PRIVY COUNCIL.

SADASUK JANKI DAS
v.
SIR KISHAN PERSHAD.

*P.C.** 1918

Oct. 28, 29; *Nov.* 1.

[ON APPEAL FROM THE COURT OF THE RESIDENT AT HYDERABAD (DECCAN).]

Hundi, suit on—Hundi drawn by second defendant without disclosing the name of any other person liable as principal—Evidence inadmissible either by claim or in defence to show that drawer was acting for an undisclosed principal—Principal must be disclosed by name, on the document to make him liable—Negotiable Instruments Act, 1881, ss. 26, 27 and 28—English Bills of Exchange Act, 1882, s. 23.

THE name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or on the back of the document so that the responsibility is made plain, and can be instantly recognised as the document passes from hand to hand.

It is not sufficient that the name of the principal should be "in some way" disclosed; it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable on the bill.

Sections 26, 27 and 28 of the Negotiable Instruments Act, 1881, contain nothing inconsistent with the above principles, and nothing to support the contention, which is contrary to all established rules, that in an action on a bill of exchange or promissory note against a person whose name properly appears as party to the instrument, it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal.

In this case it was held that on the terms of the *hundis* sued on, it did not appear that the first defendant was a principal, and that the second defendant who drew them was solely liable thereon.

APPEAL 90 of 1917 from a judgment (25th September, 1915) of the Resident of Hyderabad, which reversed the judgment (28th April, 1915) of the First Assistant Resident at Hyderabad, and restored the

* *Present*: LORD BUCKMASTER, LORD DUNEDIN, SIR JOHN EDGE AND SIR LAWRENCE JENKINS.

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judgment (19th September, 1914) of the District Court at Secunderabad.

The plaintiff was the appellant to His Majesty in Council.

The suit which gave rise to this appeal was brought to recover Rs. 39,825-14-2, the amount of principal and interest on fourteen *hundis*, the form and amount of the *hundi* Rs. 2,500 being similar in each case. The form of *hundi* is given in the judgment of the Judicial Committee.

The defendants were Maharaja Sir Kishan Pershad Bahadur, G.C.I.E., the Prime Minister of His Highness the Nizam of Hyderabad, and one Mohan Lal who in 1910 was employed by the first defendant as superintendent of his private Treasury.

The loan, Rs. 35,000, was made by the plaintiff on 14th of April, 1910, and was repayable by monthly instalments in and after October, 1910. It was stated in the plaint that the money was borrowed by the "second defendant for, and on behalf of, and as agent of the first defendant, and in the capacity of the superintendent of the private Treasury of the first defendant," and that "the second defendant drew the fourteen *hundis* on himself in his personal capacity payable to the plaintiff.

Nothing having been paid on the *hundis* in spite of repeated demands, the suit was instituted on 15th August, 1913.

The defence of the Maharaja was that "Mohan Lal had no authority whatsoever, express, implied or ostensible to borrow on his behalf. . . . without the written permission of this defendant" and that first defendant's name is not disclosed as the principal in the *hundis* in suit, nor does the second defendant purport to act as agent of the first defendant in the suit *hundis*." The second defendant

pleaded that he had acted only as agent for the Maharaja and was not liable personally.

The District Judge made a decree against Mohan Lal and dismissed the suit as against the Maharaja. The First Assistant Resident reversed that decision and decreed the suit against both defendants.

On appeal by the Maharaja, the Resident (Lieutenant-Colonel A. F. PINHEY) made a decree restoring that of the District Court.

On this appeal, which was heard *ex parte*,

Sir H. Erle Richards, K.C., and *Kenworthy Brown*, for the appellant firm, contended that the Court of Resident was in error as to the construction of the *hundis* and also in holding that "outside evidence was inadmissible to charge any party as being a principal." The suit should have been dealt with on the merits, and the appellants should have been allowed to prove by evidence that the first defendant (respondent) was a principal in the transactions in suit; and the question, it was submitted, could then have been raised whether Mohan Lal, the second defendant (respondent), had authority from the first defendant, express or implied, to act as his agent in the matter of the *hundis*. The Negotiable Instruments Act, 1881, of the Indian Legislature does not contain any provision, as did section 23 of the English Statute, the Bills of Exchange Act, 1882, that no person is liable as a party unless he had signed the bill in suit. With regard to the liability of a principal, sections 26, 27 and 28 of the Indian Act of 1881 in effect make the same rules applicable to a negotiable instrument as to any other contract. But, in any case, it is submitted that if it be necessary for the name of the principal to be disclosed on the construction of the words "acting in his name" in

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section 27, that requirement is fulfilled by the terms of the *hundis* themselves, which make it clear that the first defendant was intended to be a principal. Reference was made to section 233 of the Contract Act (IX of 1872) and *Koneti Naicker* v. *Gopala Ayyar* (1). It was also contended that apart from the *hundis*, the appellants were entitled to recover on the original consideration on the statement of their case in the plaint.

The judgment of their Lordships was delivered by LORD BUCKMASTER. On the 14th April, 1910, Mohan Lal borrowed from the plaintiffs, who are the appellants on this appeal, the sum of Rs. 35,000, and to secure repayment drew and accepted in their favour fourteen *hundis*—each for the sum of Rs. 2,500—the first payable ten months after the 14th April, 1910, and the remainder at successive intervals of one month. Each *hundi* was in the same form, and it is agreed that the true translation is as follows:—

"By order of Sirkar, may his happiness increase.

To

Mohan Lal, son of Hira Lal.

Six months from the date of the execution of this *hundi*, please pay to Seth Sadasuk Janki Das Sahu of the Residency Bazars or to his order the sum of H. S. Rs. 2,500 (half of which is Rs. 1,250) which sum I have received in cash in the Residency Bazars from the said Seth Sahib.

Dated 3rd Rabi-us-sani 1328-H. (14th April, 1910).

Mohan Lal (*In Urdu*),
Acting Superintendent of the Private Treasury of his Excellency Sir Maharaja, the Prime Minister of H. H. the Nizam.

[On the Back.]

This *hundi* has been accepted by Mohan Lal, son of Hira Lal, in favour of Seth Sadasuk Janki Das, inhabitant of the Residency Bazars, Hyderabad.

Dated 3rd Rabi-us-sani 1328 Hijri.

Mohan Lall (*In Urdu*)."

(1) (1913) I. L. R. 38 Mad. 482.

The whole of the *hundis* were dishonoured, and the appellants accordingly took proceedings on the 15th of August, 1913, against Mohan Lal and the Maharaja Sir Kishan Pershad Bahadur, the respondents on this appeal, claiming the amounts due upon the *hundis* with interest. It would, of course, have been open to the plaintiffs, had they thought fit, to have framed their case in an alternative form, and to have sued both on the *hundis* and alternatively upon the consideration.

It is indeed urged by the appellants that the plaint in fact embraced both these forms of relief, but their Lordships are unable to accept this contention, which does not appear to have been raised in the Courts below. In their opinion the plaint was confined to an action brought upon the *hundis* themselves, and the sole question for decision upon this appeal is whether upon the form of the *hundi* the first respondent, the Maharaja, was properly included as a defendant to the suit, or whether as against him the claim is demurrable.

The District Judge on the 19th September, 1914, dismissed the suit against the Maharaja, but passed a decree against Mohan Lal. The plaintiff appealed from this judgment to the First Assistant Resident at Hyderabad who, on the 28th April, 1915, reversed the judgment of the District Judge and remanded the case to be disposed of on the merits, holding that the *hundis* were drawn in a form sufficient to charge the Maharaja upon these if agency were proved; but this judgment was reversed by the Resident at Hyderabad on the 27th September, 1915, and from this judgment the present appeal has been brought.

The real point for decision is whether the *hundis* have been so drawn that in form they bind the Maharaja. If they have, it will then become necessary

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to determine whether in fact Mohan Lal had authority for the purpose. If they have not, this question of agency does not, and cannot arise in the present suit.

Now, in the actual operative part of the *hundis* there is nothing by which the Maharaja can be bound. Each one is drawn in the name of Mohan Lal alone, and accepted by him without qualification, for the addition of the words, "Acting Superintendent of the Private Treasury of His Excellency Sir Maharaja, the Prime Minister of H. H. the Nizam," is, in their 'Lordships' opinion, nothing but a description of Mohan Lal's position, and is certainly not a signature in the form necessary for an agent signing on a principal's behalf.

The appellants, however, place great reliance on the preliminary words :—"By the order of Sirkar may his happiness increase," and contend that such a preface to the instrument implies that subsequent signatures are signatures on behalf of the Sirkar.

Their Lordships cannot accept this contention. It is of the utmost importance that the name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand. In this case the preliminary words mention no more than that Mohan Lal has been directed to execute the *hundis*, and they do not necessarily imply that he has been clothed with authority to execute them in any other form than that in which they were actually prepared—a form which it has already been shown constituted nothing more than a personal liability on behalf of Mohan Lal.

The statement, to which reference has been made, which appears on page 99 of Messrs. Iyenger and Adiga's book on negotiable instruments, that "outside

evidence is inadmissible on any person as a principal party unless his—the principal party's—name is in some way disclosed in the instrument itself," is not in itself an adequate statement of the law. It is not sufficient that the principal's name should be "in some way" disclosed, it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the bills.

Their Lordships' attention was directed to sections 26, 27 and 28 of the Negotiable Instruments Act of 1881, and the terms of these sections were contrasted with the corresponding provisions of the English Statute. It is unnecessary in this connection to decide whether their effect is identical. It is sufficient to say that these sections contain nothing inconsistent with the principles already enunciated, and nothing to support the contention, which is contrary to all established rules, that in an action on a bill of exchange or promissory note against a person whose name properly appears as party to the instrument, it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal.

The judgment of the Resident appears to their Lordships to place the correct interpretation upon the documents in this case, and to state accurately the principles of law that are to be applied. For this reason they think that the appeal must fail, and they will humbly advise His Majesty that it should be dismissed.

J. V. W. *Appeal dismissed.*

Solicitor for the appellant: *Douglas Grant.*