

Division are to be sworn, should not be ignored, it does not follow that neglect or failure to take the oath renders their acts void.

Order of Boyd, C., 7 O.L.R. 146, reversed.

*Proudfoot*, K.C., for appellants. *W. M. Sinclair*, for respondents.

From Meredith, C.J.]

[June 29.

LONDON LIFE INS. CO. v. MOLSONS BANK.

*Banks and banking—Cheques—Life insurance—Fraud of agent—Payment by bank—Right of company to recover amounts paid—"Fictitious person"—53 Vict. c. 33, s. 7 sub-s. 3. (D.)*

N. was the assistant superintendent of a life insurance company, as well as its local agent at one of its branches, having sole control of the business there. A number of applications were sent in by him to the head office, which, with the exception of five, were fictitious. As to these five the insurances subsequently lapsed, of which the company were kept in ignorance—afterwards N. representing that the insured were dead and the claims payable under the policies, sent in to the head office claim papers, filling in the names of the claimants and forging their signatures thereto, when cheques for the respective amounts, made by the company in favour of the alleged claimants and payable at a branch of the defendants' bank were sent to N. whose duty it was, on the receipt to see the payees and procure discharges from them. The endorsements of the payees names were forged by N. the genuineness of the signatures on most of the cheques being certified to by his attestation. The cheques were presented to and paid by the bank in good faith, to whom or how did not appear, the amounts thereof being charged to the company's account.

*Held*, in this disagreeing with the judgment of MEREDITH, C.J.C.P., at the trial, (MACLAREN, J.A., dissenting) that there was no evidence that the bank was aware that N. had any connection with the transactions out of which the cheques arose and that they were not entitled to rely on his identification of the payees or attestation of their signatures. But:—

*Held*, however that under the circumstances the cheques must be regarded as payable to fictitious or non-existent persons and therefore, under sub-s. 3 of s. 7 of 53 Vict. c. 33 (D), payable to bearer, and that the bank had the right to pay and charge the company with the amounts. *Governor & Co. of Bank of England v. Vagliano Brothers* (1891) A.C. 107, followed.

Per MACLAREN, J.A. By drawing the cheques payable to order, the company would be estopped from denying the existence of the payees and their then capacity to endorse. The identification of the payees or the genuineness of the endorsements would be a matter between the bank and the holders of the cheques. N.'s agency and the facts proved and mentioned in the judgment of the trial judge, without more, were not sufficient to relieve the bank from the responsibility which it voluntarily assumed.

*Aylesworth*, K.C., and *Edgar Jeffery*, for appeal. *Hellmuth*, K.C., and *Ivey*, contra.