

APPELLATE CIVIL.

Before Lord-Williams and M. C. Ghose JJ.

1934

Jan. 24, 29, 30.

SURATHCHANDRA SHAHA

v.

NARAYANCHANDRA CHAUDHURI.*

Hand-note—Chose in action—Promissory note—Negotiable Instrument—Transfer—Assignment—Indorsement—Equities—Law merchant—Negotiable Instruments Act (XXVI of 1881), ss. 8, 78.

A hand-note is a memorandum of contract and evidence of a chose in action or actionable claim. It may be transferred by assignment, and the assignee thereby gets such title as the assignor had in the note and in addition the right to have the indorsement of the assignor. In British India, this has always been held to include the right to sue on the assignment in his own name. It passes all legal and other remedies for the chose in action, but subject to all equities.

A hand-note is also a promissory note, which is a negotiable instrument and, according to the law merchant as codified in the Negotiable Instruments Act, 1881, it is transferable merely by indorsement and delivery : as such it is clothed with certain incidents intended to facilitate the business of merchants.

Mulhar Sahib Maraikar v. Kadir Sahib Maraikar (1), *Benode Kishore Goswami v. Asutosh Mukhopadhyaya* (2) and *Akhoy Kumar Pal v. Haridas Bysack* (3) referred to.

Brojo Lal Saha Banikya v. Budh Nath Pyarital & Co. (4), *Harkishore Barna v. Gura Mia Chaudhuri* (5), *Reoti Lal v. Manna Kunwar* (6), *Subba Narayana Vathiyar v. Ramaswami Aiyar* (7), *Sewa Ram v. Hoti Lal* (8) and *Sarjug Singh v. Deosaran Singh* (9) discussed and dissented from.

The difference between a transfer by assignment and a transfer by indorsement and delivery is that in the former case the transfer is subject to all equities, whereas in the latter it is not.

Whistler v. Forster (10) referred to.

*Appeal from Appellate Decree, No. 622 of 1932, against the decree of Rashbihari Barman, Subordinate Judge (second court) of Pabna, dated Oct. 6, 1931, affirming the decree of Maneendranath Gan, Munsif (second court) of Pabna, dated Jan. 20, 1931.

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| (1) (1905) I. L. R. 28 Mad. 544. | (6) (1922) I. L. R. 44 All. 290. |
| (2) (1912) 16 C. W. N. 666. | (7) (1906) I. L. R. 30 Mad. 88. |
| (3) (1913) 18 C. W. N. 494. | (8) (1930) I. L. R. 53 All. 5. |
| (4) (1927) I. L. R. 55 Calc. 551. | (9) [1930] A. I. R. (Pat.) 313. |
| (5) (1930) I. L. R. 58 Calc. 752. | (10) (1863) 14 C. B. (N. S.) 248 ;
143 E. R. 441. |

1934

*Surathchandra
Shaha*
v.
*Narayanchandra
Chaudhuri.*

SECOND APPEAL by the plaintiff.

The facts of the case and the arguments advanced at the hearing of the appeal appear sufficiently in the judgment.

Gopalchandra Das and *Bhubanmohan Shaha* for the appellant.

Krishnakamal Maitra for the respondent.

LORT-WILLIAMS J. The document, upon which this case turns, is described as a hand-note. The maker of the hand-note, Kripanath Chaudhuri, was the father of defendants Nos. 1, 2 and 3. The holder was Banwarilal Shaha, the father of the *pro forma* defendants Nos. 5 to 8. The note was given in exchange for a loan of Rs. 325 and was payable on demand. The holder, without indorsing it, sold his right, title and interest in the hand-note, along with other property, to the plaintiff by a registered *kabâlâ*.

The main point for decision was whether the plaintiff could sue the defendants and recover the amount of the hand-note. Both courts below have dismissed the suit on the ground that the rights arising upon such a document can be transferred only by indorsement and delivery.

The hand-note is a promissory note, and a promissory note is a written acknowledgment of debt with a promise to repay. It is also a memorandum of contract, and evidence of a chose in action or actionable claim. Thus, it may be transferred by assignment, and the assignee thereby gets such title as the assignor had in the note, and, in addition, the right to have the indorsement of the assignor. In India, this has always been held to include the right to sue on the assignment in his own name, compare Gour's Law of Transfer, 6th Edition, page 2157. The assignment transfers the legal right to the chose in action to the assignee with power to give a good discharge. It passes all legal and other remedies for the chose in action, but subject to all equities.

A promissory note is also a negotiable instrument, and, according to the law merchant, as codified in the English Bills of Exchange Act, 1882, and the Indian Negotiable Instruments Act, 1881, it is transferable merely by indorsement and delivery. As such, it is clothed with certain incidents intended to facilitate the business of merchants.

1934

Suratichandra
Shaha
 v.
Narayanchandra
Chaudhuri.

Lort-Williams J.

Owing to some confusion of thought, it has been suggested that the Negotiable Instruments Act, in some way, has affected the transferability of such a document by assignment as a chose in action. This contention was shown to be fallacious in *Muthar Sahib Maraikar v. Kadir Sahib Maraikar* (1), *Benode Kishore Goswami v. Asutosh Mukhopadhyaya* (2) and *Akhoy Kumar Pal v. Haridas Bysack* (3). But in the later cases there occur observations in the nature of *obiter dicta*, which seem to suggest the contrary view, with the result that in *Brojo Lal Saha Banikya v. Budh Nath Pyarilal & Co.* (4), *Harikishore Barna v. Gura Mia Chaudhuri* (5), *Reoti Lal v. Manna Kunwar* (6), *Subba Narayana Vathiyar v. Ramaswami Aiyar* (7), *Sewa Ram v. Hoti Lal* (8) and *Sarjug Singh v. Deosaran Singh* (9) confusion has arisen again from time to time.

These decisions are, however, irrelevant to the issue raised in the present case, because in them there were no assignments, and they turned upon the question whether a person, whose name did not appear on a negotiable instrument, had the right to sue upon it in the absence of an assignment.

The wording of sections 8 and 78 of the Negotiable Instruments Act seems to have been the cause of the confusion to which I have referred. Section 8 provides :

The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

(1) (1905) I. L. R. 28 Mad. 544.

(2) (1912) 16 C. W. N. 666.

(3) (1913) 18 C. W. N. 494.

(4) (1927) I. L. R. 55 Calc. 551.

(5) (1930) I. L. R. 58 Calc. 752.

(6) (1922) I. L. R. 44 All. 290.

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1934

*Suratichandra
Shaha*
v.
*Narayanandra
Chaudhuri.*

Lori-Williams J.

Section 78 provides :

Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

It has been suggested that the effect of section 78 is to prevent an assignee, such as the plaintiff in the present case, from suing because he does not come within the definition of "holder" in section 8, and, therefore, cannot discharge the maker or acceptor, as contemplated in section 78. This argument seems to be erroneous. The plaintiff is within the definition of "holder" in section 8. He can sue in his own name, and he is entitled in his own name to possession, and to receive or recover the amount due on the hand-note from the parties thereto.

The difference between a transfer by assignment and a transfer by indorsement and delivery is that, in the former case, the transfer is subject to all equities, whereas, in the latter, it is not. The scope of the rule has been explained by Willes J. in *Whistler v. Forster* (1).

In the present case, no equities have arisen and the plaintiff is entitled to a decree. The appeal is allowed with costs here and below. The judgments of both the lower courts are set aside. Defendants Nos. 1 to 4 must pay into the court of first instance the amount claimed, to the extent of any assets inherited by them from Kripanath Chaudhuri, and defendants Nos. 5 to 8 must indorse the note in favour of the plaintiff. When that has been done, the amount thus paid into court will be paid out to the plaintiff. In case any difficulty arises in carrying out this decree, there will be liberty to apply.

M. C. GHOSE J. I agree.

Appeal allowed.

G.S.

(1) (1863) 14 C. B. (N. S.) 248 (257-8); 143 E. R. 441 (445).