APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1920, February 13 and March 15 and 18.

RANGASWAMI PILLAI (PLAINTIFF), APPELLANT,

v.

SANKARALINGAM AYYAR (FOURTH DEFENDANT), RESPONDENT.*

Negotiable Instruments Act (V of 1881), ss. 5 and 6—Cheque—Bill of Exchange—Banker—Local Boards Act (V of 1884), ss. 54, 144 to 147—Government Treasury, whether a banker—power of Local Board to make or issue negotiable instruments—Implied power—Rules and Forms under the Act—Local Fund Code, rule 549—Indorsee of an order of District Board, whether holder in due course.

A Local Board is impliedly empowered, under the Local Boards Act (V of 1884) to make, endorse or accept negotiable instruments, as such a power can be inferred from the rules and forms made by the Governor in Council under section 144, clause (16) of the Act and contained in the Local Fund Code, which have the force of law under section 147 of the Act.

A Government Treasury, in which a District Board deposits its money under section 54 of the Act and issues orders for payment out which are respected by the former, is not a 'Bank.'

Foley v. *Hill*, (1848) 2 H.L. Cas, 28 at p. 43; and *Halifax Union* v. *Wheelwright*, (1875) L.R. 10 Exch, 183, followed.

An unconditional order in writing for payment of money to, or to the order of a person, issued by a District Board on the Government Treasury, is not a cheque under section 6 but is a bill of exchange under section 5 of the Negotiable Instruments Act; and a *bona fide* endorsee for value of such an order is entitled to payment as a holder in due course.

SECOND APPEAL against the decree of J. G. BURN, District Judge of Trichinopoly, in Appeal Suit No. 97 of 1918, preferred against the decree of T. N. LAKSHMANA RAO, District Munsif of Trichinopoly, in Original Suit No. 52 of 1916.

The plaintiff obtained a decree for money in S.C.S. No. 101 of 1914 against the first defendant who was a contractor doing road work for the District Board of Trichinopoly. In execution of the decree, the plaintiff attached a certain sum of money alleged to be due to the first defendant from the District Board for work done by him. The second defendant, who was the son of the first defendant, filed a claim petition which was allowed on 16th October 1914 on the ground that the

* Second Appeal No. 838 of 1919.

contract had been transferred to the name of the son, who subsequently continued the contract in his name and that the money was due to him and not to the first defendant.

The plaintiff thereupon filed this suit (subsequently numbered as Original Suit No. 52 of 1916) on 17th October 1914, against the first and second defendants as well as the President of the District Board of Trichinopoly as the third defendant. The suit was for a declaration that the amount in the hands of the District Board was liable to be attached in execution of his decree in Small Cause Suit No. 101 of 1914, against the first defendant, and for a permanent injunction restraining the second defendant from taking the amount from the third defendant. A temporary injunction was also applied for and granted on 20th October 1914, and served on the President of the District Board on 22nd October 1914, who communicated the injunction order on the same date to the District Board Engineer who was the disbursing officer. But before the communication reached him, the latter had issued a cheque on 22nd October 1914, in the name of the second defendant and delivered it to him. On the 23rd October 1914, the District Board Engineer sent a letter to the Treasury Deputy Collector not to cash the cheque. In the meantime the second defendant had negotiated the cheque by endorsing it over to the fourth defendant (subsequently added as a party to this suit), who was a banker carrying on the business, *inter alia*, of discounting cheques, bills, etc., in the usual course of his business.

The fourth defendant applied to the Treasury for payment of the cheque, but payment was refused owing to the order received from the Court which had been communicated to the Treasury Officer as already stated. Subsequently, the fourth defendant obtained cancellation of the injunction in this suit by giving an undertaking to deposit the amount of the cheque into Court in the event of the plaintiff being successful in this litigation, and the cheque was accordingly cashed and the fourth defendant received its amount. The fourth defendant instituted another suit (Original Suit No. 483 of 1916) in the same Court against the second defendant and the plaintiff in the prior suit and the District Board Engineer. In the latter suit, the plaintiff sought to recover the amount of the cheque

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from the first and second defendants therein, or in the alternative for a declaration that his right as a bona fide holder of the cheque could not be affected by the claims of the third defendant (the plaintiff in Original Suit No. 52 of 1916). The District Munsif decided the prior suit (Original Suit No. 52 of 1916) in favour of the plaintiff, holding that the fourth defendant was not a bona fide holder of the cheque, that the endorsement was a collusive one and was not supported by consideration. He directed the fourth defendant to deposit into Court the amount of the cheque drawn by him for payment to the plaintiff in execution of his decree. He also dismissed the other suit. The fourth defendant preferred an appeal to the District Judge in this suit, as well as another appeal in his own suit. The learned District Judge held that the cheque was a negotiable instrument, that the fourth defendant was a bona fide holder for value and was entitled to payment of the cheque. He consequently reversed the decrees of the District Munsif in both suits. The plaintiff in Original Suit No. 52 of 1916, who was the third defendant in the other suit, preferred the two Second Appeals against the respective decrees.

R. Srinivasa Ayyangar for the appellant.

S. T. Srinivasa gopala Achariyar and *K. P. Ramakrishna Ayyar* for the respondent.

OLDFIELD, J.

OLDFIELD, J.—I agree with the judgment which my learned brother is about to deliver. I desire only to add that it is probably impossible, and for the purpose of the present case is unnecessary, to give an exhaustive definition of the term 'bank' or 'banker', and that in agreeing with my learned brother's observations I do not desire to commit myself to any.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—The first defendant in Original Suit No. 52 of 1916 was a contractor under the District Board of Trichinopoly. The plaintiff obtained a decree against him. He attached a certain sum of money in the hands of the District Board Engineer on the allegation that the money belonged to the first defendant. Thereupon, the second defendant put in a claim petition on 16th October 1914. His claim was allowed. On 17th October 1914, the plaintiff brought the present suit

(Original Suit No. 52 of 1916) for a declaration that he is entitled to attach the money as belonging to the first defendant. He obtained an injunction on 20th October 1914. It was served on the District Treasury of Trichinopoly on the 22nd. On the very same day, without knowledge of the injunction, a cheque was issued to the second defendant. He endorsed it over on 23rd October to the fourth defendant, who was a banker. Subsequently, the money was paid to the fourth defendant on his undertaking to return it in case the plaintiff succeeded in the suit. Plaintiff succeeded before the District Munsif, but that judgment was reversed by the District Judge. He has preferred this Second Appeal.

The main question for consideration is whether the fourth defendant is a holder in due course. To decide this question, we have to see what the position of the Treasury is with reference to the District Board of Trichinopoly. In form, the order which directed the payment of money to the second defendant is a cheque. If it is a cheque, there can be no doubt it can be negotiated. The learned vakil for the appellant contended, that as the Treasury is not a Bank, it was not competent to the District Board Engineer to issue a cheque on it, under section 6 of the Negotiable Instruments Act Mr. Srinivasagopala Achariyar contended that the Treasury is a 'bank' within that section. After giving careful consideration to the question, I have come to the conclusion that the Treasury is not 'a bank'. Many of the Judges in England have felt considerable difficulty in defining 'a bank'. LORD BROUGHAM in *Foley* v. *Hill*(1) mentions certain characteristics of a bank. In the view of the noble and learned Lord, the element of making a profit by the business must exist in such cases. The case nearest in point is *Halifax Union* v. *Wheelwright*(2). In that case Baron CLEASBY, delivering the judgment of the Court, expressed himself thus at page 193:—

"First it was said that, taking that statute together with several other statutes on the same subject, the word 'banker' was not to be restricted to persons regularly engaged in the business of banking, but that any person who receives the money of another into his charge, and according to the course of business between them,

(1) (1848) 2 H.L. Cas., 28, 43. (2) (1875) L.R., 10 Exch., 183.

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pays it out by having drafts drawn upon him payable to order, ought to be considered a banker within that enactment. We cannot accede to that argument."

The present case is practically identical with the one decided by the Exchequer Court. The definition attempted by Mr. Hart in his book on the 'Law of Banking', namely that

"A banker is one who, in the ordinary course of his business, honours cheques drawn upon him by persons from and for whom he receives monies on current accounts,"

Indicates that the business must have a commercial side to it. The mere fact that a Treasury receives money from the District Board and respects orders issued to it for payment will not constitute the Treasury a bank; moreover, the District Board cannot be regarded as a customer.

It was suggested by the learned advocate for the respondent that as the money deposited by the Board is utilised by the Treasury, it must be taken that a profit was made by the Treasury. But the language of Lord BROUGHAM and the judgment of the Exchequer division both require that there must be the business of utilising the money for purposes of profit. I am, therefore, of opinion that the treasury is not a bank, and that consequently, the use of the word 'Cheque' in respect of orders issued by the District Board to the Treasury is a misnomer.

The next question is, whether the order in question cannot be construed as a bill of exchange. Apart from the concession made by the learned vakil for the appellant, I am clear, from the reading of section 5 of the Negotiable Instruments Act, that all ingredients of a bill of exchange are to be found in the order issued by the District Board. It is an instrument in writing containing an unconditional order, signed by the maker, directing the Treasury to pay a certain sum of money to, or to the order of, the second defendant.

The next question is, if it is a bill of exchange, is it within the competence of the District Board to issue such a negotiable document? The chief difficulty arises from the language of section 26 of the Negotiable Instruments Act. The proviso is in these terms:

"Nothing herein contained shall be deemed to empower a corporation to make, endorse or accept such instruments except in

cases in which, under the law for the time being in force, they are so empowered.",

There can be no doubt that the District Board is a corporation. Section 27 of Act V of 1884 says that

"Every Local Board shall be a body corporate by the name of the Local Board."

Section 54 deals with the funds at the disposal of District and Local Boards. Clause (2) of that section enables the lodgment of the fund in a bank or Government Treasury. It is under this provision that monies are being deposited in the Treasury and orders are being issued for payment out. So far, there is nothing to indicate that the Board is authorized to issue negotiable instruments. Section 144 of the Act enables the Governor in Council by clause (XVI) to make rules consistent with the Act.

"For the guidance of Local Boards, their agents and officers and the officers of Government in all matters connected with the carrying out of this Act."

Under section 145 the rules are to be published. Section 147 is very important. It says that

"Such rules and forms shall, until they are cancelled or altered, have the force of law."

I must confess that the language that "the form shall have the force of law" does not strike me as either very clear or artistic; but, however, there can be no doubt that the legislature intended that the Governor in Council, to whom was delegated the prescription of rules and forms, should have power to give to these forms the force of law. Now, turning to the Local Fund Code, we find at page 379, a form which corresponds to the one issued in the present case. That undoubtedly contains language which denotes that the order can be negotiated. If the act of the Governor in Council in prescribing the forms was certainly *intra vires*, the question is whether we can infer from it that the District Board was impliedly authorized to issue negotiable orders. Rule 549 of the Local Fund Code says, that such forms shall be supplied to the Engineer or to other officer in books, to be operated upon. Reading, therefore, sections 144 to 147 of Act V of 1884, with rule 549 of the Local Fund Code and the form at page 379 of the Code, I am of opinion that the Local Board is empowered to make, endorse or accept negotiable instruments.

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It follows from this that the endorsement in favour of the ourth defendant was properly made. The District Judge has found that his action was bona fide and that he was a holder in due course. I see no reason for not accepting this finding of fact. I am, therefore, of opinion that the conclusion come to by the learned District Judge is right and that this appeal should be dismissed.

Civil Suit No. 483 of 1916 was rightly brought by the fourth defendant as plaintiff, because the action of the appellant in instituting Civil Suit No. 52 of 1916 necessitated his suing to have his rights secured as against him and in the alternative against the first and second defendants. But we think that the fourth defendant was not justified in preferring Appeal No. 97 of 1918 to the lower Appellate Court, in paying court fees, and as if the claim was one for recovery of the money. In the first Court, court fee was paid on the declaration prayed for. In this Court also, court fee was paid only on the declaration. Therefore, in directing the appellant in Second Appeal No. 838 of 1919 to pay the costs of the respondent (fourth defendant) the excess court fee paid by him in the lower Appellate Court should not be charged against him. In other respects, both the Second Appeals are dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1920, March 29.

THAYARAMMAL (PLAINTIFF), APPELLANT,

v.

LAKSHMI AMMAL AND KUMARASWAMI REDDI (DEFENDANTS), RESPONDENTS.*

Specific performance—Sale of land—Sale-deed, not registered—Vendee in default in paying purchase-money—Sale-deed, whether can be regarded as an agreement to sell—Suit by vendee for specific performance, whether maintainable.

Where a sale-deed, purporting to be a conveyance of some lands, was executed and delivered to the vendee, but was not registered, and the omission was not due to act of God or fraud on the part of the executant, it is not open to the vendee to treat the unregistered document as an agreement to sell and to sue for specific performance of such agreement.

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* Second Appeal No. 940 of 1919.