LIMITATION OF SECURITY BOND

Amount Specified is Intended as a Protection to Bank, Not a Prohibition Against Advancing More

IN a recent case before the Supreme Court of Ontario the court had occasion to interpret a bond given by two men, Mills and Howell, to the Dime Savings Bank to guarantee payment of loans to a company which they were organizing, and also to determine the liability of the guarantors according to the terms of the bond. The bond was conditioned as follows: "Now, therefore, for value received, we, the undersigned, Lawrence C. Howell, of Galt, Ontario, and Thomas Mills, of Kingston, Ontario, hereby, jointly and severally, guarantee the payment of any and all sums of money which may at any time hereafter be owing and payable by Stearns-Knight Detroit Co. when organized to said bank, not exceeding six thousand dollars ($6,000) at any one time, upon notes, acceptances, endorsements, overdrafts to be made by said corporation when organized or upon any account whatsoever.

"Acceptances of this guarantee, notice of default, renewal or extension of time of payment of any part of said indebtedness, any releases thereof, addition thereto, or change or other form of security are hereby waived and agreed to.

"This guarantee is a continuing guarantee, covering all indebtedness of said Stearns-Knight Detroit Co. when organized to said bank, not exceeding six thousand dollars ($6,000) at any one time upon any account whatsoever until revoked by notice given to said bank."

Judgment of the Court

In their judgment their lordships say:—

"The first recital set out that the corporation 'wishes and expects to borrow . . . divers sums of money from time to time, not to exceed $6,000 at any one time, upon notes, endorsements, acceptances and any account whatever.'

"The second recital reads that the respondents agreed 'to loan to the said corporation, sums of money, from time to time as above stated, not exceeding $6,000 at any one time, upon notes, acceptances, endorsements, overdrafts, etc., made or endorsed or upon any account whatsoever provided that the payment of the said loans be guaranteed by the undersigned.'

"Two points are raised: first, that the recitals govern the operative parts of the bond, so that the appellants are not liable if at any time the respondents had advanced more than $6,000; and second, that the agreement between the respondents and the company contained in the guarantee, being the basis of the appellants' liability, could not be departed from, and if in fact more than $6,000 was, at any one time, due to the respondents, the bond was void.

"Both these objections amount really to the same thing, as each suggests that the bond, when properly construed, prevented the respondents from exceeding the limit of $6,000 at any one time.

Limitation of Bond

"In my opinion, the bond primarily contemplates direct advances to the company up to $6,000 to enable it to begin operations and finance them. It was, I think, contemplated that in the course of business customer's notes for purchased motors might be discounted by the company, and thus an addition to the $6,000 would be created. This would be natural, while a limitation of the advances upon the company's own notes or endorsements for plant or operating expenses, etc., might well be insisted on from motives of prudence. The real meaning of the guarantee seems to be expressed in the last paragraph of the bond, where it is said that the guarantee is to be a 'continuing guarantee covering all indebtedness (of the company) to said banknote exceeding $6,000 at any one time upon any amount whatsoever.'

I read this as meaning that the sureties were notwithstanding renewals, extensions, additions or charges to be liable 'on any account whatsoever' only to the extent of $6,000 at any time, and that when they chose to revoke by notice they could do so, their liability being then fixed by the limited amount. The limitation of $6,000 is intended as a protection to the bank, not a prohibition against advancing more than that amount."

SUIT REGARDING STEEL RAILS

A suit involving several million dollars, the point at issue being the value of steel rails which the Dominion government, under the authority of the War Measures Act, compelled the Dominion Iron and Steel Co. to roll during the war period for the use of Canadian railways, is being heard by the Exchequer Court of Canada, at a sitting which opened on September 7. The amount involved is $8,727,617, less cash already advanced to the extent of $5,500,000. This makes the actual amount in dispute upward of three and one-quarter millions with interest.

The amount of rails rolled under the government's order was something in excess of 100,000 tons, for which the company seeks payment at the rate of $75 per ton. As the government considered the price too high, provision was made by order-in-council for a reference of the dispute to the Exchequer Court. The rails were delivered under the government order to the Grand Trunk, Canadian Pacific and other roads. These railways have been made parties to the proceedings before the Exchequer Court, the purpose being to have the court declare that the railways must pay for the rails received the amount the court finds to be fair and reasonable.

WITHDRAWAL FROM JOINT ACCOUNT

Action of Helen Grannen, niece of the late Owen Shortill, of North Devon, N.B., in drawing $1,200 from their joint account at the Bank of Montreal, after the death of Shortill, is being contested in court by Frank Shortill, son of Owen Shortill, who inherits the whole estate under a will. The hearing was concluded on September 9, and Chief Justice Hazen reserved judgment. The late Owen Shortill in making his will about 1906 left all his property, personal and real, to his son, the plaintiff in the case. About six years ago the deceased and his niece opened a joint bank account at the Bank of Montreal, in Fredericton, and after the death of the deceased Miss Grannen drew out the deposit which amounted to about $1,200. The plaintiff claims that he was entitled to the money and brought action for the purpose of obtaining it.

DOMINION TRUST LIQUIDATION

On August 21 J. C. Gwynn, liquidator of the Dominion Trust Co., obtained the consent of the shareholders of the old company, the Dominion Trust Co., Ltd., to a settlement. The sum of $25,000 out of $26,000 already collected by Mr. Gwynn from shareholders of the old company is to be handed back, and the liquidation of the old company is to proceed voluntarily. Calls of $67,000 on shareholders of the old company and $35,000 on shareholders of the new company are to be paid.

A settlement was also made of the litigation between J. W. Oxley, one of the largest English creditors, and the liquidation. The settlements will clear the way and enable Mr. Gwynn to apply to the courts for leave to pay a dividend to the creditors and depositors of the Dominion Trust company out of the moneys he has realized.

Some useful "Notes on the Dominion Bankruptcy Act" have been published in the form of a 20-page pamphlet, by Salter and Arnold, Ltd., assignees and liquidators, of Winnipeg and Regina.