

EFFECT OF BANK MARKING A CHEQUE.

that the solicitor had neglected to explain to the client that the power of sale was not in the usual form, and authorized a sale without notice. It appeared that the debt for which the mortgage was given was overdue and presently payable when the mortgage was given, and that the mortgage was in effect an arrangement for giving the client time for payment; and on this ground, therefore, it was held by Pearson, J., and also by the Court of Appeal that the doctrine of *Cockburn v. Edwards*, 18 Chy. D. 449, did not apply.

SELECTIONS.

EFFECT OF BANK MARKING A CHEQUE.

The case of *The Drovers' Bank v. The Anglo-American Co.* is of interest on this point. We find it reported in *Central Law Journal*, p. 182.

HEAD NOTE.—In the case of a certified cheque, the bank certifying the cheque is primarily liable for its payment, and it is negligent in a bank or agent for collection of such cheque to send it to the certifying bank itself for payment.

STATEMENT OF THE CASE.—The Anglo-American, etc. Co., placed in the hands of the Drovers', etc. Bank, a cheque drawn and certified by Rice & Messmore, bankers, of Cadillac, Michigan. The Drovers' Bank forwarded the cheque for collection to Rice & Messmore themselves. The cheque was not paid, and the Anglo-American Company brought suit for its amount against the Drovers' Bank and recovered judgment. The bank appealed.

SCHOFIELD, J., delivered the opinion of the court.

Assuming, first, that appellant is not chargeable with knowledge of the existence of any other bank than that of Wright & Messmore, at Cadillac, Michigan; and second, that all the information it had, or could reasonably obtain at the time in respect to the financial standing of Rice & Messmore was that they were solvent—were Rice & Messmore suitable agents to whom to transmit the certified cheque for

collection after it was placed by appellee in appellants' possession? We do not think it is of much consequence whether appellant took the cheque as payment on account, or for the purpose merely of collection; for in either view it is entitled to show that the cheque, if it has discharged its duty by an effort to collect it, has availed nothing. Nor do we regard the evidence that certain banks in Chicago were in the habit of transmitting cheques drawn on other banks, to those banks for collection, as affecting the present question. That evidence hardly comes up to the requirement of this court in regard to proof of a common-law custom, as laid down in *Turner v. Dawson*, 50 Ill. 85, and subsequent decisions of like import; but if it did, that custom does not include cases in which certified cheques are sent for collection to the banks by which they are certified. In the case to which the evidence relates there is no primary liability on the part of the bank to which the cheque is sent; but in the case of a certified cheque the bank is primarily liable for its payment. So far as affects the present question, its position is precisely what it is where it makes its promissory note, bond, or other evidence of original indebtedness. *Bickford v. First Nat. Bank*, 42 Ill. 242, et seq.

The same person cannot be both debtor and creditor at the same time, and in respect of the same debt. How then can he who is debtor, be at the same time, and in respect of the same debt, the disinterested agent of the creditor? Can it be said to be reasonable care, in selecting an agent, to select one known to be interested against the principal—to place the principal entirely in the hands of his adversary? The interest of the creditor, when his debtor is failing, is that steps be taken promptly, and prosecuted with vigour, to collect his debt. But at such a time the inclination of the creditor quite often, and it may be, sometimes his interest too, is to procrastinate. The debtor may often be interested in bringing about a compromise with his creditors whereby his debts may be discharged for less than their face. But the creditor, whose debt can all be collected by legal proceedings can never be interested in producing that result. Surely it could not be held reasonable care and diligence in an agent holding for collection the promissory note given by