JUDICIAL DECISION IN BANK OF NOVA SCOTIA CASE

Application of Section 90 of Bank Act—Acceptor of Draft Held Responsible, Though Company He Claimed to Represent Did Not Exist

A CASE involving points of interest in banking practice, that of Bank of Nova Scotia vs. Heber H. Hatfield, was decided by Mr. Justice Chandler in the King's Bench Division of the Supreme Court of Nova Scotia on January 21, 1920. The case arose out of the acceptance by Hatfield and the discounting by the bank of a certain draft; and an action commenced in 1918 in regard to the matter had been dismissed with costs but "without prejudice, however, to any action which might be taken by the plaintiff against any person or persons whatever, on or in respect of the bill of exchange sued on." This action was then brought by the bank against Heber H. Hatfield as acceptor.

Facts of the Case

The facts of the case as set out in the judgment briefly are as follows: The firm of Hatfield and Scott, carrying on business in New Brunswick and in Montreal, had made arrangements to buy car loads of apples from Edward Harrison, of Kentville, N.S., to be paid by drafts drawn by Harrison and to which the bills of lading were to be attached. On or about December 8th, 1917, the defendant and Edward Harrison called upon the agent of the Bank of Nova Scotia at Kentville, Nova Scotia, and one of them stated to the agent of the bank that Edward Harrison wanted some money. Roy, the agent of the Bank at Kentville, says that he filled in the date—namely, December 8th, 1917, in a form of draft and also the words "at sight." Whether Edward Harrison signed the draft as drawer then or at a later date does not appear, but at all events the defendant accepted the draft as it then was, by writing at the foot of the draft the following: "O.K. Hatfield and Scott Co., Ltd., per H. H. Hatfield," and the draft was afterwards filled in for the sum of $927.50, the draft being drawn on Hatfield and Scott, Ltd., Montreal, P.Q. The draft was discounted by the Bank of Nova Scotia and the proceeds of the draft placed to the credit of Edward Harrison on December 10th, 1917.

The evidence further showed that Hatfield and Scott had applied for incorporation under the Dominion Companies Act in August, 1917, but had not received their letters of incorporation until January 9, 1918—but, nevertheless, believed that during that interval they were an incorporated company. Further, the evidence showed that Hatfield had not been legally authorized by the company (which in reality did not at the time exist) to act as its agent, but that he did so.

Acceptor Held Responsible

In deciding the case Mr. Justice Chandler says:—

"Considering that Hatfield knew when he accepted the draft sued on that it was to be used immediately in order to put Edward Harrison in funds and that it was absolutely useless and futile for Hatfield to accept the draft if the draft was not to be valid or used until a bill of lading for a carload of apples was attached to it and that this particular draft was discounted by the bank and the proceeds placed to the credit of Edward Harrison's account on December 10th, 1917, I have come to the conclusion that the draft was not accepted by Hatfield conditionally, as contended by him. If the draft was not to be used, that is, discounted by the bank until a bill of lading for apples was attached to it, what was the use of Hatfield's acceptance? In the course of business between Edward Harrison and Hatfield and Scott prior to this date, and in accordance with what is stated in the letter from the Bank of Montreal to the Bank of Nova Scotia mentioned above, any drafts drawn by Harrison on Hatfield and Scott Co., Ltd., to which bills of lading were attached were paid by Hatfield and Scott at Montreal on presentation, and if this particular draft was to be held until a bill of lading was attached to it in order to secure payment, all that took place between Hatfield and Roy at Kentville when this draft was in part prepared and accepted by Hatfield, amounts to nothing whatever, and has no effect.

"If, as stated by Hatfield, Roy had waited until Harrison had brought in a bill of lading to be attached to the draft accepted by Hatfield before sending it forward for payment, the bank would have lost the benefit of the bill of lading as security for the payment of the draft. Section 90 of the Bank Act provides that the bank shall not acquire or hold any warehouse receipt or bill of lading or any such security as aforesaid to secure the payment of any bill, note, debt or liability unless such bill, note, debt or liability is negotiated or contracted at the time of the acquisition thereof by the bank. If Roy, the manager of the bank, had acted as Hatfield claims he agreed to do, the bank would have lost the security of the bill of lading as the draft accepted by Hatfield was negoiated or discounted on December 10th, at which time admittedly there was no bill of lading available to be attached to the draft and to secure its payment. It is unlikely that Roy had altogether overlooked the provisions of section 90 of the Bank Act in connection with this transaction.

Thought Company Incorporated

"The plaintiff contends that Hatfield by his acceptance of this draft in the name of a non-existing corporation warranted and represented that there was such a corporation in existence and that he, Hatfield, had authority to accept the draft for that company. The plaintiff further contends that Hatfield, not having any such authority as he represented and warranted, is personally liable under the circumstances of this case for the amount of the draft and for the costs and expenses incurred by the plaintiff in endeavoring to collect the draft from Hatfield and Scott Co., Ltd.

"It seems to me that the contention of the plaintiff as to the liability of the defendant in this matter is correct. I think that the defendant Hatfield is liable by reason of his representation that he had authority to accept the draft sued upon as agent for Hatfield and Scott Co., Ltd., and that by his conduct he warranted that he had such authority. Though Hatfield does not seem to have been aware of the fact at the time, there was no such corporation as Hatfield and Scott Co., Ltd., in existence on the date when the draft sued upon was accepted, but the ignorance of Hatfield on this point does not affect his liability."

CLAIMS COMPENSATION BOARD AUTOCRATIC

The Ontario Workmen's Compensation Board came in for severe criticism at the fourteenth annual meeting of the Ontario Bar Association on March 3 and 4, especially because of its disregard for the services of lawyers in connection with claims under the act. The committee on law reform also mentioned the board's investments as an example of this autocratic power. The 1919 report shows investments made in the bonds and debentures of loan companies and of towns and cities throughout Ontario of between $5,000,000 and $6,000,000. These carried interest at between 5½ and 6 per cent., while the province was borrowing at higher rates. The committee thinks the money might be handed right to the province, which should become indebted to the board for advances with a reasonable rate of interest.

The committee suggests several amendments to the Workmen's Compensation Act, among them one to provide that the workingman be given right to appeal to a judge with the privilege of calling evidence where he is not satisfied with the board's decision, as in the United States and England. It is also asked that lawyers be allowed to present claims to the board, as many claimants are not able to present their cause in an intelligent manner.

A million-dollar power action of the Toronto Power Co. against the Dominion government has been settled out of court. The claim was reduced from $1,200,000 to $800,000, and of this amount the Ontario Power Co. is to pay $510,000.