LEGAL DEPARTMENT.

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LEGAL DECISIONS.

Howell vs. Township of Wilmot.

Ferguson, J. Judgment in action tried without a jury at Stratford. Action by the assignee for benefit of creditors of Alfred Kaufman against the township corporation and the Canadian Bank of Commerce for a declaration that a check for $3,400 received by Kaufman on the 27th February, 1896, from the solicitor of one Irwin, to whom Kaufman had given chattle mortgage, was the property of plaintiff as such assignee, and that the moneys deposited in the Canadian Bank of Commerce at the City of London, being the amount or proceeds of the check, were the property of plaintiff as such assignee. Kaufman was insolvent prior to the 24th February, 1896. He was Treasurer of the Township, and borrowed the money from Irwin for the purpose of paying to the township the amount of a deficiency in his accounts. On the evening of the 27th February or morning of 28th Kaufman endorsed the check and mailed it to the manager of the Bank at London, who on the 29th February, placed it to the credit of the "Township of Wilmot; A. Kaufman, Treasurer," in the books of the bank. The assignment to the plaintiff was made on the evening of the 28th February. R. S. C., ch. 35, sec. 48, provides that from the time any letter, packet, chattel, money or thing is deposited in the postoffice for the purpose of being sent by post it shall cease to be the property of the sender, and shall be the property of the person to whom it is addressed. Held, that, although there was not in so many words authority from the endorsee to send the enclosed check by post, yet the sender, being the Treasurer of the virtual indorsee, and having given his instructions to the bank Manager as such Treasurer, and having obtained the check for the purpose of making good moneys belonging to the township which he had misapplied, and the check having been indorsed by him with the intention of passing the property in it, and having been mailed to him as above stated, and having regard to the clear and strong language of sec. 43 above quoted, Kaufman had not, at the time of or immediately before making the assignment to the plaintiff the right to revoke his mandate to the bank manager, and, therefore, such alleged right could not have passed to the plaintiff by the assignment, under the words in this respect of R. S. O., ch, 124, sec. 4, the word "rights" being one of those words. Held, also, as to the alleged fraudulent preference contended for, that the check was a security for money, and not money. Davidson v. Fraser, 23 A. R., 439, followed. Held, also, that Kaufman, as Treasurer of the Township, was a trustee for the Township, and had misappropriated a part of the trust moneys and was criminally liable in respect of his default, and, therefore, his replacing of the trust moneys by the transfer of a security could not be regarded as a preference of one creditor to others, the township having higher rights than those of creditors. Molsons Bank v. Halter, 18 S. C. R., 93, followed. Action dismissed with costs. Proceedings stayed for 30 days, if plaintiff desires it.

Johnston vs. Town of Petrolia.

Osler, J. A.—Judgment on motion by plaintiff to extend time for giving to the defendants the Imperial Oil Company, and Fairbank, Rogers & Co., notice of appeal to this court from the judgment of the trial Judge pronounced on the 25th September, 1896, and signed or entered on the 16th November, 1896. The action was brought against the three defendants for an injunction and damages in respect of the alleged pollution of a creek which flowed through the plaintiff's lands. The trial Judge gave judgment for the plaintiff against the town corporation, and dismissed the action against the other defendants. The town corporation on the 23rd October, 1896, gave notice of appeal therefrom for the sittings of the Court of Appeal commencing 10th November, 1896. In the 5th November, 1896, plaintiff served his reasons against appeal, and, having been advised that he was entitled to do so under rule 825, claimed by way of cross-appeal that the judgment at the trial in favor of the other defendants should be varied by converting it into a judgment against them also for an injunction and damages. Held, that the case was not one to which rule 825 applied, the plaintiff having no right to cross-appeal under that rule against defendants, who had succeeded in the action, which, as against them, was an independent action, in no way bound up with, or dependent upon the success or failure of the action against the town. Freed v. Orr, 6 A. R., 690, 700, distinguished. Re Cavander's Trusts, 16 Chy. D., 270, followed. Held, also, having regard to the provisions of rule 804, that the time for serving notice of appeal runs from the date of signing the judgment appealed from, and not from the date at which judgment happens to be given by the trial Judge. The time for appealing, counting from the proper time, having now expired, leave to appeal should, under the circumstances, be given. Order made accordingly. No order as to costs. W. R. Riddell for plaintiff. W. Cassels, Q. C., for defendants the Imperial Co. McCarthy, Q. C., for Fairbanks, Rogers & Co.

Johnson vs. Rathbun and Burford.

Mr. Rathbun is the collector of Burford township, and as such, seized certain chattels belonging to Mrs. Johnstone as a distress against Mr. Johnstone, the plaintiff's husband, for his own farm and for the farm of the plaintiff, his wife. The amount of taxes apportioned to the plaintiff's farm was tendered to the collector, who refused to accept any sum short of the total amount charged against the two farms. Under a threat to distrain, Mrs. Johnstone paid the whole amount, and then brought action to recover the sum of $65.28, the amount of her husbands taxes and $6.58, the costs charged by the collector for making the seizure. His Honor Judge Jones in handing down a judgment made the following remark:—"I think upon the whole that the plaintiff is entitled to succeed and to recover back the amount she paid in order to prevent her property from being sold to pay her husband's taxes. It was stated in the argument that this money has been paid over by the collector, Mr. Rathbun, to the township corporation. The judgment will be against both defendants for the amount claimed, $71.62 with costs of suit payable as usual in 15 days.—Expositor.

Premium on School Debentures.

At a recent meeting of the Barrie council, Solicitor Creswicke presented an opinion re the claim of the Public School Board upon the town for the premium derived from the sale of the Public School Debentures, the board requested the council to submit the question of raising the said sum to a vote of the electors, that amount being required for the purpose of improvements. It appears that the town by agreeing to pay a higher rate of interest upon the debentures than they could be sold for to realize the par amount thereof, were unable to produce more than $8500, that is to say by making the public school supporters pay, say; 4½% instead of 4% on these debentures; the town has the money on hand which is claimed. They should only have agreed to pay on their debentures such a rate as would produce, after paying expenses, the exact sum of $8500. It therefore follows to my mind, that the premium justly belongs to the Board. The only difficulty about the matter is whether the town should not pay over the $8,500 only and security for that amount enough for the P. S supporters, keeping the premium as general funds and paying back their proportionate share of the debentures, corresponding with the amount retained. This, however, would be a clumsy way of doing the matter, and as the two ideas bring about the same result, I would unhesitatingly say that the town pay over to the board the premium less the expenses of the by-law.

The way my neighbor's daughter sings
Would make one tear his hair;
Yet I suppose she has the right
Because she rents the air.

Moss—"What do you think would be the greatest evil of another civil war?" Foss—"The plays that would come after it."—Life.