

Corelli, payable to the Equitable Life Insurance Society or order. Mr. Corelli, having got the cheque marked accepted by the bank, forwarded it to the general agent in Toronto; but on the subsequent failure of the bank, before it could be returned and collected, the cheque was sent back to Winnipeg without being indorsed by the Equitable Life.

Mr. Corelli having made arrangements with La Banque d' Hochelaga to advance sufficient money to take up the cheque and hold it as collateral security for the advance, then altered the cheque by writing the word "bearer" in place of the word "order."

The liquidators of the Commercial Bank contended that it was a material alteration, and that they were not bound to pay the cheque; and as Mr. Corelli was indebted to the bank as endorser upon promissory notes which fell due after the cheque in question had been accepted to an amount exceeding the former balance to his credit, they claimed the right to set off this balance against such indebtedness. At the time of the acceptance of the cheque, the Commercial Bank had charged the amount to Mr. Corelli's account with them in the usual manner.

*Held*, that although the alteration was not one of the kind specified in s. 63 of the Bills of Exchange Act, 1890, it amounted to a change in the contract, and was therefore a material one, and that the cheque was thereby voided; and that claimant could not rank as a creditor in respect to it upon the Commercial Bank.

An unaccepted cheque is not, in any sense, an assignment of the money in the hands of the banker.

There is no debt between a banker and his customer till a demand has been made for payment.

There seems to be a distinction between the liability of a bank which has accepted a cheque at the request of the drawer and the liability where an acceptance is given at the request of the holder, and that in the former case the holder of such a cheque is in no different position from the holder of an unaccepted cheque. The question of the materiality of the alteration in a bill is a question of law, and must be considered with reference to the contract itself, and not at all with reference to the surrounding circumstances.

*Phippen* for the liquidators.

*Huggard* for the claimants.

TAYLOR, C.J.]

[May 31.

DE MILL v. MCTAVISH.

*Execution - Exemption - Non-resident.*

The short point decided in this case was that an execution debtor may claim exemptions from seizure under execution, although he is not a resident of this province.

*Huggard* for the execution creditor.

*Bain* for the defendant.