

CANADA / JUDGMENT

Canada Life v. CIBC

[1979] 2 SCR 669

COURT

Supreme Court of Canada

DECIDED

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Canada Life v. CIBC

Collection

Supreme Court Judgments

Date

1979-05-22

Report

[1979] 2 SCR 669

Judges

Laskin, Bora; Martland, Ronald; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; Estey, Willard Zebedee; Pratte, Yves

On appeal from

Ontario

Subjects

International law

Decision Content

Supreme Court of Canada

Canada Life v. CIBC, [1979] 2 S.C.R. 669

Date: 1979-05-22

The Canada Life Assurance Company (Plaintiff) Appellant;

and

The Canadian Imperial Bank of Commerce (Defendant) Respondent.

1978: May 8; 1979: May 22.

Present: Laskin C.J. and Martland, Ritchie, Spence, Pigeon, Dickson, Beetz, Estey and Pratte JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Conflict of laws—Choice of law—Banks and banking—Bills and notes—Foreign bills—Cheque drawn on New York Agency of Canadian bank—Cheque drawn on resident of Canada—Whether an inland bill—Bills of Exchange Act, R.S.C. 1970, c.B-5, ss.25, 161.

Appellant, Canada Life, is engaged in the business of life insurance in both Canada and the U.S. The respondent Bank is a chartered bank carrying on banking in both countries with its head office in Toronto and with an office in New York known as The Agency, Canadian Imperial Bank of Commerce, where for many years Canada Life has maintained bank accounts one of which was entitled “Head Office Account”. Canada Life seeks to restore to its bank account moneys removed there from by the Bank in honouring several cheques issued by Canada Life on which the payee’s endorsement had been forged. These 31 cheques were all payable to the insured or an assignee. All payees were resident or had a place of business in the U.S. The cheques which were cashed in various New York financial institutions had been drawn in Toronto by Canada Life and forwarded by mail to their New York representative who ultimately pleaded guilty to forgery. It was common ground that the liability of the Bank depended upon whether the effect in law of the forged endorsements fell to be determined by the law of Canada or by the law of New York State. If the former applies the Bank has no defence, if the latter, the Bank may succeed. The situation is substantially controlled by two sections of the Bills of Exchange Act, R.S.C. 1970, c. B-5, s. 161 which provides that an inland bill drawn in Canada and endorsed in a foreign country shall as regards the payer be interpreted according to the law of Canada and s. 25 which defines an “inland bill” and a “foreign bill”. At trial the judge concluded that the cheques were inland bills as they were drawn within Canada and upon a person resident in Canada. Accordingly he applied the law of Canada under which the Bank had no defence. The trial judge also found that if New York law applied the provisions of Article 3-405(1) of the Uniform Commercial Code provided the Bank with a complete defence in that the New York representatives had in substance supplied the names of the payees to Canada Life intending the payees to have no interest, [clause (3) of Article 3-405(1)]. The Court of Appeal did not disturb the findings at trial on the facts or as to the applicable law of the State of New York but concluded that the cheques were not “inland bills”, and that under s. 161 the law of New York applied in the determination of the legal effect of the forged endorsements and that the action of Canada Life should be dismissed.

Held: The appeal should be dismissed.

Section 25(1)(b) of the Bills of Exchange Act, when read in the context of the Act as a whole manifests an intention to limit “inland bills” in the case of cheques to those which are drawn within Canada and which are directed to a bank in Canada. In the cheques here issued by Canada Life the direction was not to the Canadian Imperial Bank of Commerce at large but “TO THE

AGENCY, CANADIAN IMPERIAL BANK OF COMMERCE, 20 Exchange Place, New York.” Payment was on demand to payees in the State of New York and was to be in United States currency. While the Agency is not a separate corporation, at least for the purposes of the Bills of Exchange Act, a bank may in some circumstances be a person resident in more than one jurisdiction. In the circumstances of this case the Agency had limited banking powers under the licence issued in the State of New York and consequently the Agency (i.e., the respondent Bank) was a resident therein. The cheques should therefore be regarded as foreign bills. Under s. 161, the law of the State of New York applies and the Bank has its defence under Article 3-405(1) *supra*.

De Beers Consolidated Mines Limited v. Howe [1906] A.C. 455; *Prince v. Oriental Bank Corporation* (1878), 3 H.L. 325; *Woodland v. Fear* (1857), 7 El. & Bl. 519; *The Bank of Montreal v. The Dominion Bank* (1921), 60 D.L.R. 403; *King v. Lovitt*, [1912] A.C. 212; *Bank of Toronto v. Pickering* (1919), 46 O.L.R. 289; *Ex Parte Breull: In Re Bowie* (1880), 16 Ch. D. 484; *Naef v. Mutter* (1862), 31 L.J.C.P. 357; *Wallace v. John Souther & Co.* (1878), 2 S.C.R. 598; *Irwin v. Bank of Montreal* (1876), 36 U.C.Q.B. 375 referred to.

APPEAL from a judgment of the Court of Appeal for Ontario[1] allowing an appeal from a judgment of Lerner J. at trial[2] for the plaintiff. Appeal dismissed.

George D. Finlayson, Q.C., and John H. Francis, Q.C., for the appellant.

J.J. Fitzpatrick, Q.C., and H. Poss, for the respondent.

The judgment of the Court was delivered by

ESTEY J.—In these proceedings, the appellant, The Canada Life Assurance Company (herein called “Canada Life”) seeks to restore to its bank account with the respondent, The Canadian Imperial Bank of Commerce (herein called the “Bank”), moneys removed from that bank account by the Bank in honouring several cheques issued by Canada Life. The ultimate issue is the determination of the final impact of the loss resulting from the forgery of the payee’s endorsement on several cheques issued by Canada Life and directed to the Bank. The outcome turns on the proper interpretation and application of the Bills of Exchange Act, R.S.C. 1970, c. B-5 (herein called the “Act”) and for these purposes, only a brief outline of the main facts is required.

Canada Life is engaged in the life insurance business in Canada and in the United States with its head office in Toronto. The Bank is a chartered bank carrying on a banking business in both countries with its head office in Toronto and with an office in New York known as, THE AGENCY, CANADIAN IMPERIAL BANK OF COMMERCE, 20 Exchange Place, New York, (herein called the “Agency”). Since about 1914, Canada Life, in the course of the conduct of its business, has maintained bank accounts in the Agency, one of which was entitled “Head Office Account”. Canada Life, in response to requests from one of its New York representatives, purportedly made on behalf of policy holders for repayment of the cash surrender values or other moneys under certain insurance policies issued by Canada Life, issued 31 cheques payable to the insured or sometimes to an assignee of the insured. All payees were resident or had a place of business in the United States. The cheques, by means of forged endorsements were cashed in various New

York financial institutions and were passed through the New York Clearing House to the Agency where they were debited to Canada Life's Head Office Account. Each of the 31 cheques was found by the learned trial judge, whose judgment is reported at (1975), 8 O.R. (2d) 210, to have been drawn in Toronto by Canada Life and forwarded by mail to their New York representative who was ultimately charged with the forgery. Each of the cheques had prominently printed at the top of the face of the cheque, "HEAD OFFICE ACCOUNT", were made "payable through the New York Clearing House in United States Currency" to the order of the insured and/or its assignee, and were directed "to THE AGENCY, CANADIAN IMPERIAL BANK OF COMMERCE, 20 Exchange Place, New York". The New York representative was ultimately prosecuted and convicted on a plea of guilty. The amount debited to the Head Office Account of Canada Life in respect of all 31 cheques totalled \$350,000, and it is this sum together with interest which is claimed in these proceedings by Canada Life. At trial the learned trial judge found:

1. All cheques were issued in Toronto in response to requests from the New York representative who, for the purpose of making the requested payments, supplied Canada Life with the policy numbers and a part of the name of the insured, all pursuant to Canada Life procedures in this connection;
2. The signatures of all payees were forged without any knowledge whatever of the transaction on the part of the payees;
3. The Agency was established pursuant to a limited banking licence from the State of New York which prohibited the Agency from carrying on a general banking business but permitted the acceptance of deposits and the transaction of banking business for customers foreign to the State of New York. The Agency was not incorporated.

These findings were not disturbed in the Court of Appeal and were not challenged in this Court.

It is conceded by counsel for both parties to this appeal that the liability of the Bank depends upon whether the effect in law of the forged endorsements is to be determined by the law of Canada or by the law of New York State. If the law of Canada applies, the Bank has no defence, but if the law of New York applies, the Bank may succeed. Two sections of the Bills of Exchange Act are of controlling importance.

161. Subject to this Act, the interpretation of the drawing, endorsement, acceptance or acceptance supra protest of a bill, drawn in one country and negotiated, accepted or payable in another, is determined by the law of the place where such contract is made; but where an inland bill is endorsed in a foreign country, the endorsement shall, as regards the payer, be interpreted according to the law of Canada.
25. (1) An inland bill is a bill that is, or on the face of it purports to be,
 - (a) both drawn and payable within Canada; or
 - (b) drawn within Canada upon some person resident therein.

- (2) Any other bill is a foreign bill.

The learned trial judge concluded that the cheques were “inland bills” as all the cheques were drawn within Canada and drawn upon a person resident in Canada. He thereupon applied the law of Canada under which all parties agreed the Bank had no defence. The learned trial judge at the same time found that if New York law applied, the provisions of Article 3-405(1) of the Uniform Commercial Code provided the Bank with a complete defence by reason of the fact that the New York representatives had in substance furnished the names of the payees to Canada Life, intending all the while that they should have no interest in the moneys to be obtained through these cheques. Article 3-405(1) provides: 3-405(1) An endorsement by any person in the name of a named payee is effective if

...

- (c) an agent or employee of the maker...has supplied him with the name of the payee intending the latter to have no such interest.

The Court of Appeal of Ontario did not disturb the findings at trial on the facts and as regards the applicable law of the State of New York, but concluded, however, that the cheques were not “inland bills” and by virtue of s. 161 of the Act, the law of the State of New York and not the law of Canada applied in the determination of the legal effect of the forged endorsements and the action of Canada Life should therefore be dismissed.

The process of determining ultimate liability, in this case, begins with a determination of the law properly applicable to this transaction according to the provisions of s. 161 of the Act. This section provides a choice of law according to the circumstances described in the section:

- (a) where an inland bill is endorsed in a foreign country, the endorsement, as regards the payer, is to be interpreted according to the law of Canada; and,
- (b) in the case of other bills (‘foreign bills’) the interpretation of the drawing, endorsement, acceptance or acceptance supra protest is to be determined by the law of the place where such contract is made.

The reference to an “inland bill” in s. 161 throws us back to s. 25 wherein an inland bill is defined. In determining whether or not these cheques are inland bills as therein defined, the focus can immediately be centered on subs. (1)(b). Subsection (1)(a) is clearly inapplicable as the cheques are payable in New York.

At first blush it would appear that there really is no distinction between the condition described in s. 25(1)(a) and (1)(b) because each subsection refers to a bill being drawn in Canada, the one referring to a bill payable within Canada and the other to a bill drawn on a person resident in Canada. It may be, however, that a bill is, in the words of s. 75(2), “drawn payable elsewhere than at the residence or place of business of the drawee” and hence subsections (a) and (b) may indeed provide for bills of two categories, namely payable inside and outside of Canada. Indeed, it would seem to be an accurate summary of s. 25(1) and (2) to say that an inland bill is a bill

drawn in Canada and is either payable in Canada or drawn on a person resident in Canada or both; and that all other bills are foreign. Conversely, subs. (2) of s. 25 in effect provides that a foreign bill is any bill drawn outside Canada or any bill (wherever drawn) drawn on a person not resident in Canada and not payable within Canada.

It is necessary in order to interpret (1)(b) to determine the meaning of 'resident'. The terms 'resident' and 'residence' have come under scrutiny of the courts principally in connection with taxing statutes. In many cases the courts have had to determine the meaning of these words with reference to a corporation. In *Unit Construction Co. Ltd. v. Bullock*[3] for example, Viscount Simonds states the general rule at p. 360 as follows:

For it has been trite law for two generations or more that a limited company "resides for purposes of income tax where its real business is carried on," and that its "real business is carried on where the central management and control abides.";

and continues on p. 361:

...it must now be regarded as clear law that an artificial person may, like a natural person, have more than one residence.

Lord Cohen spoke to the same effect at p. 372. Lord Radcliffe agreed but regarded this result as a factual refinement of the rule in *De Beers Consolidated Mines Limited v. Howe*[4] and not as an independent rule or principle of corporate law (vide p. 369). Here we do not have a taxing statute and thus no legislative inclination to establish a simple situs for the taxation of a natural or artificial person. The Legislature has enacted a code of rules for the guidance of commerce in negotiable instruments. Rather than evidencing some kind of legislative presumption or assumption that a taxpayer should ordinarily have but one exposure to taxation through one residence or situs, the Bills of Exchange Act reveals, if anything, the broader intent to clarify and simplify the conduct of commerce through the use of negotiable instruments. It is from this facilitative rather than restrictive viewpoint that the use of the word "resident" should be viewed in its position in s. 25. In my view, such an approach to the meaning of the words "person resident" in that subsection makes it even clearer than do the taxation cases mentioned above that 'resident' has a functional or business connotation in s. 25 which reflects the commercial realities which the statute was designed to serve. So interpreted, the subsection contemplates a person, organized as are the banks, as having more than one residence in which its business might be carried on and in which for those purposes such person would be 'resident'.

The reverse interpretation might be advanced by the Bank, that is that the section may be read to mean that an inland bill is one drawn within Canada on a person resident in any number of places so long as one of such multiple residences is in Canada. In essence, this approach requires the subsection to be understood as including the phrase at the end "wherever else it may be resident". This is an unnatural and artificial reading of the section and can hardly be said to represent the plain meaning of the words used by Parliament.

The Agency is not incorporated. Its premises in New York are those of the Bank. The only legal entity with which we are here concerned is the Bank. It is the Bank which holds the licence to do business in the State of New York. Thus not only should a court faced with the issue arising in this appeal examine the general law relating to 'corporate resident', but also recourse should be had to the rules evolved by the courts in determining whether a corporation is within the geographic jurisdiction of the court.

For the purpose of service of writs and notices on legal entities, the courts have evolved the principle that such service is effective when made inside the geographic jurisdiction of the court either at a place where the legal entity is carrying on its undertaking or by service on a person in the directing staff of the organization. In any case, service is only effective when made at a place of business or an establishment owned by the legal entity when such service is made upon a person who might reasonably be expected to refer the fact of service of the documents in question to persons in positions of management of the legal entity. For example, in this appeal it is conceded by counsel for Canada Life that the Agency would be a place where service of judicial process might be properly effected under the rules of court if the person upon whom service was effected was an employee or representative of such status as could reasonably be expected to relay the documents in question to persons in positions of authority in the management of the Bank.

However, the Court of Appeal sought to take the matter one step further. Speaking through Arnup J.A. it stated:

It is common ground that a bank can be "resident" in many places. I understood Mr. Finlayson to agree that if the Agency were a true "branch" of the Bank, the Bank would be "resident" in New York (at the premises occupied by the Agency). However, he made a distinction between the position of a bank which has a true "branch" and a mere agency, with limited powers, not carrying on a full banking business.

Counsel for the appellant, Mr. Finlayson, in this Court stated that the Court of Appeal misconstrued his submission. He only conceded in this Court that the Agency was (subject to the usual rules about delivery of judicial notice to an individual in a position found to be appropriate in law for the acceptance of service on behalf of the corporation) a place where service might be made on the corporation for the purpose of exercise of jurisdiction within the State of New York; or for succession taxation purposes. He did not concede that the Bank was a 'resident' in the State of New York within the meaning of the term employed in s. 25(1)(b) even if the Agency was what is conveniently referred to as a branch of the Bank.

In all of the statutes or rules of court, discussed above, the words 'residency' or 'resident' have been interpreted and applied generally in the manner I have indicated according to a rule or principle evolved from the interpretation of the wording of the statute or rule of court as the case may be. Such interpretations are not of universal application although they may have some analogical value. In the field of general corporate law the residence of the corporation has been held to be the head office or other place designated in the incorporating instrument as being the

chief place of business of the corporation. None of these tests and considerations are of much assistance in the circumstances of this case. The narrow question before us is whether or not the Bank is 'a person resident' in Canada within the meaning of s. 25(1)(b) when the reference to the Bank on the cheques is to the Agency in New York.

The term 'resident' is not defined in the Act. In s. 75(2) of the Act, it is provided that:

Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

In this provision it may be that 'residence' is used with reference to the home of an individual drawee and is not intended to be a place in addition to a place of business of a corporation. There appears to be no other reference in the Act to 'resident' or 'residence' except incidentally in provisions unrelated to this issue; for example, s. 103(1) and (2) wherein provision is made for notice of dishonor.

Some light may be thrown on the meaning of the word 'resident' in relation to banks by the cases in England dealing with the proper place for presentment of cheques where the place of payment is a branch of a bank which has more than one branch. Some of these cases, while dealing with promissory notes, such as *Prince v. Oriental Bank Corporation*[5], indirectly bring into question the status of branch banks. Sir Montague Smith at p. 332 said:

In principle and in fact, they [the branches] are agencies of one principal banking corporation or firm,...

and on p. 333 the judgment continues:

...; though separate agencies, the latter [the branches] were still agencies of one principal bank, with which alone the Plaintiffs contracted.

On the other hand, in *Woodland v. Fear*[6] it was found that a bank having several branches was bound to pay the cheques of a customer only at the branch in which the customer kept his account; and this was so for the practical reason that the bank would not know the state of the customer's account at distant branches at the time the customer or his payee presented his cheques to the branch in question. This may be on the basis of an implied contract between customer and bank or perhaps an express contract, but it is difficult to find any precise authority for such a conclusion in the present bills of exchange legislation. The case was of course decided before the codification of the law of bills of exchange in the Act of 1882 in England. In the result, the Court treated the two branches of the plaintiff bank in question as separate banks and thus enabled the plaintiff bank to recover from the defendant moneys paid out to the defendant's payee from a branch other than that in which the defendant maintained his account. Lord Campbell C.J., in giving the judgment of the Court, stated, at p. 521:

: the cheque was not drawn on the banking Company generally, but on the banking Company at Glastonbury; and this, coupled with the fact that Helyar kept his account and his balance only there, shews that the Bridgwater establishment was not bound to honour his cheque. To hold that the customer of one branch, keeping his cash and account there, has a right to have his cheques paid at all or any of the branches, is to suppose a state of circumstances so inconsistent with any safe dealing on the part of the banker, that it cannot be presumed without direct evidence of such an agreement; For an application of this case in Canada, see *The Bank of Montreal v. The Dominion Bank*[7].

There are other instances in the law where branches of a bank take on a personality separate and different from the head office or other branches of the same bank, as for example in the case of succession taxation. Thus a debt on a deposit certificate was found to have a situs in law at the branch of the bank which issued the deposit certificate rather than the head office and principal place of business of the banking corporation. (vide *King v. Lovitt*)[8]. This result was reached not on the basis of an interpretation of “residence” but on an interpretation of an expression in the taxing statute “property situate within the province”. In the course of judgment, however, Lord Robson stated at pp. 219-220 after referring to *Woodland and Fear*, *supra*, and other cases to the same effect:

In each of these cases the Courts, having regard to the necessary course of business between the parties, held that the bank had in some measuer localized its obligation to its customer or creditor, so as to confine it, primarily at all events, to a particular branch.

Somewhat similar reasoning has been applied by the courts in relation to the service of notices and other documents required to be served pursuant to rules of court on corporations. In some such instances the courts have found that while a corporation has only one ‘domicile’, it has, for the purpose of making service of court processes, several residences. Vide *Bank of Toronto v. Pickering*[9] wherein Middleton J. stated at pp. 290-1:

For many purposes a branch bank is regarded as an independant organization... When it is borne in mind that what is spoken of is “residence” and not “domicile”, it appears to me that the word is of such flexible meaning that it may well be held to apply to the branch bank.

A corporation, strictly speaking, can have no residence as distinct from domicile; and I can see no reason why it, like an individual, may not have many residences, within the meaning of the Rule, although it can have but one domicile.

The analysis of s. 25(1)(b) in my view does not depend in any way upon the adoption of principles in courts dealing with taxation or other statutes which happen to employ the same terminology. It has been said by James L.J.:

There are cases in which it has been judicially decided, and I think rightly, that the words “residence” and “business” have no actual definite technical meaning but that you must construe them in every case in accordance with the object and intent of the Act in which they occur.

(Ex Parte Breull. In Re Bowie[10] at pp. 486-7; vide Erle C.J. to the same effect in Naef v. Mutter[11], at p. 359.)

The Bills of Exchange Act is of course a codification of the common law relating to bills of exchange which finds its origins in the United Kingdom statute of 1882 and first enacted in this country in 1890. The evident design and purpose of the statute is to promote the negotiability of commercial paper by the adoption of a comprehensive set of rules relating to bills of exchange generally and more particularly to drafts, cheques and promissory notes. By s. 10 of the statute, the rules of the common law of England are made applicable to bills of exchange, promissory notes and cheques “save insofar as they are inconsistent with the express provisions of this Act”. Part 2 of the Act deals with bills of exchange, Part 3 with cheques and Part 4 with promissory notes. Certain general provisions relating to specific topics are found in Part 1. It is unfortunate that the Bills of Exchange Act has carried down to these times the terminology, in substantially unrevised form, of the 1882 statute. In those times, the principal bill of exchange was the draft and the cheque was of much less significance in daily commerce. Thus a great deal of the terminology of the statute, including that employed in s. 25, is either inappropriate to the cheque or is awkward in its application to the cheque. There may be some doubt as to the adaptation of the language of the statute to the cheque because s. 165(2) is limited in its operation by the preface: “Except as otherwise provided in this Part (III)”, which curtails the meaning and application of the succeeding words: “...the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque”. Subsection (1), however, states: “A cheque is a bill of exchange drawn on a bank, payable on demand” and while this definition is found only in Part III entitled “Cheques on a Bank”, it is clear in my view that a cheque is a bill of exchange for all purposes under the Act. Hence in the interpretation of s. 25, one must construe the language employed broadly so as to make it applicable wherever possible to all bills of exchange including cheques. Nevertheless the difficulties in terminology are numerous. For example, a cheque is not, strictly speaking, drawn on a bank in the sense that a draft is drawn upon the drawee. Nevertheless the wording of both s. 165(1) and s. 25(1) refer to “drawn” and not “directed to”, which is in fact what occurs in the case of a cheque. That is to say, the drawer of a cheque thereby makes a direction to the indicated bank to pay on demand (as in this case) a specified amount of money in a specified currency to payees designated on the face of the cheque.

It has been suggested by this Court in *Wallace v. John Souther & Co.*[12] that the word ‘draws’ with reference to promissory notes, drafts or bills of exchange includes both the manual act of forming the instrument in question but also, in the case of a bill of exchange, its delivery. The case is of little assistance to us, however, because it was concerned not with the Bills of Exchange Act but with legislation relating to the placing of stamps on certain negotiable instruments and in any case, the court was there not concerned with bills of exchange generally but rather with promissory notes where the concept of ‘drawing’ has quite a different connotation and with which we are here not concerned.

Reading s. 25(1)(b) only in the sense of a cheque for the moment, it would appear to establish as an “inland cheque” one that is drawn, in the manual sense of the term, within Canada upon a person resident therein. In the cheques here issued by Canada Life, the direction is not to the Imperial Bank of Commerce at large but “TO THE AGENCY, CANADIAN IMPERIAL BANK OF COMMERCE, 20 Exchange Place, New York”. The direction includes a reference to the Head Office Account, no doubt for the purpose of instructing the Agency as to the account against which the cheque in question is to be charged. The cheque is payable on demand to joint payees who, on the evidence here, have been found concurrently by the courts below to be business organizations in the State of New York. Payment is of course to be in United States currency. A typical cheque bore on its face the following wording, imprinted by rubber stamp:

“Paid

Canadian Imperial Bank of Commerce

March 1, 1967

New York Agency.”

I conclude on all these considerations that s. 25(1)(b), when read in the context of the Bills of Exchange Act as a whole, manifests an intention in Parliament to limit “inland bills” in the case of cheques to those which are drawn within Canada (the precise meaning of which we do not, in these proceedings, need to determine) and which are directed to a bank in Canada. It is not sufficient, in my interpretation of the section, to say that the bank to whom the direction is issued has its head office in Canada and therefore, whatever else appears in the cheque, the instrument is drawn on a person resident in Canada. Clearly all the parties to the transaction recognize that the cheque was directed to the New York Agency because the commerce in question was centered exclusively in the State of New York, and indeed, Canada Life, for that very reason, had long ago established banking facilities in that area. It is an irrelevant consideration that the business mechanics followed by the Bank and Canada Life included daily reporting to the respective head offices in Toronto of the state of the bank balance for the head office account in the New York Agency.

As I mentioned earlier, the learned trial judge concluded that these cheques were inland bills. Apparently he did so principally because s. 165 defines a cheque as “...a bill of exchange drawn on a bank...”, and a bank is in turn defined in the Act as “an incorporated bank”. Thus, since the New York Agency is not a separate corporation, the term “bank” must mean the respondent bank which, by reason of the location of its head office, is resident in Canada and not in New York. All this is predicated on the unstated major premise that a corporation for all purposes has but one place of residence, although at the outset of the judgment at trial, it is recognized that “a bank may have many residences: *Irwin v. Bank of Montreal*[13]; *Bank of Toronto v. Pickering*[14].” For these and other considerations mentioned above, I have concluded, as did the Court of Appeal, that at least for the purposes of the Bills of Exchange Act, a bank may, in some circumstances, be a person resident in more than one place.

It is also an irrelevant consideration in my view that the New York Agency was, by the laws of the State of New York, limited in the operations which it might undertake. So far as concerns the Bank and Canada Life, the New York Agency had, for the purposes of this transaction, unlimited banking powers under the licence issued by authorities in the State of New York. It is of no significance that as regards the residents of the State of New York, the Agency may have had other and lesser powers and responsibilities. I therefore conclude that the cheques in question are foreign bills.

This takes us back then to s. 161 where in its opening portion it states:

Subject to this Act, the interpretation of the drawing, endorsement, acceptance or acceptance, supra, protest of a bill, drawn in one country and negotiated, accepted or payable in another is determined by the law of the place where such contract is made;...(I omit the concluding part which refers to an inland bill).

In this case the reference to “such contract” applies to the contract arising from the forged endorsement. Thus the law of the State of New York is applicable to the endorsement. Whether the word “endorsement”, in s. 161 means simply the bare language used in the endorsement or whether it means the legal effect of the endorsement on the rights of the parties and the bill of exchange as a legal instrument is, in the final analysis, of little importance. If the word ‘interpretation’ is given a narrow construction, then we are left with the application of the general law of conflicts to determine the appropriate law to be applied by the forum. If the word ‘interpretation’ is given a broad meaning, then s. 161 makes applicable the law of the State of New York. In the former case, the law of the forum, will operate to select as the appropriate law the law of the place of performance of the contract, which is New York, or the law of the place of the contract of endorsement which is also the State of New York.

The law of the State of New York applicable to this transaction is that which is embodied in Article 3, s. 405(1)(c) which is set out above. Under that provision of the Uniform Commercial Code, the learned trial judge found as fact that the endorsement is effective and therefore may be relied upon by the Bank as a good defence against the claims herein made by Canada Life.

On this disposition of the claims of Canada Life, it is unnecessary to proceed into those considerations relating to the claim by the Bank for credit for such restitution as has allegedly been made by the wrongdoer, the agent of Canada Life; or of the claim for interest herein made by Canada Life. I therefore would dismiss the appeal with costs to the Bank throughout.

Appeal dismissed with costs.

Solicitors for the appellant: McCarthy & McCarthy, Toronto.

Solicitors for the respondent: Fitzpatrick, O'Donnell & Poss, Toronto.

[1] (1976), 14 O.R. (2d) 777.

[2] (1975), 8 O.R. (2d) 210.

- [3] [1960] A.C. 351.
- [4] [1906] A.C. 455.
- [5] (1878), 3 H.L. 325.
- [6] (1857), 7 El. & Bl. 519.
- [7] (1921), 60 D.L.R. 403.
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- [9] (1919), 46 O.L.R. 289.
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