

IN THE MATTER OF THE CENTRAL BANK OF
CANADA—BAINES' CASE.

Banks and banking—Winding-up Act—Subscription for shares—Transfer of shares—Shareholders within one month of suspension—R.S.C., c. 120, ss. 20, 70, 77.

One B. subscribed for twenty-five shares of the capital stock of the Central Bank of Canada, but did not at the time of subscription nor within thirty days thereafter make any payment thereon. About eight months later, however, payment was made by D. to the Bank, and the Bank accepted payment from him, of twenty per cent. of the amount subscribed, and subsequently dividend cheques were issued by the Bank in favor of B., were endorsed by him, and were paid.

Held, MACLENNAN, J.A., dissenting, affirming the decision of BOYD C. (reported 15 O. R. 295), that, the original signature remaining unobliterated, the subscription was revived and became complete as soon as payment was made, and no fresh signature was necessary.

Per MACLENNAN, J.A. The payment not having been made within the prescribed time, the original subscription was void, but the subsequent payment accepted by the Bank, and the endorsement by B. of the dividend cheques, operated as a new subscription.

No special directions as to the transfer of shares had been formally adopted by the directors, but the transfer book had been prepared and adapted to the system of marginal transfer. One C. transferred certain shares in blank, subject, by marginal note, initialled by C., to the order of a broker and subject to a subsequent marginal note, initialed by the broker to the order of B. B. signed an acceptance of the shares immediately under the transfer in blank signed by C., and was entered in the books of the Bank as the holder of the shares, the intermediate transfers to and from the broker being omitted. The transfer to B. and the acceptance by him took place within a month of the time of the suspension of the Bank.

Held, affirming the decision of BOYD, C., that this transfer and acceptance were a sufficient compliance with, or at least not in any way a violation of, the statutable provisions, and that B. became the legal holder of the shares and was liable as a contributory.

Sections 70 and 77 of the Act must be read together and make liable as contributories all those who hold shares at the time of the suspension of the Bank, or who have held shares at any time within one month before.

A. C. Galt, for the appellant.

W. R. Meredith, Q.C., for the respondents.

MOLSON'S BANK v. HALTER.

Assignment for benefit of creditors—Mortgage to secure moneys used by trustee in breach of trust—Trust estate not a creditor—Intent to prefer—Having the effect of preferring—R. S. O., cap. 124, sec. 2.

The defendant W., who was executor under the will of one J., made in favour of himself and the defendant H., who was his co-executor under the will, a mortgage to secure the repayment of trust moneys improperly used by W., in breach of trust. W. was at the time this mortgage was given and continued to be in insolvent circumstances, but had made no assignment for the benefit of his creditors. The plaintiffs, execution creditors of W., attacked the mortgage.

Held, that no assignment having been made, an execution creditor might attack the security and take advantage of section 2 of the Act.

Held, also, that neither H., nor H. and W., as executors, were in the strict sense of the word creditors of W., and that the mortgage therefore could not be set aside as having been given with intent to prefer, or as having the effect of preferring, one creditor to another.

Held, also, OSLER, J. A., dissenting, that the words "or which has such effect" relate only to the immediately preceding clause, dealing with the preference of one creditor over others, and this mortgage not being a preference of one creditor over others, and not being made with intent to defeat, delay or prejudice creditors, could not be set aside.

Per BURTON, J. A.—These words apply only to a preference of one creditor over another, and even then only when there is an actual intent to prefer.

Per OSLER, J. A.—These words apply to the whole of the antecedent part of the section, embracing as well conveyances made with intent to defeat, delay, or prejudice as those made