OUTSTANDING CHEQUE OF AN INSOLVENT FIRM

Recent Decision Affirms that it Is No Special Claim, And Holder Can Collect Only Proportional Amount

By M. L. Hayward, B.C.L.

In the case of Thompson vs. the Merchants Bank, decided by the Supreme Court of Canada during the present year, it appeared that one, Biggar, acting as trustee for the Canadian Agency, Ltd., bought a parcel of land in Alberta from one Eby, the purchase money being payable by instalments in the usual way, and Eby assigned his interest in the agreement to the Merchants Bank. The Canadian Agency, Ltd., transferred 40 per cent. of its interest in the land to Cairns and 10 per cent. to one, Evans. Evans was the Alberta manager of the Canadian Agency, Ltd., and also president of the Western Canada Mortgage Co. Cairns and Evans undertook to pay the amount of Biggar's liability to Eby under the agreement of sale, or to recoup Canadian Agency, Ltd., for whatever it might have to pay, and the Western Canada Mortgage Co. agreed to make advances to meet Cairns' payments.

On the 7th of June, $8,554.90 fell due under the agreement of sale, and of this sum Canadian Agency, Ltd., was entitled to be recouped by Cairns and Evans for $3,421.96 and $855.49 respectively, making 50 per cent. of the instalment due. The Canadian Agency, however, were short of money and Evans' personal cheque for $855.49, to cover his share and a cheque on the Western Canada Mortgage Co. for $3,421.96, to cover Cairns' share, were handed to Canadian Agency on June 6th in order that it might send its own cheque to the Merchants Bank at Battleford to cover Cairns' and Evans' share of the instalment falling due on the next day. These two cheques were deposited to the credit of Canadian Agency's current account in the Bank of Montreal at Edmonton on the 8th of June, and on the 6th Evans, as manager of Canadian Agency, Ltd., drew a cheque on the current account of the Agency on the Bank of Montreal for $4,277.45, which he sent to the Merchants Bank at Battleford, but stated in a letter which accompanied the cheque that it was a payment on behalf of Canadian Agency itself to cover its 50 per cent. of the June 7th instalment, and that Cairns and Evans had not provided funds to meet their shares.

In the meantime, however, Canadian Agency, Ltd., being an English company, the English courts had appointed a receiver of the assets of the company, and when the cheque was presented by the Merchants Bank payment was refused by the Edmonton branch of the Bank of Montreal on the ground that a receiver had been appointed. Later on a winding-up order was made against Canadian Agency, Ltd., and Thompson was appointed liquidator and defended the action with the Bank of Montreal.

Was Cheque a Trust Item?

The question for the decision of the Court was whether the face of the cheque standing to the credit of Canadian Agency, Ltd., in the Bank of Montreal was trust money in the possession of Canadian Agency for the specific purpose of paying Cairns' and Evans' liability to the Merchants' Bank, and therefore the property of the Merchants Bank—in which case the Merchants Bank was entitled to the payment of the cheque in full—or whether it was the ordinary case of a dishonoured cheque where the Merchants Bank would simply be paid so much on the dollar as in the case of an ordinary insolvency.

The decision of the Supreme Court of Canada was against the Merchants Bank on the ground that the money was not "impressed with a trust" in favor of the Merchants Bank, and that Canadian Agency, as the agent of Cairns and Evans, assumed nothing more than a personal liability to the Merchants Bank whose only remedy would be against Canadian Agency for damages for breach of contract.

"Nor can I regard the giving to, or the receipt of, the cheque by the Merchants Bank, followed by a presentation upon which it should have been accepted and paid as equivalent in legal or equitable effect to a transfer or payment of the money itself to that bank," said the Court. "To do so would be, in my opinion, to give to the dishonoured cheque the effect and operation of an assignment of money in the drawee's hands belonging to the drawer, or at least of a charge upon it. It has neither. Its wrongful dishonour gives no right of action to the payee against the drawee either for the money itself or for damages for such wrongful dishonour. There can be no charge in equity without an intent to charge. The cheque is merely a bill of exchange payable at the bankers. The giving of it implies neither an intention to assign the drawer's money in the banker's hands nor an intention to charge it. Unless the cheque be treated as amounting to an assignment of, or constituting a charge upon, these moneys, I cannot understand on what footing it can be successfully urged that its receipt and presentation and dishonour would produce the same legal situation as would result from the receipt of the money itself by the payee or a declaration by the banker that such money would be held in trust for him."

LUMBER AND PULPWOOD OF BRITISH COLUMBIA

Shares in Lumber and Pulpwood of British Columbia, Ltd., to a total of $400,000 are being offered by the company direct to the public. The details are given elsewhere in this issue. There is just one class of stock, and the only prior claim to the assets is an issue of bonds to the amount of $60,000. Stock to the amount of $400,000 is already outstanding, which will make the total stock issue $800,000.

The company owns a valuable timber reserve in British Columbia. Canada is now one of the few countries of the world which has extensive timber resources, and a large part of these resources are in British Columbia. With the increasing scarcity of timber and the increasing demand for paper and other products, such assets are certain to increase rapidly in value.

PACKERS' ORDER POSTPONED

At a sitting of the Board of Commerce held in Toronto on October 11th, it was decided to postpone the time when the packers' order should come into operation, from October 15th to November 1st. The order limits prices to the levels of March 10th last. Representatives of the packers pointed out that the selling prices must be based upon the cost of the meats when they were purchased (which is about six months previous), and that the supplies now on hand had been purchased at higher prices than those which were being sold on March 10th.

The amendment reads as follows:—

"The representatives of various packing houses having been heard with regard to the order of the 27th day of September:—

"The undersigned consider it expedient that the matter be fully considered by all the members of the board before the request for variations of the order be finally dealt with. Therefore for the present they simply order that the words 'fifteenth day of October' where they occur in said order be changed to the 'first day of November.'

"Meanwhile, as Mr. O'Connor joined in the original order, the representations will be conveyed to him in order that he may be given an opportunity to express himself regarding the application."

This order is signed by Messrs. Robson and Murdoch.

BRITISH COLUMBIA FIRE PREVENTION LEAGUE

While not much progress has been made by the British Columbia Fire Prevention League, organized about one year ago, it is expected that active work will start shortly. In conjunction with the provincial superintendent of insurance, letters were sent to municipal councils, schools, etc., urging the observance of Fire Prevention Day.