1931
*Nov. 3, 4.
1932
*Feb. 2.

IN THE MATTER OF

ALMUR FUR TRADING COMPANY

(IN LIQUIDATION)

AND

BANK OF UNITED STATES (CLAIMANT) .. APPELLANT;

AND

DOUGLAS L. ROSS (LIQUIDATOR) (CONTESTANT) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Promissory note—Company—By-law—Resolutions—Persons authorized to sign—Absence of signature—Person taking note—What is his duty—Companies Act, R.S.C., 1927, c. 27, ss. 87, 100, 106d, 108.

The Almur Fur Trading Company was incorporated by Dominion Letters Patent on May 25, 1927, and went into liquidation in June, 1929. The appellant bank filed its claim in respect of five promissory notes made by S., as president, on behalf of the company and amounting to $28,768.02. The liquidator called upon the bank to prove its claim before

*Present at the hearing: Anglin C.J.C. and Newcombe, Lamont, Smith and Cannon JJ.; Newcombe J. took no part in the judgment, as he died before the delivery thereof.

the Superior Court. The notes were signed in blank by S. alone and were handed to L., the New York buying agent of the company, to be filled in and used by L. in payment of goods bought or to be bought by the company. L. filled the blank note forms with the names of two other companies owned and controlled by him, being also at that time the owner of all the shares of the insolvent company. The notes were endorsed to the appellant bank, and it is admitted that the bank was a holder in due course. S. was the only witness at the trial; he produced a by-law of the insolvent company providing *inter alia* that "all cheques, * * * notes * * * shall be signed by such officer * * * of the company and in such manner as shall from time to time be determined by resolution of the Board of Directors," and he also produced a resolution of the directors pursuant to the by-law which provides "that all notes * * * be signed by the president and countersigned by the auditor * * *," of which resolution the appellant bank had no knowledge.

Held, reversing the judgment of the Court of King's Bench (Q.R. 50 K.B. 204) that the appellant bank, being a holder in due course, was entitled to rank as a creditor of the insolvent company. The notes were made in general accordance with the authority of the president under the by-law of the company and it was not necessary for the appellant bank to inquire into the authority of the president to sign the notes on behalf of the company. Under section 106*d* of the *Dominion Companies Act,* the president had to be one of the directors; and, under section 37, the only persons who could make notes on behalf of the company would be those designated in the by-law. Persons dealing with a company are presumed to have notice of what is contained in the Act under which the company was incorporated and the Letters Patent; and, in a case like the present, where the Act refers specifically to the by-laws as the place where the authority of an officer or an agent to sign promissory notes is to be found, the person taking a note made by an officer is under obligation to ascertain from the by-laws that the officer who signed the note might have been authorized to make such note in the course of the company's business; but he is not obliged to go further and inquire whether the directors passed the resolution which would give the officer express authority. That constitutes part of the company's "indoor management." If the officer might, under the by-laws, have been authorized to make the note, the making of it was within his ostensible powers and was "in general accordance with his powers as such under the by-laws."

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Coderre J., and disallowing the appellant bank's application to rank as a creditor of the insolvent company in respect of five promissory notes amounting to $28,768.02.

The material facts of the case and the questions at issue are fully stated in the above head-note and in the judgment now reported.

(1) (1931) Q.R. 50 K.B. 204.

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T. B. Heney K.C. for the appellant.

W. F. Chipman K.C. for the respondent.

The judgment of the court was delivered by

LAMONT J.—The question involved in this appeal is whether or not the appellant bank (hereinafter called the Bank), is entitled to rank as a creditor against the assets of the Almur Fur Trading Company in liquidation in respect of five promissory notes made by Murray H. Smith, as president of the company, and amounting in all to $28,768.02 The notes were signed in blank by Smith, as follows: " Almur Fur Trading Company, Limited, per Murray H. Smith, President," and were handed to H. Licht, or H. Licht, Incorporated, the New York buying agent of the company, to be filled in and used by Licht in payment of goods for the Almur Fur Trading Company, some of which had already been purchased by Smith and the balance were to be purchased by Licht or his company. Licht filled in one of the blank note forms with the name of H. Licht, Incorporated, and the others with the name of The Pacific Fur Trading Corporation. Both these companies were owned or controlled by Licht who, at the time the notes were given was the owner of all the shares in the Almur Fur Trading Company, Limited. The notes were indorsed to the Bank and it is admitted that the Bank is a holder in due course.

The Almur Fur Trading Company was incorporated by Dominion Letters Patent on May 25, 1927, and went into liquidation in June, 1929.

After the winding up order was made the Bank filed its claim, in respect of these notes, with the liquidator, who called upon the Bank to prove its claim before the Superior Court. The trial judge disallowed the claim on the ground that the notes on which the claim was based were signed by the president of the company alone, and were not countersigned by the auditor as required by the resolution of the directors adopted pursuant to the by-laws of the company. On appeal the Court of King's Bench maintained the judgment of the Superior Court (Justices Guerin and Tellier dissenting). The majority of the court based their opinions on the same ground as that taken by the trial

judge, but Mr. Justice Bernier went further and found that there was no intention on the part of the company that the documents signed by Smith should form the basis of promissory notes. The two dissenting justices were of opinion that it was not necessary for the Bank to inquire into the authority of the president to sign the notes on behalf of the company; that the notes were made in general accordance with the authority of the president under the by-laws and that the appellant, being a holder in due course, was entitled to rank as a creditor of the company. From the judgment of the Court of King's Bench an appeal is now brought to this court.

At the trial the only witness to give evidence was Murray H. Smith, president of the company. He produced by-law no. 15 of the company's by-laws, passed June 13, 1927, which in part reads as follows:—

> All cheques, bills of exchange * * * notes, * * * shall be signed by such officer, or officers, agent or agents, of the company and in such manner as shall from time to time be determined by resolution of the Board of Directors.

He also produced a resolution of the directors pursuant to the by-law, which provides:—

> That all notes, cheques, drafts and other commercial documents of the company be signed by the president and countersigned by the auditor, such countersignature to be on the left side of said note, draft, cheque or commercial document preceded by the words "Payment approved by," or other words having a like effect and meaning.

The auditor appointed was A. H. Lippman, the sales manager of the company. Smith also produced the notes in question, none of which had been countersigned by the auditor.

In the early part of 1929 Smith was in New York on his way to Europe, and in his evidence he says:—

> Mr. Licht's bookkeeper came to me the day before I left for Europe with several notes, and asked me to sign them in blank, which I did, and which I gave to her on the condition that these notes would be used as previously stated, in payment of purchases made either by me in New York or by H. Licht, Incorporated, while acting, and who did act, as our New York buying agents.
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> At that time I had made, as previously stated, a few purchases, and the merchandise was shipped direct to Montreal, and the invoices were sent to H. Licht, Incorporated, as the vendors of this merchandise required Mr. Licht's guarantee, since they knew he was the financial man behind the Almur Fur Trading Company, Limited.
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> Q. You signed these notes, Mr. Smith, to be used in payment of these goods which you had purchased?

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A. Yes. As well as for any additional orders which I could not fill, and which Mr. Licht had instructions to fill, * * *

Q. As I understand it, you signed these blank notes and gave them to Mr. Licht's bookkeeper with the intention they should be used as promissory notes to cover these particular commitments you had made and any future commitments?

A. Any future orders that Mr. Licht would fill on behalf of the Almur Fur Trading Company, Limited, and for which we would receive the goods.

As to the receipt of the goods, he says:—

The purchases I made while in New York and for which the invoices were sent to Licht were sent direct to us, but whether we received the other orders he had instructions to fill I have no knowledge of, because I left for Europe.

The above evidence makes it abundantly clear that Smith intended Licht to convert the documents signed by him into promissory notes binding on the company and to use the same or the proceeds thereof in payment of the goods which Smith himself had already purchased and of those which Licht or his firm were to buy for the Almur Fur Trading Company. The purchasing of these goods was part of the ordinary business of the company. Whether Licht filled the order given to him by Smith on behalf of the Trading Company does not appear, nor do I see how the application of the proceeds of the notes can be material in this case. If the notes would have been binding on the company in the hands of a holder in due course provided Licht used the proceeds as instructed by Smith, they must, in my opinion, be equally binding if Licht misappropriated the proceeds after receiving them, although, in such case, he might have to account to the liquidator for the proceeds of the notes. That, however, cannot affect the Bank. The one question here is, can the Bank's claim to rank as a creditor be defeated because the notes were not countersigned by the auditor?

It is to be noted at the outset that the Almur Fur Trading Company, being a limited company, was capable of speaking and acting only through agents duly authorized in accordance with its constitution. When the notes were tendered to the Bank for discount, the duty of the Bank was to ascertain if they were binding on the company on whose behalf they purported to be made by the company's president. The Bank was bound to see that Smith, as president, had, under the constitution of the company, power to execute promissory notes on its behalf. The company,

being incorporated by Letters Patent under the Dominion Companies' Act (R.S.C., 1927, c. 27), its constitution was to be found in the Act and in the Letters Patent. An examination of the Act shews that the president had to be one of the directors (s. 106*d*); that the affairs of the company were to be managed by a board of not less than three directors (s. 100); that the persons named in the Letters Patent were to be the directors of the company until others were appointed in their stead, and that the directors had power to

> administer the affairs of the company in all things, and make or cause to be made for the company, any description of contract which the company may by law enter into.

(s. 108). The Act also provides (s. 37) that:—

> Every promissory note or cheque made, drawn or endorsed on behalf of the company by any agent, officer or servant of the company in general accordance with his powers as such under the by-laws of the company shall be binding upon the company.

Under this section the only persons who could make notes on behalf of the company would be those designated in the by-law; and the by-law provided that the persons who might sign notes which would bind the company were such officer or officers, agent or agents as the directors would determine by resolution.

The resolution required the notes to be countersigned by the auditor, but of this the Bank had no knowledge and what has here to be determined is, was the Bank justified in assuming that, as the directors might, under the by-laws, have authorized the president to sign notes on behalf of the company, the necessary resolution for that purpose had been duly passed? In my opinion it was. In *Dey* v. *Pullinger Engineering Company* (1), the articles of association of a company empowered the directors to authorize one of their body as managing director to draw bills of exchange on behalf of the company. The managing director drew a bill on behalf of the company without having in fact received any authority from the directors to draw bills. In an action on the bill against the company as drawers it was held that the managing director, in drawing the bill on behalf of the company, was a "person acting under its authority" within the meaning of s. 77 of the *Companies' (Consolidation) Act,* 1908, and that the company was liable.

(1) [1921] 1 K.B. 77.

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The section of the English Act in question in that case read as follows:—

> A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person *acting under its authority*.

In his judgment Bray J., at page 79, said:—

> It is clear, therefore, that anyone looking at the Memorandum and Articles of Association would see that the managing director might have the power to draw and indorse this bill. * * *
>
> A holder in due course cannot as a rule be expected to know what goes on in the company's board room, and if he has to take the risk of its turning out that the persons signing had no authority, and much more so if he has to prove that they had authority, people in business would be very shy in dealing with such bills. * * *
>
> An "authority" may be express, or implied, or apparent, and I can see no reason for inserting the word "express" before it in s. 77.

In *Biggerstaff* v. *Rowatt's Wharf, Limited* (1), the question was whether an assignment of debt by the company to the plaintiff was valid. The assignment was executed by the managing director, one Davy. By the articles of the company the directors were authorized to appoint a managing director and to delegate to him such of the power of the board as they thought fit. The company had power to assign the debts but there was no minute shewing what powers had been delegated to the managing director, nor his powers as such, although he had acted in that capacity. It was held that the assignment was valid. Lindley L.J., in his judgment, at page 102, said:—

> The persons dealing with him must look to the articles, and see that the managing director might have power to do what he purports to do, and that is enough for a person dealing with him bona fide.

The authority of an officer to bind a company by contract entered into on its behalf was considered by this court in the case of *McKnight Construction Co.* v. *Vansickler* (2). There the respondent made an offer in writing to purchase certain lands belonging to the appellants. The offer was accepted by Douglas, the secretary-treasurer of the company, who was also assistant manager, but he signed as secretary-treasurer. There was no evidence that Douglas had ever been authorized to accept any offer for the company's lands. It was held that in accepting the offer he was acting within the apparent scope of his authority, and that

(1) [1896] 2 Ch. 93. (2) (1915) 51 Can. S.C.R. 374.

was sufficient to protect a person dealing with him bona fide. In his judgment Duff J., at pages 382 and 383, said:—

> The secretary-treasurer was the apparent agent of the company for the transaction of the kind of business he undertook to do. That being so, the case is within the principle very satisfactorily stated in Palmer's Company Law, 9th ed., 1911, p. 44, in the following words:—
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> "This rule is that where a company is regulated by an Act of Parliament, general or special, or by a deed of settlement or memorandum and articles registered in some public office, persons dealing with the company are bound to read the Act and registered documents, and to see that the proposed dealing is not inconsistent therewith; but they are not bound to do more; they need not inquire into the regularity of the internal proceedings—what Lord Hatherly called "the indoor management." They are entitled to assume that all is being done regularly. See also *Mahony* v. *East Holyford Mining Co.* (1); *Bargate* v. *Shortridge* (2); *In re Land Credit Co. of Ireland* (3); *Premier Industrial Bank* v. *Carlton Manufacturing Co.* (4), is not easily reconcileable with the rule.
>
> This rule is based on the principle of convenience, for business could not be carried on if a person dealing with the apparent agents of a company was compelled to call for evidence that all internal regulations had been duly observed."

And Anglin J. (now Chief Justice), at page 387, laid down the rule as follows:—

> For any lack of formality in the steps leading to the authorization of Douglas the plaintiffs should not suffer. They were not called upon to ascertain that proper steps had been taken to clothe him with authority to execute the contract with them on behalf of the company. They acted with perfect good faith. The power which Douglas purported to exercise was such as under the constitution of the company, he might possess, and "that is enough for a person dealing with him bona fide."

The law, therefore, seems to be that persons dealing with a company are presumed to have notice of what is contained in the Act under which the company was incorporated, and the Letters Patent. Also in a case like the present, where the Act refers specifically to the by-laws as the place where the authority of an officer or an agent to sign promissory notes is to be found, I am of opinion that the person taking a note made by an officer is under obligation to ascertain from the by-laws that the officer who signed the note might have been authorized to make such note in the course of the company's business. He is not, however, obliged to go further and inquire whether the directors passed the resolution which would give the officer express authority. That constitutes part of the company's "indoor management." If the officer might, under the by-laws, have

(1) (1875) L.R. 7 H.L. 869.
(2) (1855) 5 H.L. Cas. 297.
(3) (1869) 4 Ch. App. 460.
(4) [1909] 1 K.B. 106.

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been authorized to make the note, the making of it was within his ostensible powers and was "in general accordance with his powers as such under the by-laws."

Even if Smith had not any authority to sign the notes who, in this case, can question his right to do so? Certainly not the liquidator, for he stands simply in the place of the company. Now the man who had acquired all the shares in the company at the time the notes were made, and who was in fact the company, not only approved of their being made, but it was at his request and under his direction that they were made. Where all the shareholders of the company have ratified or are estopped from objecting to the making of the notes by the president, it is not, in my opinion, open to the liquidator to question his authority. If it was thought that the making and discounting of these notes was part of a scheme on the part of Smith and Licht to defraud the creditors of the company, the creditors might, by appropriate action, inquire into the matter. That, however, cannot affect the rights of a holder of the notes in due course. I am, therefore, of opinion that the appeal should be allowed with costs and the Bank permitted to rank as a creditor.

Appeal allowed with costs.

Solicitors for the appellant: *Cook & Magee.*

Solicitors for the respondent: *Brown, Montgomery & McMichael.*