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Commentary

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His Lordship rejected the argument that the written agreement, if valid, does not create a defence but only renders the plaintiff liable to damages for not withholding action as agreed. Although the plaintiff's right of action on the six promissory notes has not been extinguished, to allow the argument "would be to countenance the circuity of action and multiplicity of proceedings which it was one of the chief objects of the Judicature Acts to abolish and would be contrary to the terms of subsection 7 of section 2 of the Laws Declaratory Act, R.S.B.C. 1960, c. 213." While this is extremely persuasive language it is at least interesting that the practical effect of the Court's decision is to specifically enforce a promise in a situation in which its counterpart could not be so enforced nor even sued upon for more than nominal damages since the breach thereof would result in a financial benefit to the plaintiff. The case of Stracy v. The Governor and Company of the Bank of England, upon which His Lordship relied, was substantially different in this respect.

While the result in Foot v. Rawlings will probably not leave many with a sense of injustice, it is disappointing that the highest court in the land did not seize the opportunity to illuminate some difficult conceptual issues. F.E.A.


The issue with which the Supreme Court of Canada was faced in this case had not been previously dealt with by a Canadian court. The Court split three to two in affirming the decision of the Appellate Division of the Supreme Court of Alberta and the trial judge Riley J. in finding for the plaintiff.

K wishing to raise money on a truck he owned, went to S, the manager of a car sales agency. S made arrangements to have money advanced by the plaintiff company to the defendant M, a friend of K's, on a purported conditional sale. The transaction was as follows: S was to transfer K's truck to M; M would sign a promissory note and a conditional sale contract. The contract would be assigned to the plaintiff company and the note discounted with the plaintiff company by S. The proceeds thereof were to be paid by S to K and K was to make all the periodic payments. In fact, K never transferred the truck to S and the whole scheme was merely a device to raise money. The net amount to be raised was discussed and understood to be $10,000.

M. signed the conditional sale contract and the promissory note in blank and transferred them to S who in turn negotiated them to the plaintiff company for value. The plaintiff in fact filled in the

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9 Supra footnote 1 at p. 205.
10 (1830) 6 Bing. 754; 8 L.J. O.S.C.P. 234.
blanks in the promissory note in the amount of $14,326.96 which amount included $12,000 to S and finance and handling charges. S fraudulently withheld the money paid, from K and M, and the plaintiff now sues M on the promissory note, only three payments having been made.

The majority opinion in the Supreme Court of Canada, written by Judson J. and concurred in by Fauteux and Martland J.J. held that it was not open for the court to draw inferences of a conditional delivery and failure to fill in a document in accordance with authority given in the circumstances of this case. The minority on the other hand, Cartwright and Hall J.J. found that on the facts, M had signed the note in blank subject to certain conditions which were not fulfilled and that therefore the note became unenforceable within section 32 of the Bills of Exchange Act.

In the majority decision it was pointed out that M knew, three weeks after signing the note, that it had been filled out in an amount which would produce $12,000 and had raised no objection at that time. The trial judge had found as a fact that the defendant M had not given instructions to S as to what should be done with the note. The majority concluded from these facts that the plaintiff fell within section 31 of the Bills of Exchange Act and had prima facie authority to fill the bill out in any amount he desired and as was pointed out no inference of any condition attached by M on the filling out of the note in order to bring the case within section 32 would be drawn.

Cartwright and Hall J.J. both dissented primarily because of the fact that it was understood that the note was to be used in order to raise an amount of $10,000 and not $12,000; hence, the note as it was filled out was unenforceable within section 32. Cartwright J. suggested other conditions attached to M's execution of the note which were not complied with but did not seriously press this attack in his judgment.

It is clear that the result of the case turned on whether or not the plaintiff company had filled out the defendant's note in accordance with the authority given by the defendant and therefore whether any limitations were attached by the defendant to his signature so as to make it unenforceable within section 32.

Despite the finding of the trial judge, that no express instructions were given by the defendant to S, the minority drew an inference as to the limitations attached to the use of the note. The majority would not do this.

The common law position on this area of law was that once a person executed a negotiable instrument in blank he was estopped from denying its validity when filled in. Section 32 of the Bill of Exchange Act has displaced this rule now requiring that such a note be filled in with authority given in order to be enforceable while conceding that a blank instrument may, prima facie, be filled in for any amount under Section 31. The Supreme Court has held that on the
present facts no limitations were put on this prima facie authority. Interpreted broadly, the ratio of this case could be that any limitations on authority which are to render a note unenforceable within Section 32 must be expressed. This view, I submit, is desirable as it would add certainty to commercial transactions, an element much appreciated by the business community. In effect, by this view, a holder of a blank note need fill it in only in accordance with express conditions stated and need not worry that a court would draw inferences of limited authority from surrounding circumstances. D.R.O'C.

K. PATENTS


The decision of the Supreme Court of Canada in C. H. Boehringer Sohn v. Bell-Craig Limited, [1963] S.C.R. 410, 25 Fox Pat. C. 36 is of considerable importance in determining the form of claims to be employed in applications for patent made under Section 41(1) of the Patent Act. That section provides as follows:

In the case of inventions relating to substances prepared or produced by chemical processes and intended for food or medicine, the specification shall not include claims for the substance itself, except when prepared or produced by the methods or processes of manufacture particularly described and claimed or by their obvious chemical equivalents.

In other words, in patents of the type referred to there can only appear what are known as process-dependent claims.

The Supreme Court of Canada held that an applicant for a patent can not satisfy the requirements of Section 41(1) of the Patent Act for a claim for a substance by the filing of a broad process claim for the production of a whole genus of which a substance is one, if the claim, because of its generality, is found to be invalid. The Court pointed out that the subsection was intended to place a strict limitation upon claims for substances by chemical process and intended for food or medicine. As provided in the subsection such a substance can not be claimed by itself. It can only be claimed when produced by a particular process of manufacture. The applicant for patent must claim not only the substance but that process by which it is manufactured. Therefore, in order to comply with the subsection he must make two claims. He must make valid claims to both the process and the substance if he is to be entitled successfully to claim the latter. The Court further held that to interpret the subsection as meaning that all that is necessary is to file a claim for the process, valid or not, would be to defeat its purpose.

It will thus be seen that when a substance prepared or produced by a chemical process and intended for food or medicine is claimed, it must be claimed by reference to a claim for the process by which it is produced and that process claim must be valid. The applicant