APPELLATE CIVIL.

Before Graham and Mitter JJ.

JOGESHCHANDRA DHAR

v.

MAHAMMAD IBRAHIM.*

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July 3.

Promissory note—Instrument not addressed to drawee when accepted by a third party, if becomes a bill of exchange—Construction—Circumstances to be taken into consideration—Estoppel—Acceptor not named in the instrument when liable—Negotiable Instruments Act (XXVI of 1881), ss, 5, 17, 45.

An instrument purporting to be a promissory note, in which there is no mention of a drawee, may become a bill of exchange if acceptance is endorsed thereon by a third party.

A person who thus endorses an acceptance thereby admits himself to be a drawee and becomes liable under it, even though he is not named as a drawee, provided acceptanee by him is not inconsistent with the address on the bill of exchange. The acceptor having signified his acceptance is estopped from contending that he is not the drawee.

Lloyd v. *John Edward Oliver* (1) and *Gray* v. *Milner* (2) referred to.

Davis v. *Henry John Clarke* (3) and *Steele* v. *M'Kinlay* (4) distinguished.

SECOND APPEAL by the plaintiff.

The appeal arose out of a suit for recovery of money due on an instrument, which was described as a *hundi* in the plaint, under which the defendants Nos. 1 and 2 promised to pay to plaintiff's order the sum of Rs. 1,000 with interest forty-five days after date without grace; and, in the corner at the top, there was an endorsement, alleged to have been signed by defendant No. 3 for self and on behalf of defendant No. 4, to the effect—"accepted payable on due date "23rd September." The suit was contested by defendant No. 4 alone, the written statement filed by defendant No. 3 at a late stage not having been

*Appeal from Appellate Decree, No. 1543 of 1927, against the decree of Jnan Chandra Banerjee, Subordinate Judge of Chittagong, dated March 8, 1927, affirming the decree of Gour Krishna Basu, Munsif of Chittagong, dated Dec. 21, 1925.

(1) (1852) 18 Q. B. 471; 118 E. R. 178.
(2) (1819) 8 Taunt. 739; 129 E. R. 571.
(3) (1844) 6 Q. B. 16; 115 E. R. 6.
(4) (1880) 5 App. Cas. 754.

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accepted and the other defendants not having entered appearance. The defence *inter alia* was that the instrument in suit was not a *hundi* but a promissory note and, as such, made only the defendants Nos. 1 and 2 liable, that the defendant No. 3 attested the document merely as a witness, and that the words "accepted payable on due date" were a subsequent interpolation made with the object of giving the document an appearance of *hundi* and binding the defendants Nos. 3 and 4. The Munsif, who tried the suit, held that the words relating to acceptance were subsequently inserted, and he decreed the suit *ex parte* against the defendants Nos. 1 and 2 and dismissed it against defendants Nos. 3 and 4. On appeal by the plaintiff, the Subordinate Judge held that the instrument was a promissory note and that only the makers thereof, who undertook to pay the money, were bound thereby. He also held that there was no inherent improbability in the circumstances of the case, of Mahammad Ibrahim, defendant No. 3, representing the firm of defendant No. 4, or of his standing surety for defendants Nos. 1 and 2, though not in the sense in which that term is used in the Negotiable Instruments Act. The Subordinate Judge, therefore, dismissed the appeal and upheld the decree passed by the Munsif.

The plaintiff, thereupon, appealed to the High Court.

Mr. Probodhkumar Das and *Mr. Apurbacharan Mukherji*, for the appellant.

Syed Nasim Ali and *Mr. Nurul Huq Chaudhuri*, for the respondents.

Cur. adv. vult.

MITTER J. The action in which this appeal is taken was brought by the plaintiff, now appellant, for the recovery of Rs. 1,044-8, which is the principal, and interest, alleged to be due on an instrument, which is described in the plaint as a *hundi* or bill of exchange. To this suit are impleaded as defendant the Guptas (defendants Nos. 1 and 2), who borrowed

Rs. 1,000 from the plaintiff on the 9th August, 1924, and executed the *hundis* in question, promising to repay the same within 45 days from that date, and Mahammad Ibrahim (defendant No. 3) and a firm known as Makbul Ahmed and Sons of Chittagong (defendant No. 4), who are alleged to have accepted the *hundi* or the bill of exchange. Both the courts agreed in dismissing the plaintiff's suit against defendants Nos. 3 and 4 and in decreeing the suit *ex parte* against defendants Nos. 1 and 2, although their reasons for so doing are different. The lower appellate court does not regard the instrument in question as a bill of exchange, within the meaning of the Negotiable Instruments Act, 1881, but regards it as a promissory note and, as the Guptas are the makers of the promissory note, and not the defendants Nos. 2 and 4, he considers defendants Nos. 3 and 4 are not bound by the instrument.

The plaintiff in this appeal contends that the lower appellate court was in error in holding that the instrument in question was not a "bill of exchange," whereas the respondent contends that the deed is merely a promissory note and the question for determination in this appeal is whether the view taken by the lower appellate court is right.

The document in question is in the following form, on a paper, which is described as a "hundi," in print :—

> Forty-five days after date without grace we jointly and severally promise to pay to the order of Babu Jogeshchandra Dhar, Chittagong, the sum of rupees one thousand only for value received in cash and that with interest 3 per cent. per annum after due date.
>
> PRASANNAKUMAR GUPTA,
> RAMKAMAL GUPTA.

In the corner, at the top, is the endorsement "Accepted payable on due date 23rd September." Below this endorsement there are two signatures of defendant No. 3, Mahammad Ibrahim, one for self and the other for Makbul Ahmed & Sons.

Defendants Nos. 1 and 2 did not appear in the suit. Defendant No. 3 filed a written statement, which was

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rejected, as having been filed too late. Defendant No. 4 filed a written defence and defendant No. 3, in his evidence, said that he was asked to sign the document as a witness and he did so. He also said that the words "accepted payable on due date 23rd "September" were not in the document when he signed it.

The Munsif found that "it seemed to him very "likely that the words 'accepted payable on due date' "were subsequently inserted in the document, with a "view to make defendant No. 3 or his firm liable for "the money, probably because they were more solvent "than defendants Nos. 1 and 2." The lower appellate court apparently does not accept this conclusion of the Munsif and, although its finding in the part of the case is somewhat involved, it says "though, on the "facts, having gone through the evidence of defendant "No. 3, the plaintiffs' ledger, exhibit 3, I am of opinion "that there was no inherent improbability in the "circumstances of the case of Mahammad Ibrahim "representing the firm of defendant No. 4, or of his "standing surety for defendants Nos. 1 and 2 "(though not in the sense in which that term is used "in Negotiable Instruments Act)" and the lower appellate court rejects the story of defendant No. 3 as untrue, for it says "that if it be true, as Mr. "Ibrahim says, that he attested the document as a "witness merely, there would not be two signatures, "one for self and the other representing the firm." As I said, the finding of the Subordinate Judge is open to the comment of its being somewhat involved, but, as I read it, it means that the defence of subsequent interpolation of the words "accepted," *etc.*, and of defendant No. 3's signing, as a witness, did not find favour with the Subordinate Judge. We are unable to agree with the somewhat insistent contention of the learned advocate for defendant No. 3 that the finding of the Munsif, on this part of the case, has not been displaced by the Subordinate Judge. The Subordinate Judge evidently proceeds on his view of the law that the document in question

is not a bill of exchange and rests his judgment on that alone.

The question for determination in this appeal really turns on the construction of the document, dated the 9th August, 1924.

We have no doubt that it is a bill of exchange, as defined in section 5 of the Negotiable Instruments Act, and, even if there is any ambiguity about its being either a promissory note or a bill of exchange, the holder of the bill is entitled to treat it as either, having regard to the provisions of section 17 of the Negotiable Instruments Act which enacts that "where "an instrument may be construed either as a "promissory note or a bill of exchange, the holder may "at his election treat it as either, and the instrument "shall be thenceforward treated accordingly."

It seems clear that it is a bill of exchange. So far back as 1852, in the case of *Lloyd* v. *John Edward Oliver* (1), it was held, with reference to a document, closely resembling the instrument in question, that it was a bill of exchange. In the English case the document was in the following form :—

London, July 17th, 1851, £99. 15*s*.

Two months after date I promise to pay Mr. T. R. Lloyd or order the sum of ninety-nine pounds fifteen shillings for value received.

JOHN EDWARD OLIVER, HENRY OLIVER.

Birmingham.

Across this was written "Accepted, payable "Spooner, Attwood & Co., Bankers, London, Edward "Oliver." It was proved that Edward Oliver was the signature of the defendant. Lord Campbell C. J. was of opinion that this instrument, even before acceptance, might be treated as a bill of exchange as against Henry Oliver, the drawer. As against the defendant it was clearly a bill of exchange.

This case is sought to be distinguished by the respondent from the present case on two grounds : (*i*) although there were no express words of request to J. E. Oliver to pay, it had always been the custom in drawing bills of exchange to place the name of the party to whom the bill was directed, where the name

(1) (1852) 18 Q. B. 471 ; 118 E. R. 178.

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of J. E. Oliver was written; (*ii*) the acceptor could not be rendered liable unless he was the drawee. Lord Campbell did not rest his decision on the ground that J. E. Oliver's name was placed where, according to mercantile usage, the name of the drawee would be placed. It is true, Erle J. referred to it, but neither Lord Campbell nor Crompton J. referred to mercantile usage, from which it could be inferred that there was an implied request to J. E. Oliver to pay.

Reliance was placed by the learned advocate for the respondent on the case of *Davis* v. *Henry John Clarke* (1), for the proposition that, unless the acceptor is named expressly as the drawee, his acceptance does not render him liable. But the case lays down no such proposition and is obviously distinguishable. There, John Hart drew a bill payable to himself or order addressed to John Hart. Clarke wrote across this, "accepted, H. J. Clarke" and it was held that Clarke could not be sued as acceptor of a bill of exchange directed to Hart. Lord Denman C. J. pointed out that there is no authority either in the English law or the general law merchant for holding a party liable as acceptor of a bill addressed to another. In the present case, let us assume that no party is named in the address, but the acceptance by defendants Nos. 3 and 4 was not inconsistent with the address, so that the acceptors might be deemed to have admitted themselves to be the party addressed. The present case also resembles the case of *Gray* v. *Milner* (2). Patteson J., while delivering judgment in *Davis* v. *Henry John Clarke* (1), commented on *Gray* v. *Milner* (2), as follows:—"In *Gray* v. *Milner* "(2), no party was named in the address; and I must "say that the decision in the case appears to me to go "to the extremity of what is convenient. It may be "considered as having been decided on the ground that "the acceptance was not inconsistent with the "address, so that the acceptor might be deemed to have "admitted himself to be the party addressed."

(1) (1844) 6 Q. B. 16 (18); 115 E. R. 6 (7).

(2) (1819) 8 Taunt. 739; 129 E. R. 571.

In the case before us, the document, on the face of it, is shown to be a "*hundi*" or bill of exchange. Here, the Guptas are the drawers and, in the corner, are shown the names of the defendants Nos. 3 and 4, who, by signifying their acceptance, have admitted themselves to be drawees. Defendants Nos. 3 and 4 are now estopped from contending that they are not the acceptors and that they are not drawees. No question of estoppel could arise in *Davis* v. *Henry John Clarke* (1), for, on the face of the bill, it was addressed to a person other than the acceptor: see the remarks of Patteson J., at page 19 of the Report in 6 Q. B. We are not unmindful of the decision of the House of Lords in the case of *Steele* v. *M'Kinlay* (2), where it was laid down that, save in the case of acceptances for honour or per procuration, no one can become a party to a bill *qua* acceptor, who is not a proper drawee or an addressee. But, here, the defendants Nos. 3 and 4 have, by accepting, admitted themselves to be drawees and this view is not inconsistent with the decision of the House of Lords just referred to. It has been contended, for the respondent, that no consideration passed from plaintiff to defendants Nos. 3 and 4; therefore, under section 45 of the Act, the plaintiff can have no relief against them. There is no substance in this ground, for it is common ground that the sum of Rs. 1,000 was paid to defendants Nos. 1 and 2, and section 45 does not contemplate a further consideration flowing from the plaintiff to the drawee. Defendants Nos. 3 and 4 were under no obligation to accept the *hundi*, but, having done so, they were bound to make good the acceptance to the plaintiff who acted on the faith of it, provided defendant No. 3 had authority to bind the firm (defendant 4) by the acceptance.

We think, therefore, the judgments and decrees of the courts below, in so far as they dismiss the suit against defendant No. 3, must be set aside and there will be a decree against defendant No. 3.

(1) (1844) 6 Q. B. 16 (19); 115 E.R. (2) (1880) 5 App. Cas. 754, 779.

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Defendant No. 4 has entered appearance separately from defendant No. 3 and has contended that defendant No. 4 firm is not bound, as defendant No. 3, who is the servant of the firm, had no authority to bind the firm by the acceptance of the *hundi*. The first point for decision is whether the *hundi* has been so drawn that in form it binds the firm of defendant No. 4. The first signature of defendant No. 3 below the acceptance is for himself and the second signature is "for Makbul Ahmed & Sons." It is plain, therefore, that the firm of defendant No. 4 is intended to be bound. In so holding, we are not unmindful of what was said by their Lordships of the Judicial Committee of the Privy Council in the case of *Sadasuk Janki Das* v. *Sir Kishan Pershad* (1), in the passage quoted below. In that case Lord Buckmaster observed as follows :—"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 the present case, there can be no difficulty in this behalf, for the form of the *hundi* shows that defendant No. 3 was signing on behalf of the firm defendant No. 4.

It now becomes necessary to determine whether defendant No. 3 had authority to accept the *hundi* on behalf of the firm, and to sign such acceptance. The true rule is that where a bill is accepted by an agent of the drawee instead of, by the drawee himself, the acceptance is good. The hand that holds the pen is immaterial, if, in fact, there be authority to sign. See Halsbury's Law of England, volume 2, page 486. The decree of the lower appellate court, in so far as it dismisses the suit against defendant No. 4 firm, must also be set aside and the case remitted back to the lower appellate court in order that it may determine the question whether the defendant No. 3 had authority to accept *hundis* or bills of exchange on

(1) (1918) I. L. R. 46 Calc. 663 (668); L. R. 46 I. A. 33 (36).

behalf of the firm. If it comes to the conclusion that he had such authority, then it will pass a decree against defendant No. 4. If it comes to a contrary conclusion, then plaintiff's suit against defendant No. 4 will be dismissed. Costs will abide the result.

As defendants Nos. 1 and 2 have not appealed, the *ex parte* decree against them will stand. The result is that plaintiff's claim is decreed against defendants Nos. 1 to 3. Defendant No. 3 will pay to the appellant costs throughout. Plaintiff's appeal against defendant No. 4 will be reheard in the light of the observations we have made.

GRAHAM J. I agree.

Case remanded.

A. A.