

raised, did not of itself negative prohibition. But a Judge had power only to prohibit subordinate tribunals and persons—no power to prohibit the Court of Appeal; and it would be doing this, in effect, if the order asked for were granted. It was idle to argue that there was only one point before the Court of Appeal, and that it was only decided that the money in the bank might be taxed. The point there was the point again raised here, namely, whether the money in the bank, situate outside the reserve, was money available for payment of the primary debtor's debts, he being an unenfranchised Indian. See the reasons of appeal filed. The Court of Appeal held that the money was garnishable. The learned Judge was asked to hold that it was not, and to prohibit the payment. This went to the root of the whole matter, and he was, of course, bound by the decision.—There was a point taken also about a counsel fee allowed by the trial Judge. This should have been made a ground of appeal, if objected to. The learned Judge did not, at all events, feel called upon to consider this fine point, in view of the fact that the defendant himself, on the 23rd May, gave his cheque in settlement of the suit. There is no prohibition, of course, if nothing remains to be prohibited. The learned Judge was not quite sure as to the facts upon this point, but the cheque was accepted on the day it was issued, and was stamped as paid by the Dominion Bank on the 4th June last. Motion dismissed without costs, other than \$5 already ordered to be paid. J. B. Mackenzie, for the primary debtor. The primary creditor was not represented.

MENARY V. WHITE—BRITTON, J.—DEC. 12.

Fraud and Misrepresentation—Sale of Farm—Action by Purchasers against Agent for Vendor—Value and Character of Land—Evidence—Findings of Fact of Trial Judge—Dismissal of Action—Costs.—An action for damages for false and fraudulent representations whereby the plaintiffs were induced to purchase a section of land in Alberta; tried without a jury at Orangeville. The action was founded upon fraud; rescission of the agreement for sale, dated the 10th June, 1909, with the Stewart-Matthews Company, for whom the defendant was agent, was not asked. The plaintiffs had paid a considerable portion of the purchase-money; and they asked damages because of misrepresentation as to the value and character and