

APPEAL FROM ORIGINAL CIVIL.*Before Sandersm C. J. and Buckland J.***BENGAL-NAGPUR RAILWAY COMPANY, LTD.**

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v.

June 23.

CO-OPERATIVE HINDUSTHAN BANK, LTD.**Estoppel—Valuable consideration—Cheque, form of—Negotiable Instruments Act (XXVI of 1881), s. 58.*

The plaintiff Bank made advances to one B. & Co. against some bills in respect of goods supplied to the defendant Railway Company. The Bank before making the advances enquired of the Railway Company and was told that the bills were in order. The Railway Company in payment of the bills, issued a cheque payable to the Bank for credit of B. & Co., but, finding that certain representations by B. & Co. about the goods were untrue, stopped the cheque. The plaintiff Bank sued on the dishonoured cheque.

Held, that the Railway Company were estopped from denying that the bills were in order.

Appeal by the defendant Railway Company from the judgment of C. C. Ghose J.

In August 1923 one M. Badree and Company entered into a contract with the Bengal-Nagpur Railway Company for supply of 100 tons B. C. dog spikes for sleepers on the Railway. Badree and Company entered into another contract for purchase of the same goods from Messrs. Bird and Company. Thereafter, Badree and Company made two bills for Rs. 7,989-8 and Rs. 7,685, making a total of Rs. 15,674-8, and approached the plaintiff Bank for an advance of

* Appeal from Original Civil No. 179 of 1924 in suit No. 3268 of 1923.

80 per cent. on these bills. The Bank enquired of the Railway Company and were informed that the bills were in order and arrangements were being made to pass the same on to the Chief Auditor for payment. On that the Bank made the advance. The bills were presented to the Railway Company, and a cheque was drawn by the Railway Company on the Imperial Bank of India in these terms "Pay to Co-operative Hindusthan Bank, Limited, for credit of Messrs. M. Badree and Company, the sum of Rupees fifteen thousand six hundred and seventy-four and annas eight only and charge the same against the drawing account." The Railway Company thereafter, finding that certain statements by Badree and Company with regard to these goods were untrue and that Messrs. Bird and Company were unpaid vendors of the goods and had the Railway receipts still with them, stopped payment of the cheque and accordingly on 30th November when the cheque was presented payment was refused.

On that the plaintiff Bank sued the Railway Company for the said sum of Rs. 15,674-8, and obtained the following judgment from Mr. Justice C. C. Ghose sitting on the Original Side :—

GHOSE J. This is a suit for the recovery of a sum of Rs. 15,674-8 and it has arisen under the following circumstances. In November 1923, a firm named M. Badree & Co. endorsed over to the plaintiff Bank for valuable consideration two bills Nos. 570 and 584 against the defendant Company for the respective sums of Rs. 7,989-8 and Rs. 7,685 for the price of goods sold and delivered to the defendant Company. On the 2nd November 1923, the plaintiff Bank forwarded the two bills to the defendant Company for payment. On the 27th November 1923, the defendant Company issued a cheque on the Imperial Bank of India in favour of the plaintiff Bank for the sum of Rs. 15,674-8 in payment of the amounts of the said two bills. The plaintiff Bank presented the cheque to the Imperial Bank of India in Calcutta for payment on the 30th November 1923, but was unable to obtain payment, as payment

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thereof had been stopped by the defendant Company. The defendant Company in their Written Statement admitted that by a letter dated the 2nd November 1923, the defendant Company stated to the plaintiff Bank that the said bills were in order and that arrangements were being made to pass the same to its Chief Auditor for payment. The defendant Company, however, went on to add that they did not admit that by the said statement they recognised the title of or consented to payment of the said bills being made to the plaintiffs. The defendant Company added that the cheque in question was issued and forwarded upon the untrue representation of the said M. Badree & Co., that the Railway receipts for the said goods had been lost and that such receipts had been in the possession and disposition of the said firm. At the time the cheque was so issued and forwarded, the defendant Company believed that the said Messrs. Badree & Co. were the owners of the said goods and entitled to deal with and to give delivery thereof to the defendant Company. The defendant Company subsequently became aware of the true facts, *viz.*, that the said receipts were in the possession of Messrs. Bird & Co., from whom the said Messrs. Badree & Co. had contracted to purchase the goods upon terms that the price thereof should be paid against delivery of such receipts and that upon tender to them by the said Messrs. Bird & Co. of such receipts, the said M. Badree & Co. had in breach of contract failed to make payment of such price. The defendant Company thereupon stopped payment of the said cheque. In view of this Written Statement, I allowed the plaintiff Bank to file an additional statement by way of reply. The plaintiff Bank stated that the defendant Company had represented to the plaintiff Bank, both verbally and by their letter of the 2nd November 1923, that the bills of Messrs. M. Badree & Co. were in order, and that payments would be made to the plaintiff Bank, and had thereby induced the plaintiff Bank to make advances to the said Messrs. M. Badree & Co., and that the defendant Company were estopped from denying that the amounts of the said bills were due and that the plaintiff Bank was entitled to receive payment of the same and that the defendant Company were not entitled to stop payment of the said cheque.

On these pleadings the following issues properly arose for decision :—

(i) Was the said cheque a negotiable instrument within the meaning of the Negotiable Instruments Act ?

(ii) Is the defendant Company estopped from denying the plaintiff's right to the validity of the said cheque or to realise the amount of the said bills ?

Mr. Pugh, on behalf of the defendant Company, raised certain other

issues, which I thought did not properly arise on the pleadings. I accordingly disallowed the issues suggested by Mr. Pugh and confined my attention to the two issues mentioned above.

It appears that Messrs M. Badree & Co. proposed to the plaintiff Bank in October 1923, that the Bank should advance to them 80 per cent. of the amounts of certain bills on certain terms and conditions. Thereupon, one Dharendra Nath Dutt Gupta, who is an assistant in the plaintiff Bank, was deputed to make enquiries in the office of the Chief Engineer, Bengal-Nagpur Railway. He went and saw Mr. Roy, who is the Head Clerk in the Chief Engineer's office. The result of his enquiries is embodied in Exhibit B. 1. He states that Exhibit C, which is a letter addressed by M. Badree & Co. to the plaintiff Bank, was shown to Mr. Roy and thereafter on the 2nd November, the plaintiff Bank wrote the letter, dated the 2nd November 1923, to the defendant Company. The plaintiff Bank subsequently received Exhibit D, being a letter which ran as follows and which was addressed by the Chief Engineer, Bengal-Nagpur Railway :--
 "I have to acknowledge receipt of your letter No. 15-3613, dated 2nd November 1923, and to say that the two bills Nos. 570 and 584 of 12th and 31st October 1923, for the sums of Rs. 7,898-8 and Rs. 7,685 respectively are in order. Arrangements are being made to pass the same on to our Chief Auditor for payment." Subsequently, the cheque in question was received by the plaintiff Bank with the covering letter Exhibit E; money was advanced by the plaintiff Bank to Messrs. M. Badree & Co., on the security of the bills referred to in the above letter, and the Bank subsequently received Exhibit G from the Bengal-Nagpur Railway, stating that the goods, in respect of which the said bills had been made out, had been received by the Railway.

There is very little oral evidence in this case, but the manager of the Bank, Mr. Memmohan Bhattacharjee, made it clear that the Bank would not have advanced any money to M. Badree & Co., but for the letter Exhibit D, which the Bank received from the Railway. Mr. Pugh submitted that the cheque in question was not a cheque, but a simple pay order, and it was not a document within the meaning of the Negotiable Instruments Act. It was not an unconditional order to pay, because it was an order to pay somebody for the benefit of somebody. In the second place, Mr. Pugh argued that there was no proper assignment of the bill in favour of the plaintiff Bank, and if there was any assignment, it was subject to equities. The plaintiff Bank, according to Mr. Pugh, could not rely upon any question of estoppel, because there was misrepresentation on the part of Badree; and on all these grounds Mr. Pugh claimed that the suit should be dismissed.

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The substantial question, therefore, which I have got to decide, is whether the cheque in question is a document within the meaning of the Negotiable Instruments Act. A cheque is defined in section 6 of the Negotiable Instruments Act as a Bill of Exchange drawn on a specified Banker and not expressed to be payable otherwise than on demand. "A Banker's cheque," as Parke C. B. said in the case of *Ramchuran Mullick v. Luchmee Chand* (1) "is a peculiar sort of instrument, in many respects resembling a Bill of Exchange, but in some entirely different. A cheque does not require acceptance; in the ordinary course it is never accepted; it is not intended for circulation, it is given for immediate payment; it is not entitled to days of grace; and though, it is, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons, it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person primarily liable to pay, who orders his debt to be paid at a particular place, and as being much in the same position as the maker of a promissory note, or the acceptor of a Bill of Exchange, payable at a particular place and not elsewhere, who has no right to insist on immediate presentment at that place" [See also *Hopkinson v. Forster*—(2)]. As Sir George Jessel pointed out, the following are the requirements of a cheque, the Banker's name should be specified, there must be certainty of payee, the sum directed to be paid should be distinctly expressed in the instrument both in words and figures to avoid difficulty, but either will do, and the cheque must be dated, the crossing of a cheque is a direction to the Banker on whom the cheque is drawn not to pay it except through Banker when the crossing is general and when the crossing is special, it is henceforth payable only through the Banker mentioned, or through another Banker to whom it is sent for collection by that Bank. I have considered Mr. Pugh's contention with reference to the cheque in question and, in my opinion, it is an unconditional order to pay in the circumstances of this case, and it is a document within the meaning of the Negotiable Instruments Act. If that is so, then judgment must follow for the plaintiff Bank, but I desire to observe having heard the evidence in this case, that judgment must also follow for the plaintiff Bank on the second issue. There can be no doubt on the facts that the Bank were the assignees of the two bills referred to above, and on the evidence in this case the assignment was not subject to any such equities as were sought to be suggested by Mr. Pugh. There will, therefore, be judgment for the plaintiff Bank for the amount claimed with the costs of this suit on Scale No. 2.

(1) (1854) 9 Moore P. C. 46, 69. (2) (1874) L. R. 19 Eq. 74

The defendant Railway Company appealed from that judgment.

Mr. L. P. E. Pugh and *Mr. F. S. R. Surita*, for the appellants Company.

Mr. N. N. Sircar and *Mr. A. K. Roy*, for the respondent Bank.

SANDERSON C. J. This is an appeal by the defendant Railway Company from the judgment of my learned brother Mr. Justice C. C. Ghose delivered on the 1st of August 1924.

It appears that a man called Badree had agreed to supply certain goods, viz., dog spikes, to the Railway Company. He made out two bills in respect of these goods. He arranged with the plaintiff Bank that they would make advances to him to the extent of 80 per cent. of the amount of the bills. Before completing the arrangement the Bank sent a representative to the office of the Chief Engineer of the Railway at Garden Reach, and made certain enquiries from the Head Clerk of the Chief Engineer. The enquiries were directed to the question whether the bills in question were genuine. He was informed that the bills were in order and that the Railway Company would pay the bills in due course. Having got that information on the 1st of November, the arrangement, to which I have already referred, was made between the Bank and Badree. The Bank, however, were not satisfied with the information which they had obtained verbally, and consequently they wrote a letter on the 2nd of November asking for confirmation. They said " As assured by your said Head Clerk, " we should be glad to have your confirmation in " reply that the bills are correctly drawn and that " bills will be paid to us direct, the cheques therefor

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“being drawn in favour of this Bank in due course.”

The answer to that was from the Chief Engineer on the same date and was as follows: “. . .

“The bills are in order. Arrange-
 ments are being made to pass the same on to our
 “Chief Auditor for payment.”

It is in evidence that in consequence of that statement and believing the statement to be true the Bank made certain advances to Badree. The bills were presented to the Railway Company and in due course, on or about the 28th of November, a cheque for the amount of the bills was sent to the Bank by the Railway Company. The cheque was drawn by the defendant Company upon the Imperial Bank of India and was in these terms: “Pay to Co-operative Hindusthan Bank, Limited, for credit of Messrs. M. Badree & Co., the sum of rupees fifteen thousand six hundred and seventy-four and annas eight only, and charge the same against the drawing account.” The cheque was presented on the 30th of November and payment was refused.

It appears that the Railway Company stopped it because they found that Badree had made certain statements with regard to these goods which were untrue and that Messrs. Bird & Co. were unpaid vendors of the goods and still had the railway receipts.

The learned Judge came to the conclusion that the plaintiffs were entitled to a decree.

I have no doubt that the decision, at which the learned Judge arrived, was correct. In my opinion, the Railway Company are estopped from denying that the two bills in question were in order and that the transaction was correct in every respect.

The learned counsel who appeared for the defendants argued that there could be any estoppel by

reason of a phrase which occurs in the letter dated the 2nd November, written by the manager of the plaintiff Bank to the chief engineer of the defendants, and the phrase is this: After referring to the bills, the writer said " duly endorsed in favour of " this Bank for valuable consideration, enclosing their " letter also on the point herewith." The argument was that inasmuch as the Bank represented that valuable consideration had already passed from the Bank to Badree it was not possible to hold that the Bank had relied upon the Railway Company's statement so that the Railway Company should be estopped.

In my opinion, the phrase, " for valuable consideration " is quite consistent with there having been an arrangement that the Bank would make advances in future to Badree against the bills if it was found that they were in order and the manager of the plaintiff Bank stated that the Bank would not have advanced money to Badree, but for the letter from the Chief Engineer of the defendants, dated the 2nd November 1923, which contained the statement that the bills were in order and arrangements were being made to pass the same on to the Chief Auditor for payment.

In these circumstances, I am of opinion that there is no substance in the abovementioned contention.

The learned counsel further relied upon section 58 of the Negotiable Instruments Act and argued that inasmuch as Badree had made untrue representations to the Railway Company and that in consequence of those representations the Railway Company had issued the cheque, it was for the plaintiffs to show that they were holders in due course.

I am not prepared to accept that argument because I think the facts of this case do not bring it within that section. The plaintiffs were not claiming

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through any person who obtained the cheque from the defendant by "fraud or for an unlawful consideration." The cheque on which the suit was based was drawn by the defendants in favour of the plaintiffs and did not pass through the hands of Badree.

The last point, with which I think it is necessary to deal, is that the learned counsel argued that the form in which the cheque was drawn went to show that the plaintiffs were merely collecting agents. In my judgment, the words used in the cheque do not bear that interpretation. I think the words "for credit of Messrs. Badree and Company" merely means this, that the cheque was drawn in favour of the Co-operative Hindusthan Bank, Limited, in respect of the amount which was owing by the Railway to Messrs. Badree and Company. The Railway Company must have known that the plaintiffs, in view of the arrangement between them and Badree, were entitled to receive the money and in the ordinary course of business the plaintiffs would give credit to Messrs. Badree and Company for the amount of the cheque.

For these reasons, in my judgment, the appeal should be dismissed with costs.

BUCKLAND J. I agree and have nothing to add.

Attorneys for the appellants: *Orr, Dignam & Co.*

Attorneys for the respondents: *Dutt & Sen.*

N. G.

Appeal dismissed.