

APPELLATE CIVIL.

Before Mr. Justice Shephard.

NARASIMHULU AND OTHERS (PETITIONERS),

v.

ADIAPPA (COUNTER-PETITIONER).*

*Civil Procedure Code, s. 272—Post Office Act—Act XIV of 1866, s. 5—
Attachment of letters in Post Office.*

An attachment was placed under Civil Procedure Code, s. 272, on letters in the post office addressed to certain judgment-debtors. The day before the attachment the senders of the letters had applied to have the letters returned to them :

Held, that the postmaster held the letters in trust for, or on behalf of, the judgment-debtors, and they were accordingly liable to attachment on the application of the decree-holder.

CASE referred for the orders of the High Court under section 617 of the Code of Civil Procedure by E. J. S. White, District Munsif of Kurnool.

The case was stated as follows :—

“Bupalem Subbaya and Kristam Ramaya, tradesmen of Prodatur in the Cuddapah District, came to Kurnool and purchased quantities of indigo, which they forwarded to the petitioners, who are also tradesmen of Prodatur.

“On the 27th March 1889 the petitioners registered and posted two covers at Prodatur. One was addressed to Bupalem Subbaya and contained halves of certain currency notes to the value of Rs. 800. The other cover was addressed to Kristam Ramaya and contained the remaining halves of the same notes. Both were directed to Kurnool. The money was admittedly remitted in payment of the indigo already purchased, or to be thereafter purchased, by Subbaya and Ramaya on account of the petitioners. The covers were received at the Kurnool Post office on the 29th March 1889. Previous to the arrival of the covers at Kurnool, the addressees had left the town, having, it is alleged, absconded without paying for the indigo taken by them. They were arrested on charges of cheating preferred against them, and

* Referred Cases Nos. 20 and 21 of 1889.

brought back to Kurnool, on the date the letters were received at the Kurnool Post office, the addressees were in confinement in the Kurnool jail, pending trial.

“On the 5th April 1889 the counter-petitioner filed original suit No. 130 of 1889 against Bupalem Subbayya and original suit No. 131 of 1889 against Kristam Ramayya; and on his application the covers addressed to the defendants, which had in the meantime been received at the Kurnool Post office, were attached before judgment. The attachment was made in the usual manner by notices issued to the postmaster of Kurnool in the form (No. 142 of the 4th Schedule, Civil Procedure Code) prescribed for orders of attachment under sections 272 and 436 of the Civil Procedure Code. The order of attachment of this Court was issued in both cases on the 5th April 1889 and received by the postmaster of Kurnool on the following day. On the 4th April the petitioners presented to the postmaster of Kurnool an application to the address of the Postmaster-General for return of the covers to them.

“These petitions are now filed for release of the attachment. It is pleaded that the covers, not having been delivered to the addressees, were not liable to be attached; that the petitioners had the right of recalling them; that the post office was merely the agent of the senders for delivery of the letters to the addressees; and that the petitioners having countermanded the request for delivery, before delivery was made, are entitled to have the covers returned to them.

“For the counter-petitioner it is pleaded that the money contained in the covers was remitted to the addressees in payment of indigo supplied by them to the petitioners; that the payment became complete as soon as the covers were posted; that the post office was the agent, not of the senders for delivery, but of the addressees for receipt of the money contained in the covers; and that the petitioners had no right to recall the covers and have not recalled them.

“Decrees have been obtained by the counter-petitioner in both suits against the addressees; and it is now necessary, in execution of those decrees, to decide the question of the legality of the attachment made before judgment.

“The case is one without, as far as I am aware, any exact precedent; and both parties request that it may be submitted for

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the decision of the High Court. The decree-holder specially requests the reference, as the Postmaster-General, it is understood, declines to be bound by the prohibitory order issued; and there is no very obvious method by which the attachment can be enforced against that official.

“In these circumstances, I would beg respectfully to submit, for the decision of the High Court, the question whether the prohibitory orders issued to the postmaster of Kurnool for detention of the covers in question are valid and binding on the petitioners and the Postmaster-General.

“As section 617 requires that the Court making a reference should state his opinion on the question referred, I would venture to express my opinion that the attachment is valid. The question appears to me to be whether a cover made over to the post office for delivery to the addressee has passed out of the power or possession (which may be constructive) of the sender. This question can, I think, be decided by reference to section 4 of the Contract Act. We there find in illustration of cases in which an acceptance is ‘out of the power’ of the acceptor, the case of an acceptance contained in a letter sent by post. The acceptance is out of the power of the acceptor as soon as the letter is posted. The view, then, of the legislature must be that a letter is out of the power of the sender as soon as it is posted. That the legislature considers the title of the sender of a letter to such letter to have ceased as soon as the letter is posted, appears from section 27 of the Indian Post Office Act XIV of 1866. It is there enacted that ‘No person having delivered into any post office any letter or other article shall be entitled to recall the same.’ Provision is made for the return of any such letter under the authority of the Governor-General in Council; but this of course is a matter of grace. The sender cannot claim the return of the letter as of right, the title to such letter having ceased to be in the sender, and, as I view it, vested in the addressee. It appears to me that the post office in such a case is the agent, not of the sender, but of the addressee. The addressee can demand as of right the delivery of the cover to him; whereas the sender by express enactment ceases to have such right as soon as he delivers the cover to the post office. The post office receives delivery of the letter for the addressee. The delivery is complete, for the sender has also by express enactment ceased to have power over it. Delivery to

an agent authorized to receive such delivery is delivery to the principal. The Government is authorized to take delivery of letters—section 5 of the Post Office Act, 1866. Delivery to a carrier passes the property in the goods delivered—sections 91 and 92 of the Contract Act. The post office has the exclusive privilege of carrying letters—section 5 of the Post Office Act. This raises the question of stoppage in transit; but it appears to me that the right to stoppage of letters in transit by the post office is excluded by section 27 of the Post Office Act already quoted. There is no right, though the stoppage may be permitted at the discretion of the Government. The addressee on the other hand is entitled to delivery—section 45 of the Post Office Act.

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“The Court attaching the letter stands, it seems to me, in the place of the addressee, and, as in the case of any other attachment of property, acquires a superior right to possession of the property attached. The Court clearly can attach a cover, specially a cover known to contain bank notes or promissory notes—section 266 of the Civil Procedure Code. A cover containing such notes, delivered to the post office, is ‘property in the custody of a public officer’ within the meaning of section 272 of the Civil Procedure Code.

“It is not necessary that the property should belong to the judgment-debtor. It is sufficient if he has a disposing power over it—section 266. It is not denied that the addressee has a disposing power over a letter sent to him through the post office. It cannot be disposed of by the post office except by his authority. He can direct the post office to deliver it to any person mentioned by him, to re-direct it, or keep it till called for. He can sell it and direct delivery to the purchaser. He can refuse to receive it, and direct that it be returned to the sender.

“Property is liable to attachment ‘whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf’—section 266. In the present case the covers containing the notes are expressly held in the name of the judgment-debtor in each case, and it can scarcely be denied that they are held in trust for him on his behalf.

“Admittedly the money contained in the covers was money due to the addressees for the indigo forwarded by them to petitioners. If the petitioners were seeking to recover the money from the addressees, they would, it is clear, have no right to do

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SO. The case does not, it appears to me, differ in any material respect from the ordinary one of money due by A to B and delivered to C for payment. If such money is attached, when C is on the point of paying it to B by D, B's judgment-creditor, can A have any right to object ?

“ The objection, which the Postmaster-General is understood to take to the attachment, appears to be even less tenable than the objection raised by the petitioners. Let us suppose that the addressees, decrees against whom have been put in execution in this Court, authorized the post office to deliver to the Court, in satisfaction of those decrees, the covers held by the post office containing money due to the said addressees ; and that to obviate all objections they authorized the Court by a power of attorney to receive delivery. The post office would, I presume, in that case have no objection to making the delivery in accordance with the instructions of the addressees. The attachment made by the Court vests for the time being all the rights of the judgment-debtors in the Court ; and has all the effect of a direct conveyance. For the post office to argue in this case that the Court cannot claim delivery of the covers without an express authority from the addressees is tantamount to an assertion that the Court cannot make an attachment without the judgment-debtors' authority and consent. It is asking the Court to produce its power of attorney.”

Ramasami Mudaliar for petitioners.

Rama Rau for counter-petitioner.

JUDGMENT.—The question forming the subject of this reference arises in consequence of a claim to have released from attachment certain letters containing currency notes on the ground that the right and title of the judgment-debtors had ceased before the attachment took place. The letters, which are addressed to the judgment-debtors, were attached in the hands of the postmaster in the manner indicated by section 272 of the Civil Procedure Code. A day before the attachment took place, the claimants, being the persons who had sent the letters, had applied to the Postmaster-General, through the postmaster, to have the letters returned. The question is whether, in the circumstances stated by the District Munsif, the letters, with their contents, were, on the 6th April, liable to attachment as being the property of the judgment-debtors, and whether they were held by the postmaster in trust for them or on their behalf. I am of opinion that both

questions must be answered in the affirmative. The notes were sent by the claimants to the judgment-debtors on account of purchases of indigo made, or to be made by the latter on behalf of the former. In the hands of the judgment-debtor the notes would clearly have been part of their general property and subject to attachment by their creditors. The question is whether the ownership in the notes was vested in the judgment-debtors or liable to be divested at the date of the attachment. According to English law, it seems clear that the post office holds every letter that is once posted as agent of the addressee, and that therefore where delivery of a thing is requisite to pass the property, it is generally sufficient to deliver it for transmission by the post office. *Ex parte Cote*(1). I find nothing in the Act XIV of 1866 to indicate a different state of law in this country, and, on the contrary, the illustrations to sections 4 and 5 of the Contract Act are in accordance with English law. I think that the provision in the Act, reserving to the Postmaster-General the liberty of returning the letter to the sender, which is in effect a proviso to the declaration that the sender shall not be entitled to have his letter returned cannot possibly be construed in the manner suggested by the vakil for the claimants. Construed as giving an absolute right to the sender, the proviso would be inconsistent with the former part of the section. When once the letter has been posted, the property in it becomes vested in the addressee, and the sender has no power of reclaiming it without the addressee's consent. The doctrine of stoppage *in transitu* can have no application, because the parties do not stand in the relation of vendor and purchaser. In my judgment the question referred by the District Munsif must be answered in favor of the judgment-creditors.

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(1) L.R., 9 Ch., 27.