

THE BANK OF OTTAWA v. HOOD.

1908

*Nov. 5.
*Dec. 1.*Contract—Delegation of payment—Revocation of authority.*

APPEAL from the judgment of the Superior Court, sitting in review at Montreal(1), affirming the judgment of the Superior Court, District of Montreal (Doherty J.), by which the appellant was ordered to account to the respondent for certain moneys received by it from the Government of Canada in connection with a contract for the construction of public works by the firm of Brewder & McNaughton.

The firm of Brewder & McNaughton, contractors for the works to be constructed for the Government, sublet their contract to the respondent. After assuming the contract, the respondent raised a question as to the manner in which payments for the works were to be made to him, on progressive estimates, and this formed the subject of correspondence between Brewder & McNaughton and the appellant, that firm having already given the Ottawa Branch of the bank a power of attorney to draw these moneys from the Government. The respondent wished to be furnished with an undertaking by the bank to pay to him in Montreal the moneys it received under the power of attorney, and the bank's manager, at Ottawa, wrote a letter to Brewder & McNaughton stating that "as each payment is made to the bank by the Government it will, with your con-

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Idington, Maclellan and Duff JJ.

(1) Q.R. 33 S.C. 506.

1908
BANK OF
OTTAWA
v.
HOOD.

sent, be forwarded to William Hood & Son in payment of their work." This arrangement having been assented to by Brewder & McNaughton, the bank wrote to the respondent in regard to drawing the moneys in Montreal, referred to the correspondence with Brewder & McNaughton and enclosed a copy of their letter assenting to the arrangement above mentioned. The moneys received by the bank from the Government were credited to the firm of Brewder & McNaughton and, upon their instructions, certain of the payments were forwarded to the respondent, none being so forwarded except those so authorized. Subsequently, Brewder & McNaughton notified the bank to make no more payments to the respondent and, on their order, some payments were made to another person. In August, 1901, Brewder & McNaughton became insolvent, the Government cancelled their contract and the last payment received from the Government by the bank was placed to their credit. On refusal by the bank to recognize the respondent's demands for payments made from time to time, he brought action against the bank for \$3,300 alleged to be due to him out of \$3,500 alleged to be in possession of the bank, and for an account of all moneys received by the bank from the Government. The defence to this action was, in substance, that the only agreement the bank made was with Brewder & McNaughton, that this contract was entered into in Ontario and was governed by the law of that province under which there existed no privity of contract between it and the respondent. The respondent's action was maintained at the trial and affirmed, on an appeal, by the Court of Review.

After hearing counsel on behalf of the parties on the present appeal, the Supreme Court of Canada reserved judgment and, on a subsequent day, delivered

judgment allowing the appeal and reversing the judgment appealed from with costs.

1908
BANK OF
OTTAWA
v.
HOOD.
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THE CHIEF JUSTICE and GIROUARD and MACLENNAN JJ. were of opinion that the appeal should be allowed with costs, but delivered no notes of reasons for judgment.

IDINGTON J. delivered notes of his reasons in which he discussed the evidence adduced and concluded that it did not shew that the bank had become a party to any contract with the respondent by which it was bound to account to him for the moneys received from the Government.

DUFF J. agreed with Idington J.

Appeal allowed with costs.

Shepley K.C. and G. M. MacDougall K.C. for the appellant.

Aimé Geoffrion K.C. and R. A. E. Greenshields K.C. for the respondent.