

APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and Buckland J.

H. V. LOW AND COMPANY, LIMITED,

v.

SUDHANNAKUMAR CHAKRABARTI.*

1931
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Promissory Note—Note payable to a person or bearer—Indian Paper Currency Act (X of 1923), s. 25.

A promissory note made payable, on demand, to a person or bearer is illegal and void and an endorsement in favour of a named payee or order does not make it a valid document.

Mian Baksh v. Bodhiya (1) and *Chidambaran Chettiar v. Ayyasami Thevan* (2) relied on.

The endorsee of a promissory note, not covered by the proviso to section 25 of the Indian Paper Currency Act, cannot enforce it against the endorser.

Alagappa Chetty v. Alagappa Chetty (3) relied on.

Arunachalam Chettiar v. Narayanan Chettiar (4) distinguished.

APPEAL by the plaintiff company.

The facts are fully set out in the judgment of the trial court, which was as follows:—

REMFRY J. The plaintiff company sues as endorsees of the promissory note, dated the 27th day of April, 1928.

It appears that the first two defendants executed the note in the following form :

“On demand we hereby promise jointly and severally to pay to Babu Haridas Banerji, of 18, Gopal Basu Lane, Calcutta, or bearer the sum of Rs. 2,000 only bearing interest at 12 per cent. per annum for value received in full.”

On the end of the note there are endorsements in the following terms :

“Please pay to Messrs. B. R. Basu or order”

(Signed) Haridas Banerji.

and

Please pay to Messrs. H. V. Low & Co., or order

(Signed) B. R. Basu & Co.

This Haridas Banerji and Messrs. B. R. Basu & Co. have been made defendants, as liable on the note as endorsees thereof.

*Appeal from Original Decree, No. 99 of 1930, in Suit No. 1778 of 1929.

(1) (1928) I. L. R. 50 All. 839.

(3) (1920) I. L. R. 44 Mad. 187.

(2) (1916) I. L. R. 40 Mad. 585.

(4) (1918) I. L. R. 42 Mad. 470.

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Various defences were raised, but, as the objection raised to the validity of the promissory note, if it is well founded, will dispose of the case, I will consider it.

The objection, which is issue No. 6, is whether the promissory note is unenforceable, inasmuch as it offends against the provisions of section 25 of the Indian Paper Currency Act, which is Act X of 1923. The section is "No person in British India shall draw, accept, make or issue any bill of exchange, *hundi*, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, *hundis* or notes payable to bearer on demand, of any such person."

On the face of it, the promissory note is payable to bearer on demand and, therefore, contravenes the section.

It was argued, for the plaintiff company, that, as it was also payable to a named person or order, it did not come within the terms of the section.

This argument was unsuccessfully argued in *Mian Bakhsh v. Boahiya* (1) and in *Chidambaram Chettiar v. Ayyasawmi Thevan* (2).

In my opinion, as the promissory note was payable on demand to bearer, it contravened the section, and the addition of named payee or order does not make it a valid document, for it still was payable to bearer on demand.

It was also argued that the payee and endorsees were estopped from raising the point by section 120 of the Negotiable Instruments Act. That Act provides that none of its provisions shall affect the Indian Paper Currency Act, and it would be extraordinary if the Act defeated its own purpose by raising an estoppel. But that question does not arise, for section 120 only asserts a holder in due course, and a person taking a promissory note illegal on the face of it has notice of a defect in his transferor's title.

It was argued that, however the case might be as regards the drawers, the endorsers were liable. But the plaintiff company, by receiving the note, were parties to a transaction forbidden by law, for the endorsements on this promissory note did not, in any way, alter its term, it was still payable to bearer on demand.

Lastly, it was argued that the parties to the note were estopped. Apart from the question whether an estoppel can be pleaded so as to defeat the provisions of any law, it is suggested that the defendants cannot assert that the note is illegal. As it is illegal on the face of it, the plaintiff company had knowledge of the fact and no one can set up an estoppel as between parties both of whom knew the facts.

I do not say that a party cannot be bound by an estoppel merely because he did not know the facts, or that a party knowing of the facts can never set up an estoppel, for he may derive title from a party who could set up the estoppel. But, except on the last mentioned case, a party knowing the facts cannot set up an estoppel. How far this rule affects section 120 of the Negotiable Instruments Act I need not consider, for the plaintiff company were not holders in due course.

In my opinion, therefore, the plaintiff company cannot found a cause of action on this promissory note against the drawers or endorsers under section 23 of the Contract Act, for it was within the prohibition of section 25 of the Indian Paper Currency Act.

The suit must, therefore, be dismissed. The point, on which the defendants have succeeded, was not taken in the written statement. But the plaintiff then contested the case, the plaintiff must pay the costs of the parties who appeared.

(1) (1928) I. L. R. 50 All. 839.

(2) (1916) I. L. R. 40 Mad. 585.

Sudhir Roy for the appellant company. The Indian Paper Currency Act makes it penal to make a promissory note payable to bearer. But the endorsement is not illegal and the holder in due course can enforce the claim.

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Section 11 of the Bank Charter Act (7 & 8 Vict. c. 32), which is similar, is explained in section 11 of the Stamp Act (17 & 18 Vict. c. 83). It is clear that if any endorsement is necessary, then the note does not come within the mischief of the Act.

[RANKIN C.J. But there was no need to endorse the note in the present case.]

In fact, there being an endorsement already, the second endorsement was necessary. *Jethá Parkha v. Ramchandra Vithoba* (1).

[BUCKLAND J. That does not help you, unless you can say that the document is not a negotiable instrument.]

I cannot say that, but the first endorsement takes it outside the purview of the Paper Currency Act.

Section 58 of the Negotiable Instruments Act makes it possible for a holder in due course to enforce a bill obtained by illegal means.

[RANKIN C.J. But this document is illegal on the face of it.]

Still, the endorser is estopped. *Arunachalam Chettiar v. Narayanan Chettiar* (2).

[RANKIN C.J. But, in that case, the document was held to be within the proviso of section 25, and that would entitle the holder in due course to take the benefit of that possibility.]

That is so, but I still come within the principle of estoppel.

[RANKIN C.J. It is very difficult to plead estoppel against a statute.]

It is true that *Arunachalam Chettiar v. Narayanan Chettiar* (2) was not followed in *Alagappa Chetty v. Alagappa Chetty* (3).

(1) (1892) I. L. R. 16 Bom. 689.

(2) (1918) I. L. R. 42 Mad. 470.

(3) (1920) I. L. R. 44 Mad. 187.

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Chidambaram Chettiar v. Ayyasawmi Thevan (1) and *Mian Bakhsh v. Bodhiya* (2) do not apply to this case. See also *Ajudhia Prasad v. Rikhnath* (3).

The two endorsements have changed the nature of the document.

J. C. Hazra and *S. B. Sinha*, for the Chakrabarti respondents, not called upon.

Sambhu Banerji, for respondent Basu, not called upon.

RANKIN C.J. In my opinion, the judgment of the learned Judge is right. The instrument before us is a promissory note. It is payable, in the first place, to Haridas Banerji. It is also payable to "bearer" and it is payable "on demand." In my judgment, the learned Judge was right in holding that it is hit by section 25 of the Indian Paper Currency Act (X of 1923). That section is taken from the Bank Charter Act of 1844 (Sir Robert Peel's Act) where a similar provision was made; not, however, with reference to "any person" but only with reference to banks. It was part of the prohibition of issuing bank notes, except so far as regards certain banks, who by that statute were permitted to continue to issue. By the Indian Act "No person in British India shall draw, "accept, make or issue any bill of exchange, *hundi*, "promissory note or engagement for the payment of "money payable to bearer on demand." In this case, although the name of Haridas Banerji is on the face of the instrument, it is an instrument that is payable to bearer on demand. The learned Judge has pointed out that there is authority for saying that the mere mention of an individual on the instrument does not make the section inapplicable. *Mian Bakhsh v. Bodhiya* (2) and *Chidambaram Chettiar v. Ayyasawmi Thevan* (1). So far, then, as regards the claim upon the maker of this promissory note, it would seem that the claim must be founded upon an illegal document. It is suggested that, in this case,

(1) (1916) I. L. R. 40 Mad. 585.

(2) (1928) I. L. R. 50 All. 839.

(3) (1928) I. L. R. 50 All. 764, 766.

the plaintiffs who are endorsees for value can at all events sue their own endorsers and that line of reasoning was developed in the case of *Arunachalam Chettiar v. Naraynam Chettiar* (1). But in a subsequent case, namely, in the case of *Alagappa Chetty v. Alagappa Chetty* (2), it was pointed out by a Division Bench that "there can be no estoppel against a clear injunction of a statute" and, in my opinion, the moment it is seen that this being a promissory note cannot be a document covered by the proviso to section 25, it becomes impossible to deny that even a holder in due course is bound by the provision of the section and that an endorsee cannot on the basis of the instrument make his claim against the endorser. In my judgment, the opinion of the learned Judge is correct and the plaintiff's suit must fail and this appeal must be dismissed with costs.

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BUCKLAND J. I agree.

Appeal dismissed.

Attorneys for appellants: *Dutt & Sen.*

Attorneys for respondents: *G. N. Dutt & Co.,
 A. N. Roy Chowdhury.*

S. M.

(1) (1918) I. L. R. 42 Mad. 470. (2) (1920) I. L. R. 44 Mad. 187, 188.