

Reports and Notes of Cases.

Dominion of Canada.

SUPREME COURT.

Fitzpatrick, C.J., and Davies, Idington, [40 D.L.R. 238.
Duff and Anglin, JJ.]

ROGERS v. CALGARY BREWING & MALTING CO.

*Bills and notes—Cheque—Unreasonable delay—Payment with draft
—Dishonour—Discharge of maker.*

The maker of a cheque is discharged from his liability if the agent of the payee, instead of insisting on prompt payment out of funds then available, allows an unreasonable time to elapse, and then accepts a draft which is dishonoured, on another bank, immediately after which the drawee goes into insolvency.

Calgary Brewing & Malting Co. v. Rogers, 34 D.L.R. 252, affirming 33 D.L.R. 173, reversed.

J. A. Ritchie, for appellant. *P. M. Anderson*, for respondent.

ANNOTATION ON ABOVE CASE FROM D.L.R.

Cheques—Delay in presenting for payment.

The Bills of Exchange Act, 1890 (53 Vict. c. 33) was a re-enactment with little modification of the English Bills of Exchange Act, 1882. In the revision of 1906, however, many alterations were made in the arrangement and constitution of the sections. Many of the sections of the new Act consist of sub-sections of the old Act and even more frequently sections of the old Act have been divided into parts and sub-sections and now appear in separate sections of the new Act.

S. 166 of the Act of 1906 (R.S.C. 1906, c. 119) corresponds with s. 74 of the English Act of 1882. Clause *a* is as follows:—

(a) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right, at the time of such presentment, as between himself and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged, to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank, to a larger amount than he would have been had such cheque been paid. This clause was passed to mitigate the rigour of the common law rule. At common law the omission to present a cheque for payment did not discharge the drawer until six years had elapsed, unless some injury resulted to him from the delay. *Robinson v. Hawksford* (1846), 9 Q.B. 51; *Laws v. Rand* (1857), 3 C.B.N.E. 442. But by the common law if a cheque was not presented within a reasonable time and