APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.

RAMANADHAN CHETTY (PLAINTIFF), APPELLANT,

v.

KATHA VELAN AND TWO OTHERS (DEFENDANTS), RESPONDENTS.*

1916, November, 24, and 1917, August, 30 and September, 11.

Promissory-note in favour of the managing trustee of a charity—The trustee succeeded by another—Latter's right to sue on the note without any assignment or endorsement.

A promissory-note executed in favour of a trustee can be sued on by his successor without endorsement or assignment, the Negotiable Instruments Act not affecting devolution of rights by operation of law.

Catherwood v. *Chabaud* (1823) 1 B. & C., 150, applied and followed.

Sowcar Lodd Govinda Doss v. *Muneppa Naidu* (1908) I.L.R., 31 Mad., 534, referred to.

APPEAL under clause 15 of the Letters Patent against the judgment of COUTTS TROTTER, J., in Civil Revision Petitions Nos. 131 and 132 of 1915 praying the High Court to revise the decrees of GOVINDA RAO, the District Munsif of Pattukottai, in Small Cause Suits Nos. 1065 and 1067 of 1914.

Plaintiff sued as trustee of a charity on promissory-notes executed by the first defendant in favour of the second defendant who was the trustee at the time of execution. The defendants contended *inter alia* that the action was not maintainable for want of endorsement or assignment of the note in plaintiff's favour. The Court of first instance decreed the suit. The second defendant filed a Civil Revision Petition against the decree.

COUTTS TROTTER, J., allowed this petition and dismissed the suit by the following judgment :—

I think that the decision in *Sowcar Lodd Govinda Doss* v. *Muneppa Naidu*(1) is in conflict with that in *Arunachalla Reddi* v. *Subba Reddi*(2) and the authorities therein referred to. Apart from authority I am very strongly of opinion myself that *Sowcar Lodd Govinda Doss* v. *Muneppa Naidu*(1) cannot possibly be supported as it amounts *pro tanto* to a repeal to the Negotiable Instruments Act. I therefore think that the present suit was unsustainable being

* Letters Patent Appeals Nos. 35 and 36 of 1916.

(1) (1908) I.L.R., 31 Mad., 534. (2) (1907) 17 M.L.J., 393.

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a suit on a promissory-note which had not been endorsed to the plaintiff and I must hold that the District Munsif was wrong in decreeing the plaintiff's suit. I allow the petition and dismiss the suit with costs here and in the Court below.

The plaintiff filed these Letters Patent Appeals against the decision of COUTTS TROTTER, J.

T. V. Gopalaswami Mudaliyar for the appellant.

S. R. Muttuswami Ayyar for the respondents.

These Letters Patent Appeals coming on for hearing the Court made the following

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ORDER.—We must call for a finding as to whether at the time of the suit the right to collect monies due to the trust had devolved solely on the plaintiff.

Fresh evidence may be adduced, if desired. The finding will be submitted within two months from this date, and the parties will be at liberty to file objections to the said finding within seven days after notice of the return of the same shall have been posted up in this Court.

In compliance with the above order of this Court, the District Munsif of Pattukkottai submitted the finding that at the date of these suits, the right to collect monies due to the trust had devolved on the plaintiff.

On the return of the above finding of the lower Court, the Court delivered the following

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JUDGMENT.—We must accept the finding that the promissory-note sued on was executed to Ulagappa Chettiar as trustee of the charity. The question whether the said payee could alone have maintained the suit without joining his co-trustees was not raised in the Court below. It would depend in each case upon the powers and duties of the managing trustee whether such a person is competent to represent the trust solely. That question has not been put in issue and we are not prepared to allow it to be debated now.

Another question which was argued at some length need not be discussed now, namely, whether if there is an assignment of the note by the act of parties, it should not be only in the mode prescribed by the Negotiable Instruments Act. There is a

considerable conflict of opinion on this question and it can only be settled by a reference to a Full Bench.

The possibility of transfer of right in the note by operation of law has not been the subject of judicial pronouncements to any considerable extent. In this Presidency, apart from certain observations of MILLER, J., in *Sowcar Lodd Govinda Doss* v. *Muneppa Naidu*(1), the matter is *res integra*.

The Negotiable Instruments Act only deals with transfers by negotiation. Under the English Bills of Exchange Act the common law of the land is expressly saved (see section 97). It is a pity that there is no such saving clause in the Indian Enactment. Section 57 of the Act, by implication, seems to contemplate that the legal representatives of a deceased person can negotiate a promissory-note. The practice of allowing legal representatives in this country to sue on notes executed to their predecessors is apparently founded on the principle that the Act does not abrogate rules of devolution of rights in the properties of the deceased.

If a son, as legal representative, can sue on a note executed to his father, there could be no impediment in principle to other heirs or successors having a similar right. The case of trustees is, in some respects, stronger than that of other heirs. In the case of private trusts, section 75 of Act II of 1882 enacts that the property standing in the name of the predecessor shall vest in the successor. It is not necessary to obtain a transfer by an instrument or by endorsement. We fail to see why this principle should not be extended to public trusts. In Byles on Bills it is stated, "The executor of a deceased party to a bill or note has, in general, the same rights and liabilities as his testator." "The executors of every person", says Lord Macclesfield, "are implied in himself and bound without naming" . . . "On the death of the holder of a bill or note, his executors or administrators may indorse; and an indorsement by the executors or administrators is for all purposes as effectual as an indorsement by the deceased." The cases quoted by the author in support of the above propositions show that the English Bills of Exchange Act does not affect the

(1) (1908) I.L.R., 31 Mad., 534.

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common law right of devolution by operation of law. The same considerations are applicable to the construction of the Indian Enactment.

In *Catherwood* v. *Chabaud*(1) it was held that a note given to an administrator as such can be sued on without assignment by an administrator *de bonis non* to the original estate. BAYLEY, J., points out that 'the money recovered is applicable to the right fund, as assets of the first intestate.' The case of a trustee replacing another stands on the same footing.

Broadly speaking, trustees exercise rights and obligations as agents of the trust. The trust being the owner, succeeding trustees derive their rights and office by relation to the trust and not as the heirs of the last holder of that office. All of them form a chain of representatives in respect of the trust, as was once said by the Judicial Committee. In this view, each trustee by virtue of his appointment takes up the management of the trust properties at the place left by the previous trustee. It is not necessary that the authority or consent of such a person should be given to the successor. As pointed out by MILLER, J., in *Sowcar Lodd Govinda Doss* v. *Muneppa Naidu*(2) the predecessor being *functus officio* would have no power to endorse the note given to him in a capacity which he was divested of. Consequently the present plaintiff who has replaced Ulagappa Chetty is entitled to sue on the note without any assignment or endorsement.

We are, therefore, of opinion that the decision of the learned Judge must be reversed and that of the Court below must be restored. Appellant will get his costs from the second defendant in this Court.

S.V.

(1) (1823) 1 B & C., 150. (2) (1908) I.L.R., 31 Mad., 534.