

BONENFANT v. THE CANADIAN BANK OF  
COMMERCE

1929

\*Oct. 14.

\*Dec. 9.

*Banking—Bills and notes—Collateral security—Pledging—Bills of Exchange Act, R.S.C., 1927, c. 16*

APPEAL from the decision of the Court of King's Bench, appeal side, Province of Quebec (1), reversing the judgment of the Superior Court, Trahan J. (1) and reducing the amount awarded to the respondent from \$6,584.98 to \$2,579.05.

The respondent bank sued the appellant as endorser of certain promissory notes, which, with others, had before maturity been transferred to the bank by one Dussault, as collateral security for moneys owing or to become owing to the bank by Dussault. The appellant, by his defence, denied in general terms that the bank was holder in due course of the notes. The Court of King's Bench unanimously concurred with the view of the trial judge that the bank was entitled to enforce payment of the notes up to the amount chargeable against them by the bank as pledgee; and the Supreme Court of Canada affirmed that decision.

But the respondent bank cross-appealed on two grounds: first, that it was entitled to judgment against the appellant for the full amount of the notes and interest, and secondly, that it should be reimbursed the amount of certain costs paid to the appellant as the costs of a successful appeal made by the latter in respect of some promissory notes of which due notice of dishonour had not been proved; and the bank relied upon the terms of Dussault's letter of hypothecation, which authorized it to charge as pledgee "toutes les dépenses encourues et les déboursés faits par la banque à ce sujet."

As to the first ground, the Supreme Court of Canada agreed with the view of the majority of the judges of the Court of King's Bench that, on the whole evidence, the respondent bank's claim was not valid, in so far as it rested upon the existence of a liability on the part of the appellant to Dussault. And on the second point, the Supreme Court of

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\*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Lamont JJ.

Canada affirmed the judgment of the court appealed from rejecting that claim, on the ground that, *prima facie*, the bank's liability for these costs resulted directly from its own fault and nothing in the letter of credit authorized it to put upon its customer the burden of a disbursement exacted from it under such circumstances.

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*Appeal and cross-appeal dismissed with costs.*

*Louis A. Pouliot K.C.* for the appellant.

*Chas. Mignault* for the respondent.

IN RE THE WALLACE REALTY COMPANY  
 LIMITED

1930  
 \*March 13.  
 \*April 10.

THE WALLACE REALTY COMPANY }  
 LIMITED ..... } APPELLANT;

AND

THE CORPORATION OF THE CITY }  
 OF OTTAWA ..... } RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
 COURT OF ONTARIO

*Income assessment (municipal)—Assessment Act, R.S.O., 1927, c. 238—Ascertainment of "income" (as defined in s. 1 (e))—Allowance of deduction, from company's gross revenue, of sum paid for interest on moneys borrowed for investment—Exemption claimed for dividends received on shares in another company whose revenue derived from real estate rentals—Deduction for overhead expenses; proportionate allowance, having regard to amount of non-taxable income.*

The appellant company's business, carried on in Ottawa, Ontario, included the leasing and managing of real estate owned by it in Ottawa, and the buying and selling on its own account of stocks, bonds, etc. In the year in question it derived a gross revenue of \$12,288 from rents (exempt from assessment for income tax), and a gross revenue of \$27,091 from dividends and interest upon stocks, bonds, etc. From the latter sum it claimed, in respect of income assessment, deductions or exemptions as follows: (1) \$8,004.83, being interest paid to a bank for money borrowed to pay off a balance of stock and bond purchase price and to buy certain bonds; (2) \$6,622, being dividends on shares held by it in another company, whose revenues were derived

\*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Smith and Cannon JJ.