

*Held*, also, following *Clifford v. Logan*, 9 M.R. 423, that an instrument creating only an equitable charge of this nature upon property not at the time in existence, did not before the Act 57 Vict., c. 1, s. 2 (M.), come within s. 3 of the Bills of Sale Act, so as to require registration to make it operative as against an execution creditor, and that the Act of 1894 repealing s. 4 of the Bills of Sale Act, and substituting a new sub-section, did not affect a prior existing instrument.

Judgment of the County Court in favor of the claimant affirmed, and appeal dismissed with costs.

*W. A. Macdonald*, Q.C., for plaintiffs.

*Culver*, Q.C., for claimant.

Full Court.]

[Feb. 27.]

IN RE COMMERCIAL BANK OF MANITOBA, BARKWELL'S CLAIM.

*Negotiable instrument—Deposit receipt—"Not transferable"—Chose in action—Assignment of debt—Winding up.*

In this case the bank had issued a deposit receipt for £300, bearing interest at 5 per cent. per annum and payable in one year. Across the face of the instrument were printed the words "not transferable." After the commencement of the winding-up proceedings, and before the making of the order, the depositor indorsed the receipt in writing, directing payment of the money to the claimant, who applied to be placed on the list of creditors of the bank.

The application was opposed by the liquidators on the ground that the deposit receipt was not assignable, and that they might have a claim against the original depositor, who was a shareholder of the bank, in respect of the double liability on his shares.

*Held*, reversing the judgment of BAIN, J., that although the instrument could not be transferred by indorsement, yet the debt owing by the bank might be assigned to the claimant by the use of apt words in that behalf: *Gathercole v. Smith*, 17 Ch. D. 1, distinguished.

The question whether the wording of the indorsement on the receipt was a sufficient assignment of the chose in action was not decided by the Court, and an order was made remitting the application to Chambers for proof of the claim without costs of the appeal.

*Tupper*, Q.C., for the liquidators.

*Wilson*, for claimant.