

RECENT LEGAL DECISIONS.

BANKING, TRANSFERRING SUMS TO ADJUST ACCOUNTS.—An Australian produce dealer acquired control of all the shares in a butter company, and was elected chairman of the board as well as managing director. He then brought the Company bank account to the branch of the Bank of New South Wales, where he kept his own account. He explained to the branch bank manager that the business was really one, but he desired to keep two accounts, because some of his old customers would deal with him who would not deal with the Butter Company, and that there would require to be adjustments between the accounts. He also gave the Bank manager two cheques in blank, one signed by himself and one by the Company, to be used by the manager as he should see fit for adjustment purposes. The dealer was in the habit of over-drawing his account, and on two occasions he drew sums from the Company account and credited them in his private account, which was then overdrawn, and on a third occasion he deposited a cheque payable to the Company in his private account, which gave him a credit and left the other with a debit. Subsequently the manager of the Bank, without any communication with the customer, made use of the blank cheque signed by the latter, and transferred a sum back to the Company's account. Soon after the Company went into liquidation, and an action was commenced against the Bank, in which it was sought to hold it liable for the amounts which the dealer had transferred from the Company's account to his own. The trial Judge, in Australia, found for the Bank, holding that it had acted in good faith and without notice of any irregularity or breach of trust. A full Court reversed this on appeal, and the Bank then successfully carried the matter to the Privy Council in England. Lord Devey, in delivering the judgment of the Privy Council, said in part:—The question is narrowed to this: was there any duty on the part of the Bank or its manager to enquire into the state of the account between the dealer and the Company? The course of business would necessarily result in cross accounts between the dealer and the Company, and probably in the latter becoming indebted to the dealer, and there would be no objection in the Company making advances to the dealer to enable him to meet his engagements for butter on their account. The law is well settled, that in the absence of notice of fraud or irregularity a banker is bound to honour his customer's cheque, and is entitled to set off what is due to a customer on one account against what is due from him on another account, although the moneys due to him may, in fact, belong to other persons. On the other hand, a banker is not justified of his own motion in transferring a balance from what he knows to be a trust account of his customer to the same customer's private account. It was possible that the Bank manager was imperfectly acquainted with the law relating to Joint Stock Companies, and that he placed some, and perhaps undue, reliance on the fact of the dealer being sole owner of the shares. But the Bank is bound only by its manager's acts and knowledge, and not by his opinions on legal questions. (*Bank of New South Wales v. The Goulburn Valley Butter Factory Company*, 18 Times Law Reports 735.)

INSURANCE—COMMANDEERING OF GOLD.—A large quantity of gold, worth over two hundred thousand pounds sterling, the property of a company incorporated under the laws of the former South African Republic, was insured with the Alliance Marine and General Assurance Company against arrests, restraints and detentions of kings, princes, and people, while in transit from the Company's mine, at Johannesburg, to the United Kingdom. The policy contained the

following clause, excepting liability. "Warranted free of capture, seizure and detention, and the consequences thereof, or any attempt thereat, piracy excepted, and also from all consequences of riots, civil commotions, hostilities or warlike operations, whether before or after declaration of war." While in transit, the gold was seized at the frontier by the Government of the South African Republic. At that date the commandos had been called out, but war had not been declared. The seizure was in accordance with the laws of the Republic. The English Court of Appeal affirms the judgment at the trial in favour of the Insurance Company, and holds that the loss was caused by seizure within the meaning of the exception in the policy. (*The Robinson Gold Mining Co. v. The Alliance Marine and General Assurance Company*, 18 Times Law Reports, 732.)

BANKS, COLLECTION OF DRAFT.—A bank receiving a draft from another Bank for collection, and crediting it against such other bank without notice of its insolvency, is liable to the owner of the draft for the proceeds. (*Nash v. Second National Bank*, 51 Atl. Rep. 727, New Jersey.)

SEALED TENDERS addressed to the undersigned, and endorsed "Tender for improvements in Quebec Harbour," will be received at this office until Friday, 22nd August, inclusively, for the construction of crib work, concrete and pile work in Quebec Harbour.

Plans and specification can be seen at this Department and at the offices of H. A. Gray, Esq., Resident Engineer, Confederation Life Building, Toronto; C. Desjardins, Esq., Clerk of Works, Post Office, Montreal; Ph. Beland, Esq., Clerk of Works, Post Office Building, Quebec; E. T. P. Shewen, Esq., Resident Engineer, St. John, N.B., and C. E. W. Dodwell, Esq., Resident Engineer, Halifax, N.S.

Tenders will not be considered unless made on the printed form supplied, and signed with the actual signatures of the tenderers.

An accepted cheque on a chartered bank, payable to the order of the Honourable the Minister of Public Works, for seventy-five thousand dollars (\$75,000), must accompany each tender. The cheque will be forfeited if the party decline the contract or fail to complete the work contracted for, and will be returned in case of non-acceptance of tender.

The Department does not bind itself to accept the lowest or any tender.

By order,

FRED. GELINAS,
Secretary.

Department of Public Works,

Ottawa, 31st July, 1902.

Newspapers inserting this advertisement without authority from the Department will not be paid for it.

The undersigned, having well established and responsible agents in the towns of British Columbia, is now open to accept a General Agency for a first class Fire Company, and to arrange for the transfer to it of the entire business written by him for the Imperial Insurance Co. Ltd in Victoria and other parts of the Province.

ROBERT S. DAY,
Victoria, B.C.