

ORIGINAL CIVIL.

Before Panckridge J.

REEMAH EZEKIEL

v.

PROVINCE OF BENGAL.*

1939

Mar. 15.

Bailment—*Government promissory note, if transferable without endorsement on the back of the note—Suit by bailor for return of goods bailed, when attached as property of absconder by criminal Court, if maintainable, without claim proceedings—Indian Contract Act (IX of 1872), ss. 148, 160—Indian Evidence Act (I of 1872), s. 117—Indian Securities Act (X of 1920), s. 5—Code of Criminal Procedure (Act V of 1898), s. 88, sub-ss. (3), (6A), (6D).*

A company deposited with the Collector of Excise, Calcutta, a Government promissory note of Rs. 10,000 as security in connection with the establishment of a private bonded warehouse for the purpose of a wine business carried on by them under license granted by the Government. The last endorsement on the note was as follows "Pay to D. E. and Mrs. E either or survivor or order". This note was never endorsed to the company though they gave consideration for it to D. E. The excise license of the company was cancelled in 1935 and the company demanded the return of the note. Thereafter, on the application of the excise authorities, the Magistrate, before whom prosecution for offences under the Excise Act and the Indian Penal Code was pending against D. E., the endorsee of the note, ordered the attachment of the note under s. 88, sub-s. (3)(c) of the Code of Criminal Procedure. Meanwhile Mrs. E. as debenture-holder in the company instituted a suit to enforce her security and in that suit a receiver was appointed of the property and assets of the company. The receiver filed this suit for a declaration that the Government promissory note deposited with the Collector of Excise was a part of the assets of the company and for the return of the note. Subsequently Mrs. E. was substituted as plaintiff in the place of the receiver.

Held: (1) that the Government promissory note was not a part of the assets of the company;

(2) that the order of attachment was not a bar to a decree for the return of the note;

* (3) that the Government of Bengal was a bailee of the note and as such was bound to return the note on the cancellation of the excise license and they could not refuse to return the note on the ground that some interest subsisted in D. E.

Sub-section (6D) of s. 88 of the Code of Criminal Procedure does not prevent a person from filing a suit to establish his title to attached property without first filing a claim or objection under sub-s. (6A).

Transfer of a Government promissory note which is effectual to vest the property in the note in the transferee can only be done by endorsement on the back of the note itself.

*Original Suit No. 1882 of 1937.

ORIGINAL SUIT.

Carden Noad, N. C. Chatterjee and H. N. Sanyal for the plaintiff. The Government of Bengal were bailees of the note within the meaning of s. 148 of the Contract Act and they were bound to return the note without demand when the purpose for which it was bailed was accomplished; Contract Act, s. 160. The Government as bailees were precluded from denying the company's title to the note; s. 117 of the Evidence Act. Endorsement is not necessary to pass the title in the note. *Brojo Lal Saha Banikya v. Budh Nath Pyarilal & Co.* (1).

1939
 Reemah
 Ezekiel
 v.
 Province of
 Bengal.

Standing Counsel, S. M. Bose, with him Advocate-General, Sir Asoka Roy, for the defendants.

Government promissory note can only be transferred by endorsement on the back of the note. Indian Securities Act, s. 5. There has been no endorsement in favour of the company. Nor has there been any assignment of the note as would satisfy the provisions of s. 130 of the Transfer of Property Act. *Brojo Lal Saha Banikya v. Budh Nath Pyarilal & Co.* (1) is not applicable. The intention of the parties was that the sum of money represented by the note should stand security; the piece of paper was not subject to bailment. In view of the attachment, the suit for the return of the note is not maintainable.

Carden Noad, in reply.

PANCKRIDGE J. The facts of this case are as follows: There was a company named Davidson's Limited which carried on business as importers of wines and spirits. For the purposes of this business they owned a private bonded warehouse and, as a condition of owning it, they were required by the Excise authorities to secure the liability, which would arise from time to time, to pay duty in respect of dutiable liquors imported by them.

1939

*Reemah
Ezekiel*

v.

*Province of
Bengal.**Panckridge J.*

On September 20, 1933, the company wrote to the Collector of Excise enclosing a Government promissory note in the Five Per Cent. Loan, 1945-55, of the face value of Rs. 10,000. The company in their letter to the Collector describe the note as "deposit money in connection with the establishment of a private warehouse by us at 6, Cooper's Lane in lieu of executing a hypothecation bond." This Government promissory note has never been endorsed to the company. The last endorsement is as follows:—"Pay David Ezekiel and Mrs. Ezekiel, either or survivor or order", the endorser being the Imperial Bank of India.

On January 9, 1934, the Collector acknowledged receipt of the promissory note, which he described as "deposit by you in connection with the establishment of a private warehouse at 6, Cooper's Lane in lieu of executing a hypothecation bond required for this purpose".

There is a document of November 11, 1934, whereby the Collector certifies that the company have deposited the bond in connection with the establishment of a private warehouse, and that the bond is lying in the Collector's custody.

It appears from a letter of May 28, 1935, that on March 18, 1935, the company had written to the Collector stating that they desired to withdraw the note and to deposit in lieu thereof either cash or other Government securities. This letter is of no particular importance, except as evidencing the date when the company first attempted to recover possession of the note.

On July 23, 1936, the company's solicitors wrote to the Commissioner of Excise saying that as the company's Excise licenses have been cancelled and they have been prevented by the Excise from selling their goods, they have been instructed to ask for the return of the note. This letter failed to elicit a

reply, and in a reminder of September 1, 1936, the solicitors again ask for the promissory note, and point out that as their clients' Excise license has been suspended and they are not permitted to sell the goods lying in their bond, their security has been automatically discharged, and they are entitled to the refund of their deposit. A further reminder was sent on October 2, 1936.

On October 16, 1936, the Commissioner wrote to the company's solicitors stating that the security deposit could not now be refunded.

At this time a prosecution for offences under the Excise Act and the Indian Penal Code was pending in the Magistrate's Court at Alipore against David Ezekiel, who was an endorsee of the note, and was also interested in Davidson's Limited.

On December 16, 1936, the Police Inspector, who was in charge of the prosecution, at the instance of the Excise Department, applied to the trying Magistrate to order attachment of the note. The trying Magistrate endorsed on the inspector's written application an order that the note should be attached, and that it should remain with the Collector of Excise, who was not to part with it or deal with it in any way without the permission and authority of the Court.

The formal order addressed to the Commissioner of Police requires him to attach the right, title and interest of David Ezekiel in the note, and all interest that had accrued, or was thereafter to accrue on it.

The order of attachment was made on the ground that David Ezekiel was absconding, and in making it the Court purported to exercise the powers conferred on it by s. 88, sub-s. (3)(c) of the Code of Criminal Procedure, which prescribes, as one of the methods of attaching moveable property, an order in writing prohibiting delivery of such property to a proclaimed person or to any one on his behalf.

1939

*Reemah
Ezekiel*

v.

*Province of
Bengal.**Panckridge J.*

1939
 Reemah
 Ezekiel
 v.
 Province of
 Bengal.
 Panckridge J.

Meanwhile the present plaintiff Mrs. Ezekiel, David's wife, as a debenture-holder in Davidson's Limited had instituted a suit to enforce her security, and in June, 1936 this Court had appointed the Official Receiver receiver of the property and assets of Davidson's Limited with power to get in and collect the same and to bring suits in his own name.

On December 8, 1937, the Official Receiver instituted the present suit. While it was pending, that is to say, on April 11, 1938, Mrs. Ezekiel obtained a decree for foreclosure, which provided for the discharge of the Official Receiver, and declared that Mrs. Ezekiel was entitled to the assets of the company. The decree gave Mrs. Ezekiel liberty to realise the assets and proceed with pending suits, which had been instituted by the Official Receiver.

Consequential amendments to the plaint were made on June 22, 1938, in accordance with which Mrs. Ezekiel has become plaintiff in the place of the Official Receiver.

The reliefs sought include a declaration that the note is a part of the assets of Davidson's Limited, return of the note with all interest thereon, or its value, and damages.

The written statement of the Province of Bengal was filed on February 16, 1938.

Under s. 88(6A) of the Code of Criminal Procedure any person who claims to have an interest in property attached under the section can make a claim within six months of the attachment. Sub-section (6D) provides that if a claimant's claim or objection is disallowed in whole or in part, that person may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute, but subject to the result of such suit, if any, the order of the Magistrate shall be conclusive.

No proceedings were taken either by the Official Receiver or by the present plaintiff under sub-s. (6A). It is not disputed that sub-s. (6D) does not prevent a person from filing a suit to establish his title to attached property without first filing a claim or objection under sub-s. (6A), but I understand it to be suggested that an attachment is a bar to a claim for relief other than by way of declaration of title and the reliefs consequent thereon.

It was suggested by the learned Standing Counsel that the note was deposited not by Davidson's Limited, but by David Ezekiel. That suggestion was based upon the language of an entry in the ledger of Davidson's Limited which, it is true, lends some support to the submission.

However, the point as to the identity of the depositor is not taken in the written statement, and in view of the correspondence it is to my mind perfectly clear that it was the company that deposited the note, and that the Collector throughout has treated it as a deposit made by the company.

With regard to the company's title the position appears to me to be as follows: The books of Davidson's Limited satisfactorily prove that the company gave consideration for the promissory note, by crediting David Ezekiel on January 31, 1934, with Rs. 11,300 which was then the market value of the note.

Some difficulty is caused by the fact that there has been no endorsement in favour of the company by David Ezekiel and the plaintiff, or by either of them, nor has there been any assignment by a separate document, such as would satisfy the provisions of s. 130 of the Transfer of Property Act, assuming that transfers effected as laid down in that section are valid in respect of Government securities. In any event, however, I consider that there has not been a transfer, which is effectual to vest the property in the note in the company, because in my opinion that

1939

*Reemah
Ezekiel*

v.

*Province of
Bengal.**Panckridge J.*

1939
Reemah
Ezekiel
v.
Province of
Bengal.
Panckridge J.

can only be done by endorsement on the note itself, and in this connection I would refer to s. 5 of the Indian Securities Act, 1920, which provides that notwithstanding anything in s. 15 of the Negotiable Instruments Act, 1881, no endorsement shall be valid, on a Government promissory note unless made by the signature of the holder inscribed on the back of the security itself. Therefore the note is not and has never been, strictly speaking, a part of the assets of Davidson's Limited.

This, however, is very far from saying that Davidson's Limited have no rights whatever to the note.

In my opinion when the note was deposited with the Collector on December 20, 1933, and accepted by him in his letter of January 9, 1934, the Government of Bengal became the bailees of the note within the meaning of s. 148 of the Contract Act. It follows that under s. 160 of that Act the Government were under a duty to return it without demand as soon as the time for which it had been bailed had expired, or the purpose for which it had been bailed was accomplished. I do not think it is a matter of much importance whether the license is more properly described as having been cancelled or as having been suspended, because I am told that it is an annual license and expires at the end of a year. It is not suggested that Davidson's Limited were under any liability to Government in respect of the bonded warehouse, and so, even without demand, Government were under an obligation to deliver the note according to the directions of Davidson's Limited, at least as early as the expiry of 1935.

I have read the subsequent correspondence which contains an unequivocal demand for the note by Davidson's Limited and unequivocal refusal to part with the note on the part of the Government. I do not think any useful purpose would be served by insisting on an amendment of the plaint setting out

these facts. In my opinion it was the duty of Government to return the note, and that, under the well-known principle, which is embodied in s. 117 of the Evidence Act, being bailees they were not at liberty to refuse to return it on the ground of some interest which they allege still subsists in David Ezekiel.

I also consider that the Government cannot after their refusal improve their position by obtaining *ex parte* an order under s. 88 of the Criminal Procedure Code, and they cannot buttress their position by the direction contained in the order that they are not to part with the note without the authority of the criminal Court.

I am not concerned with the position which would have arisen if the note were no longer in the possession of the Government of Bengal through the Collector of Excise, nor with what the measure of damages in those circumstances would be, having regard to the fact that the title of Davidson's Limited has not been perfected by the endorsement of the holders or either of them. In my opinion Davidson's Limited as bailors have been throughout entitled to obtain the return of the note from the bailees, and I also hold that the order of attachment which the Government have obtained in the Courts is no bar to my directing its return.

I accordingly make a decree in terms of prayer 2 of the plaint with costs.

Suit decreed in part.

A. C. S.

1939
 Reemah
 Ezekiel
 v.
 Province of
 Bengal.
 Panckridge J.