

DEBTOR AND CREDITOR—ASSIGNMENT OF DEBT FOR WHICH DEBTOR HAS GIVEN A NEGOTIABLE INSTRUMENT—NOTICE OF ASSIGNMENT OF DEBT.

In *Bence v. Shearman* (1898) 2 Ch. 582, an appeal was had from Kekewich, J., on a simple question relating to the equitable assignment of a debt, in respect of which the debtor had previously given his creditor a negotiable instrument, viz., a cheque. Notice of the assignment was given to the debtor, while the creditor was still the holder of the cheque; under these circumstances Kekewich, J., held that there had been an effectual assignment of the debt, and that the debtor was bound by the notice, and the cheque given for the debt to the creditor having been subsequently paid the debtor was liable over again for the debt to the assignee. The Court of Appeal (Lindley, M. R. and Chitty and Collins, L.JJ.), were unable to agree with that view, holding that a debtor after giving his creditor a negotiable instrument for his debt, is not bound by any notice of an assignment subsequently received by him, even though the negotiable instrument is still in the hands of his creditor, and that in case the instrument he has given is a cheque, there is no duty on his part to stop payment thereof. In this case the debtor, at the suggestion of the assignee, did for a time stop payment of the cheque, and if the assignee had promptly taken the necessary steps to enforce his claim as against the assignor he might probably have succeeded, but he neglected his opportunity, and the direction to stop the cheque was recalled, and the cheque was paid, and the assignee lost his money.

TRUSTEE—EXECUTOR—BREACH OF TRUST—OUTSTANDING ESTATE, NEGLECT TO GET IN—DEBT SECURED BY NOTE—LIABILITY OF TRUSTEE.

In *re Grindey*, *Clews v. Grindey* (1898) 2 Ch. 593 we refer to, merely to draw attention to the need for enacting in Ontario the English Judicial Trustees Act, 1896 (59 & 60 Vict., c. 35). In this case a testator had given his real and personal property to trustees upon trust to maintain the same in the same order of investment as at his death, until one of his sons should attain 21. Part of the estate consisted of a debt of £166 due upon a promissory note payable on demand, the executors believing the debtor to be a man of substance, neither called in the debt, nor applied to the Court for directions. The testator died in 1892 and in 1894 the debtor died and his estate was found to be insolvent, and only paid a dividend of 2/6 on the pound. The action was brought to compel the executors and trustees to make good the loss thus sus-