Banking: Insurance: Commerce—Legal Notes

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CROWN BANK vs. LONDON GUARANTEE AND ACCIDENT COMPANY.

The Guarantee Company furnished the plaintiff bank a bond whereby they agreed to indemnify the bank to the extent of $5,000 in case of a paying teller and $6,000 in case of an accountant against "all pecuniary loss sustained by the bank and directly occasioned by dishonesty, negligence or disobedience of direct and positive instructions in connection with their duties." The bond also contained a proviso that the company should not be liable where the acts done were in obedience of any instructions from a superior officer or where the loss arose from a mere error of judgment on the part of the employee—also a proviso requiring the bank when required by the defendants and at their cost to assist them in every way in bringing to justice any guilty employee and procuring the re-embursement to the defendants by the defaulting employee of any money paid by the defendant company by reason of said defalcation.

Teller Absconded With Large Sum.

On Saturday, December 9th, 1905, one Banwell, paying teller in the plaintiff's Toronto office, absconded taking with him $40,350. These moneys were properly in his custody until the close of the business day; at the close of the day it was his duty to submit his cash to examination and checking by the accountant who on verifying same, would lock the teller's cash box which would then be deposited by the teller along with the other moneys and securities in the bank vault. On the day in question, the accountant certified to the correctness of the teller's statement, which included the missing money. The box was deposited in the vault, and the theft was not discovered until the opening of the teller's cash box upon the following Monday.

The Guarantee Company took no steps towards following or apprehending the teller, but the bank, who had a much larger sum at stake, took active steps, and finally, sparing no expenditure, located him in Jamaica. As a result, they secured the return of some $38,600, but to effect the capture the bank expended in travelling expenses, detectives and solicitor's charges, sums amounting to $8,163, so that the bank was said at the trial to be out of pocket some $10,500; which, with interest added for the interval, considerably exceeded $11,000, which was the aggregate sum of the two bonds.

Bank Entitled to Deduct Expenses.

The Guarantee Company admitted liability upon Banwell's bond of $5,000, but pleaded they were not liable upon the teller's bond as they claimed there was no loss "directly occasioned by dishonesty or negligence" on his part. This plea the court repudiated, saying that if Banwell had abstracted the money before the accountant entered the cage, as it appears he did, any reasonable inspection or counting would have disclosed the fact; and had the money been placed in the box and locked by the accountant, after a proper counting, still the money could not have been taken, so it is impossible to escape the conclusion that the primary and moving cause of the fraud was attributable to the accountant. The defendants are liable to the extent of $11,000 for the negligence of the accountant and the fraud of Banwell.

The Guarantee Company further claimed that they were in no case liable for the expenses incurred by the bank in apprehending the defaulter, and that, therefore, they were entitled to credit for the full sum of $38,600 the return of which was secured. The court held that the bond between the parties was in reality the contract of indemnity, the bank was, therefore, entitled to deduct all such reasonable expenses as had been incurred by it in recovering the money from the teller, and was only bound to account to the Guarantee Company for the surplus after such deduction.

Thus, the guarantors are held liable upon both bonds and such liability in this particular case amounts to the full amount of these bonds; this is the limit of the contract and of course the company cannot be held liable for any sums lost by the bank in excess thereof.—17 C. L. R. 95.

ANOTHER BANK CASE.

A father gave the plaintiff company a letter in the following terms: "I hold myself responsible for my son's fidelity whilst he remains in your employment up to the sum of £250." The plaintiff company were tobacco and cigar merchants and the son from time to time, and while in their employ, stole goods which amounted in the aggregate to £269. He was arrested, prosecuted and convicted by the plaintiff, and goods to the amount of £114 were returned. The father then claimed credit for the amount returned and that he should be liable for only £136. The plaintiffs had incurred in the prosecution and tracing of the thief, expenses which amounted to £98. The court held that the father's guarantee covered not only the immediate loss but also all reasonable expenses incurred by the company for the purpose of securing return of stolen goods. The defendants could not show that any part of the £98 had been foolishly expended. Held, therefore, that he could claim credit only for £16 being the excess of value of goods recovered over the sums expended. This leaves net losses of £253, and the defendant is, therefore liable to the full amount of his guarantee.—22 T. L. R. 366.

AGENT CANNOT MAKE SECRET PROFIT.

Fleming vs. Hutchinson.—The plaintiff approached Hutchinson, who was a real estate broker at Vancouver, B.C., respecting investments in city property, and in consequence of the interview instructed Hutchinson to purchase a lot he had listed for sale at $220 per acre, and another at a price quoted. Under the terms of his agency, the broker was to look for his commission to the vendor.

The defender purchased the first mentioned lot at $180 per acre, but concealing this fact received from the plaintiff the full price quoted and put the difference in his own pocket. He then represented to the plaintiff that the second lot could not be bought at the price quoted for it, but a higher price was necessary. The plaintiff therefore paid the increased price. The defendant bought the lot at the price originally stated and also retained the difference on this contract himself.

Defendant's Plea Not Admitted.

The court held that Hutchinson stood in the position of an agent for the plaintiff, and that as such it was his duty to procure the lots upon terms as favorable as possible to the plaintiff, and that he could not make any secret profit out of the transactions. The defendant argued that he was not an agent but a broker, and, as such, was entitled to buy the lots for the smallest and sell them for the largest price obtainable; and that, in any event, he was entitled to commission. The court was of the opinion that at the time he secured the options, he was an agent for Fleming, that he secured the options in that capacity and was at that time relying upon Fleming's instructions and the latter's promised purchase money and not upon his own.

Held that under the agreement, Hutchinson was not entitled to any commission from the purchaser but must return to Fleming the entire amount retained by him in each case.—40 S. C. R. 134.

I.O.F. AND ITS INCREASED RATES.

Some months ago, as will be remembered, the Independent Order of Forester's put in force a new schedule increasing the assessment rates of so-alled "old members." The increase affects thousands of members throughout Canada and the United States. Certain members in New York State objected to payment and obtained an interim injunction restraining the Order from enforcing the new schedule.

The decision has now been given by Judge Marcus of Buffalo. He holds that the Order has a legal right to increase the rates, as the right to make such changes is acknowledged by members upon application and admittance to membership; and further that the charter of the society requires the Order to make such changes whenever it appears necessary to do so to enable the society to meet its obligations to all members when they mature.

THIS IS FROM MASSACHUSETTS.

"Fell into his hat and suffocated," was the indorsement on the death certificate of Alfred Parlow, who was found dead by the roadside in North Raynham, Mass., last week by a neighbor. It is supposed from the position of the man's body, he was on his way to his home and tripped and fell. As he fell, his derby hat slipped down over his eyes, and his face was forced into it by the fall. The man was evidently stunned and never recovered sufficiently to extricate himself, dying of suffocation.