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RUTHERFORD *v.* ROYAL BANK OF CANADA

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,  
PROVINCE OF QUEBEC

1931  
\*Nov. 9.  
\*Dec. 22.

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*Bills and notes—Banking—Cheque—Irregular payment by a bank—Verification slip—Release signed by authorized agent.*

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), reversing the judgment of the Superior Court, Patterson J. (2), and dismiss-

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\*PRESENT:—Duff, Newcombe, Lamont, Smith and Cannon JJ.

(1) (1931) Q.R. 50 K.B. 458.

(2) (1930) Q.R. 68 S.C. 349, *sub nomine Dunton v. Royal Bank of Canada.*

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ing the action instituted against the respondent bank by the appellant acting as trustee of a bankrupt company in reimbursement of a cheque alleged to have been paid without authorization.

The firm of Harvie Smith & Company, Limited, opened and operated, for the purposes of the business which it formerly carried on in Montreal, a current account in a branch of the appellant bank, under authority of a resolution of the directors of the company passed on the 30th of November, 1926, in accordance with its by-laws. The following resolutions relevant to the issues involved in this appeal were passed. Resolution no. 3 provided that any two of the four senior officers of the company, namely, the two vice-presidents and the treasurer, were authorized on behalf of the company to make, sign, draw, accept or endorse cheques, etc., and, by resolution no. 4, it was also provided that "all securities, documents and instruments signed, made, drawn, accepted or endorsed as aforesaid shall be valid and binding upon the company." The respondent bank had no knowledge of these resolutions. Throughout the period with which this appeal is concerned, Dr. Robert Harvie was the president and Milton F. Gregg was a vice-president and the treasurer of the company. On the 9th of August, 1927, a cheque signed in the name of the company by Robert Harvie alone, for \$4,250 payable to himself or to his order, was presented at the branch of the respondent and, although incomplete since it bore the signature of only one officer of the company, whereas under the terms of the above mentioned resolution, it should have been signed by two, it was accepted for payment by the accountant of the branch, charged against the company's account therein and paid in due course through the personal account which Harvie had in the same branch of the bank. Milton F. Gregg, who was one of the officers of the company duly authorized for and on its behalf *inter alia* to receive all paid cheques and other vouchers and to sign the bank's form or settlement of balances and release, on the 5th of November, 1927, received from the bank a detailed statement of the company's account with the bank

for the three months ending the 31st of October preceding and the cheques and vouchers for the various items mentioned in the statement, and signed and delivered to the bank what is referred to as a "verification slip" and which in fact is the bank's form of settlement of balances and release whereby the company undertook forthwith to examine the statement and vouchers and to inform the bank within ten days of anything in them that was found to be incorrect, agreeing that the statement should be conclusive evidence of the correctness of the balance therein shown and that the bank should be released from all claims by the company in respect of each and every item shown therein, save such as were questioned or notified in writing to the bank. Harvie Smith & Company, Limited, assigned in bankruptcy in October of the next year (1928) and Mr. W. E. Dunton was appointed its trustee in bankruptcy. He found the said cheque of 9th August, 1927, among the papers of the company that were turned over to him and instituted the present action to recover from the bank the amount thereof, on the ground that it was paid by the bank out of the company's funds without authorization. Mr. Dunton was later on replaced as trustee by the present appellant, who continued the action to judgment.

The Superior Court, Patterson J. (1) maintained the appellant's action, but the judgment was reversed on appeal to the Court of King's Bench (2).

On appeal to the Supreme Court of Canada, after hearing counsel for the appellant and the respondent, judgment was reserved; and, at a later date, judgment was rendered dismissing the appeal with costs. Mr. Justice Smith, who delivered the judgment of the court, after stating the facts of the case, made the following observations: "No objection to the payment by the bank of this cheque was ever made by the company. The vice-president and treasurer Gregg had full authority to sign the release on behalf of the company, and *prima facie* that document is binding on the company. No evidence was offered to displace the *prima facie* defence thus established, and it is therefore un-

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necessary to discuss here under what state of facts or circumstances a customer of the bank might be relieved from the ordinary effect of such a release.”

*Appeal dismissed with costs.*

*John Ahern K.C.* for the appellant.

*L. A. Forsyth K.C.* and *H. Hansard* for the respondent.

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