

WORKMEN'S COMPENSATION }  
BOARD (*Defendant*) . . . . . }

APPELLANT; 1967  
\*Nov. 10  
1968  
Jan. 23

AND

BANK OF MONTREAL (*Plaintiff*) RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL  
FOR BRITISH COLUMBIA

*Workmen's compensation—Employer indebted under assessment to Workmen's Compensation Board—Lien on property produced in or by the industry—Whether lien attaches to proceeds of property subject to lien—Workmen's Compensation Act, R.S.B.C. 1960, c. 413, s. 48.*

\*PRESENT: Martland, Judson, Ritchie, Hall and Spence JJ.

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H, a logging and sawmill operator, agreed to purchase certain standing timber and after having cut and removed the same he milled it into cants which he sold to A Co. On December 29, 1959, H obtained a loan from the plaintiff bank in the sum of \$702.32 and as security for such advance he assigned to the bank all money due or to become due to him under the contract with A Co. H incurred indebtedness to the Workmen's Compensation Board in respect of assessments for 1958, 1959 and part of 1960. A Co., upon receiving conflicting claims from the Board and the bank for the money owing to H, took interpleader proceedings and paid the sum of \$966.57 into Court. The trial judge held that the Board was entitled to enforce its lien, under s. 48 of the *Workmen's Compensation Act*, R.S.B.C. 1960, c. 413, to the amount of \$918.15 being assessments for the years 1958 and 1959. The bank appealed to the Court of Appeal which reversed the trial judge and awarded \$702.32 of the money to the bank. With leave, the Board then appealed to this Court to restore the judgment of the trial judge.

*Held:* The appeal should be dismissed.

In the absence of legislation specifically extending the lien to cover the proceeds of property that was subject to the lien, the Court agreed with the majority in the Court of Appeal that the proceeds of the sale of the cants did not constitute property, real or personal, within the meaning of s. 48 and that these proceeds were not impressed with a lien created in and by s. 48. *Re Clemenshaw (a Bankrupt)*, *Workmen's Compensation Board v. Canadian Credit Men's Trust Association Ltd. (No. 1)* (1962), 40 W.W.R. 199, explained; *Royal Bank of Canada v. Workmen's Compensation Board of Nova Scotia*, [1936] S.C.R. 560, distinguished; *Dinning v. Workmen's Compensation Board*, [1932] 1 W.W.R. 136, applied.

APPEAL from a judgment of the Court of Appeal for British Columbia<sup>1</sup>, reversing the judgment of Ruttan J. on the trial of an issue directed upon interpleader proceedings. Appeal dismissed.

*C. C. Locke, Q.C.*, for the defendant, appellant.

*P. B. C. Pepper, Q.C.*, and *R. I. A. Smith*, for the plaintiff, respondent.

The judgment of the Court was delivered by

HALL J.:—This is an appeal by leave of the Court of Appeal for British Columbia from a judgment of that Court<sup>1</sup> declaring that the Bank of Montreal was entitled to payment out of Court of the sum of \$702.32 of the money paid into Court pursuant to the Order of Brown J. dated March 3, 1961, as the result of certain interpleader

<sup>1</sup> (1967), 58 W.W.R. 731, 60 D.L.R. (2d) 680.

proceedings to determine the question of priority to the money in Court between the parties under s. 48 of the *Workmen's Compensation Act* of British Columbia, R. S. B. C. 1960, c. 413. Section 48 reads as follows:

Notwithstanding anything contained in any other Act, the amount due to the Board by an employer upon any assessment made under this Act, or in respect of any amount which the employer is required to pay to the Board under any of its provisions, or upon any judgment therefor, constitutes a lien in favour of the Board payable in priority over all liens, charges, or mortgages of every person, whenever created or to be created, with respect to the property, real, personal, or mixed, used in or in connection with or produced in or by the industry with respect to which the employer was assessed or the amount became payable, excepting liens for wages due to workmen by their employer, and such lien for the amount due the Board is valid and in force with respect to each assessment for a period of three years from the end of the calendar year for which the assessment was levied.

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The litigation was conducted upon an agreed statement of facts as follows:

1. Frank J. Huber agreed with one A. L. Bowes to purchase standing timber from Bowes, payment to be made as the timber was logged.
2. Huber cut and removed the timber and milled the same into cants which he sold to Ashcroft Lumber Co. Ltd. to deduct from the purchase price the amount owing to Mr. A. L. Bowes on the purchase of Timber as aforesaid and amounts due to the Forest Service of the Province of British Columbia in respect thereof.
3. Huber delivered the said cants to Ashcroft Lumber Co. Ltd. during the month of December, 1959 and the months of January and February, 1960, and in respect of such deliveries Ashcroft Lumber Co. Ltd. by March 1st, 1960 was indebted to Huber in the sum of \$966.57.
4. On December 29th, 1959 Huber obtained a loan by way of overdraft from Bank of Montreal at Ashcroft in the sum of \$702.32 and as security for such advance, Bank of Montreal obtained a valid assignment in writing from Huber whereby he assigned all his right, title and interest in and to all monies due or to become due to him from the Ashcroft Lumber Co. Ltd. under his contract with Ashcroft Lumber Co. Ltd. The whole of the said advance remains unpaid.
5. Ashcroft Lumber Co. Ltd. was given notice of the said assignment on December 30th, 1959.
6. Huber was registered with Workmen's Compensation Board as an employer in the industry of logging and sawmill operations at all times material.
7. Huber is liable to pay Workmen's Compensation Board the sum of \$945.37 in respect of his said operations as set out in the Affidavit of James Alexander Downing sworn November 21st, 1962 and filed herein.
8. On April 6th, 1960 Workmen's Compensation Board filed a certificate under Section 39(2) of the Workmen's Compensation Act in

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respect of the said indebtedness and issued a Warrant of Execution against Huber on April 17th, 1960 which was returned by the Sheriff nulla bona on April 20th, 1960.

9. Upon receiving conflicting claims from Workmen's Compensation Board and Bank of Montreal, Ashcroft Lumber Co. Ltd. took interpleader proceedings and paid the sum of \$966.57 into Court pursuant to the said Order of the Honourable Mr. Justice Brown herein dated March 3rd, 1961.

The learned trial judge, Ruttan J., found one additional fact as follows:

Huber was indebted to the Workmen's Compensation Board under assessment for the year 1958 in the sum of \$678.12 and for the year 1959 in the sum of \$240.03, and for the year 1960, \$27.22.

and he held that the appellant Board was entitled to enforce its lien to the amount of \$918.15 being assessments for the years 1958 and 1959 due under the *Workmen's Compensation Act*. The Bank appealed to the Court of Appeal which reversed the trial judge and awarded \$702.32 of the money to the Bank. The Board now appeals to this Court to restore the judgment of Ruttan J.

The issue is whether, by said s. 48, the amount payable by Ashcroft to Huber as set out in item 3 of the agreed statement of facts is 'property... produced in or by, or used in connection with the industry...' The respondent Bank contends that the lien given by s. 48 of the Act is against 'property' so described and restricted; that the lien is not against all the property of the employer Huber, such as in this instance, accounts receivable.

The learned trial judge said: "If the lien would attach properly to the lumber I can see no reason why it cannot attach to the money which represents that lumber." and he relied on *Re Clemenshaw (a Bankrupt), Workmen's Compensation Board v. Canadian Credit Men's Trust Association Ltd. (No. 1)*<sup>2</sup>. The judgment in *Clemenshaw* was based on the fact that since it had not been established by the Board that the moneys in the hands of the trustee represented the proceeds of the sale of property used in or produced by any industry, the Board in that case failed to prove that it had a lien on the fund there in question, but the judgment suggests that the proceeds could represent property within the meaning of the section so as to allow the lien created by the section to attach to the proceeds,

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<sup>2</sup> (1962), 40 W.W.R. 199.

and that if such proof had been forthcoming the result would have been different. It is of some importance, however, to note that in *Clemenshaw* the moneys said to be subject to the lien were from a sale of property made by the producer's trustee and the Board might on that basis have been entitled to receive the proceeds of the sale.

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The appellant relied on *Royal Bank of Canada v. Workmen's Compensation Board of Nova Scotia*<sup>3</sup>, but the statute under review in that case provided that the Board should have a first lien on all the property, real, personal or mixed, used in or in connection with or produced in or by the industry with respect to which the employer was assessed though not owned by the employer, subject only to municipal taxes.

The *Workmen's Compensation Act of Alberta*, R.S.A. 1955, c. 370, also reads differently from the British Columbia statute. Section 77(4) of the Alberta Act, reading in part, "... is a charge upon the property of the employer, including moneys payable to, for, or on account of the employer, within the Province".

Branca J.A., speaking for the majority in the Court of Appeal, said:

The Act enacts some very extraordinary rights and remedies in favour of the Board and had the Legislature intended to impress the lien which might be created by s. 48 of the Act upon the proceeds of the sale of property produced in and by the industry and thus grant further extraordinary rights to the Board, one would have expected clear words to that effect. In the absence of such words in the statute I am unable to subscribe to that interpretation.

and after discussing the case of *Dinning v. Workmen's Compensation Board*<sup>4</sup>, continued:

I am of the opinion, therefore, that the learned trial judge was in error in his finding that the lien created by s. 48 attached to money which represented the lumber.

I am of the opinion that the proceeds of the sale of the cants do not constitute property real or personal produced in and by the industry with respect to which Huber was assessed, and that the monies therefore are not impressed with a lien created in and by s. 48 of the Act.

In the *Dinning* case, Dinning was a trustee in bankruptcy of Campbell River Mills Limited. A quantity of logs belonging to Campbell River Mills Limited was destroyed

<sup>3</sup> [1936] S.C.R. 560, [1936] 4 D.L.R. 9.

<sup>4</sup> [1932] 1 W.W.R. 136, [1932] 1 D.L.R. 373.

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by fire and the proceeds of an insurance policy were paid to the trustee. The Board contested against alleged prior rights of other creditors, claiming an amount owing to the Board by the bankrupt company by way of unpaid assessments. The trial judge held that by virtue of s. 46 of the *Workmen's Compensation Act*, the predecessor to the present s. 48, the Board had a lien upon the insurance money and was entitled, therefore, to the insurance funds. That judgment was reversed on appeal. Macdonald J.A., in construing s. 46 as it was, and which for practical purposes is almost identical in its language to s. 48 as it is at present, said:

A lien or charge is created with respect to the property to which it attaches and extends no further unless moneys received from a defined source is mentioned. Priority under s. 46 is only given in respect to charges on the property or industry, not on other sources of income, e.g., an insurance contract. It is property "used in" or "produced by" the industry e.g. manufactured products. It would be possible to enlarge the section to include such a fund but even a liberal construction of the words used would not permit such an extension. It should not be so construed as to defeat a registered charge conveying an estate to another unless clear words were employed indicating such an intention.

In the absence of legislation specifically extending the lien to cover the proceeds of property that was subject to the lien, I agree with Branca J.A. that the proceeds of the sale of the cants did not constitute property, real or personal, within the meaning of s. 48 and that these proceeds are not impressed with a lien created in and by s. 48.

The appeal should, therefore, be dismissed with costs.

*Appeal dismissed with costs.*

*Solicitors for the defendant, appellant: Ladner, Downs, Ladner, Locke, Clark & Lenox, Vancouver.*

*Solicitors for the plaintiff, respondent: Campney, Owen & Murphy, Vancouver.*