

ORIGINAL CIVIL.

Before Buckland J.

A. G. KIDSTON & CO., LTD.

v.

SETH BROTHERS.*

1929

July 8.

Bills of Exchange—When are inland instruments—Negotiable Instruments Act (XXVI of 1881), ss. 11, 12, 104—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 4, 51.

A bill of exchange drawn upon a resident of British India is an inland instrument irrespective of the place where it was drawn.

The facts necessary for this report are as follows : The plaintiff company filed this suit to recover the sum of Rs. 2,938-11-3, being the balance of the amount due on certain bills of exchange, which were presented on due dates for payment, but were dishonoured by non-acceptance by the defendant firm. The bills of exchange were accepted, payable at the Calcutta office of Lloyd's Bank, Ltd. At the hearing, counsel for both sides proceeded on the basis that the bills were foreign bills and a judgment was delivered on that basis, but on further consideration the former judgment was recalled upon the point in view of the fact that the instruments were inland instruments under section 11 of the Negotiable Instruments Act.

Mr. F. S. R. Surita, for the plaintiff company.

Mr. C. T. Moore, for the defendant firm.

BUCKLAND J. This is a suit on dishonoured bills drawn in England on a firm carrying on business in Calcutta. When the case was before me some days ago, Mr. Moore, on behalf of the defendants, contended that, by virtue of section 104 of the Negotiable Instruments Act, coupled with section 51 of the Bills of Exchange Act, the bills ought to have been protested, and, that not having been done, no

*Original Civil Suit, No. 2259 of 1928.

suit could be brought upon them. I considered the point and expressed my opinion upon it. At that time, it was assumed that the bills were foreign bills. Subsequently, however, for my own satisfaction, I turned to the definition of a foreign bill and it appeared to me clear, as I now think, that the question which was then argued by Mr. Moore never arose, because these bills are not foreign bills at all. A foreign bill is defined by section 12 of the Negotiable Instruments Act, which provides that any instrument not drawn or made or made payable, as provided by section 11, shall be a foreign instrument. Section 11 defines an inland instrument as a note, bill or cheque drawn or made in British India and made payable in or drawn upon any person resident in British India. That should be read thus: (1) a note, *etc.*, drawn or made in British India and made payable in British India, or (2) a note, *etc.*, drawn upon any person resident in British India. In the latter case, it is immaterial where the promissory note, bill, *etc.*, is drawn. A reference to the definition in the English Act, section 4, which the draftsman of the Indian section probably took as a model, makes this clear. In that, the second part of the definition defines an inland bill as a bill drawn within the British Isles upon some person resident therein. This undoubtedly suggests that in the second part of the definition in section 11 the words "in British India" were deliberately omitted after the word "drawn." If a bill is drawn upon a resident in British India, it still remains an inland Bill wherever it may have been drawn. In these circumstances, the other point argued by Mr. Moore does not arise and this judgment supersedes my former judgment on this point. The remainder of my earlier judgment is incorporated herewith as follows:

The only other point taken at the hearing is that the plaintiff company have not given the defendants credit for all payments made on account of these bills and the defendants claim to be credited with a further sum of Rs. 100. The position is by no means clear,

1929

A. G. KIDSTONE
& Co., LTD.

v.

SETH BROTHERS.

BUCKLAND J.

1929
 A. G. KIDSTON
 & Co., LTD.
 v.
 SETH BROTHERS.
 BUCKLAND J.

and a small balance, such as a hundred rupees, may involve a protracted account. Learned counsel for the defendants is not in a position to explain to me with any reasonable exactitude how the figure is arrived at, and, reluctant though I am to send so small a point to a reference, I must direct that it be referred to the Assistant Referee to enquire and report as to what payments have been made by the defendants to the plaintiffs on account of the sums due in respect of the bills in suit. The defendants must pay the costs of the suit, and if it shall appear that full credit has been given to the defendants for all sums paid by them, then the defendants must pay the costs of the reference as well; on the other hand, if it shall appear that full credit has not been given by the plaintiff company for all payments made by the defendants, then the plaintiff company will have to pay the costs of the reference.

The plaintiff company claim Rs. 2,651-5-9 due for principal and interest. They admit they have omitted to give credit for £2, apart from the item of Rs. 100 already mentioned. Rupees 28 must, therefore, be deducted from the sum claimed, and, as it is not claimed that there are more than Rs. 100 still in dispute, I will now make a decree for Rs. 2,523-5-9. The balance of Rs. 100 will depend upon the reference.

Attorneys for the plaintiff company : *Orr, Dignam & Co.*

Attorneys for the defendant firm : *Fox & Mondol.*

O. U. A.