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February 24.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burdett.

JAI NARAIN AND OTHERS (PLAINTIFFS) v. MAHBUB BAKHSH AND OTHERS (DEFENDANTS).*

Act No. XXVI of 1881 (Negotiable Instruments Act), section 9—Hundi—Holder in due course—Effect of fraudulent endorsement to fictitious endorsee.

Two hundis not payable to bearer were intrusted to a broker by the payees for sale. The broker represented to the payees that a certain firm, known as Har Sahai Mal Kedar Nath, was willing to purchase them, and the payees accordingly endorsed them over to Har Sahai Mal Kedar Nath. The broker then forged two further endorsements on the hundis; the first from Har Sahai Mal Kedar Nath to Kedar Nath Chandu Lal; the second from Kedar Nath Chandu Lal to Bhola Nath Moti Ram. Both the lastmentioned firms were fictitious. The hundis were then sold as by the last endorsees to Mahbub Bakhsh Muhammad Husain, who realized the amounts thereof from the drawee. *Held*, on suit by the payee against the last endorsees and the broker, that the last endorsees were not protected as holders in due course and the plaintiffs could recover. *Hunsraj Furmanand v. Ruttonji Walji (1) and Arnold v. The Cheque Bank (2)* followed.

IN this case the payees of two hundis made them over to a broker of the name of Kunji Lal for sale. The broker at first represented that a firm of the name of Har Sahai Mal Kedar Nath was willing to purchase them, and the payees on faith of this representation endorsed them in favour of Har Sahai Mal Kedar Nath. Subsequently the broker forged thereon two further endorsements. The first purported to be by Har Sahai Mal Kedar Nath in favour of Kedar Nath Chandu Lal; the second by Kedar Nath Chandu Lal in favour of Bhola Nath Moti Ram. Both the lastmentioned endorsees were purely fictitious names. Kunji Lal, the broker, then sold the hundis to Mahbub Bakhsh Muhammad Husain, forging a further endorsement from Bhola Nath Moti Ram in their favour. Mahbub Bakhsh Muhammad Husain proceeded to realize the amounts of the hundis from the drawee. When the payees came to demand the price of the hundis from Har Sahai Mal Kedar Nath they found that no sale had been effected to them at all. They

* Second Appeal No. 624 of 1904, from a decree of Babu Nil Madhab Rai, Judge of the Court of Small Causes, exercising powers of a Subordinate Judge of Cawnpore, dated the 26th of February, 1904, reversing a decree of Pandit Bishambar Nath, Mansif of Cawnpore, dated the 10th of August, 1903.

then, after an ineffectual attempt to stop payment, sued Mahbub Bakhsh Muhammad Husain and Kunji Lal to recover the amount due on the hundis. The Court of first instance (Munsif of Cawnpore) gave the plaintiffs a decree for the bulk of their claim, excluding a sum claimed as the cost of prosecuting Kunji Lal in the criminal Court. This decree was, however, set aside by the lower appellate Court (Small Cause Court Judge of Cawnpore, with powers of a Subordinate Judge) and the suit dismissed. The plaintiffs thereupon appealed to the High Court.

Hon'ble Pandit *Sundar Lal* and Hon'ble Pandit *Madan Mohan Malaviya*, for the appellants.

Pandit *Moti Lal Nehru* (for whom Pandit *Mohan Lal Nehru*), for the respondents.

STANLEY, C.J. and BURKITT, J.—This second appeal arises under the following circumstances. The plaintiffs are the payees of two hundis which were made payable at Calcutta. They employed a broker named Kunji Lal to sell these hundis, and Kunji Lal, in accordance with these instructions purported to have effected a sale with the firm of Har Sahai Mal Kedar Nath, to whom the hundis were endorsed on the representation that this firm had purchased them. Then the broker, Kunji Lal, forged two further endorsements on the hundis purporting to have been made by the firm of Har Sahai Mal Kedar Nath to a firm which had no existence, namely, the firm of Kedar Nath Chandu Lal, and a further endorsement from this firm to another firm, which also had no existence, namely, the firm of Bhola Nath Moti Ram. Kunji Lal then went to the defendants 1 and 2 and offered the hundis to them for sale and sold them, representing that the endorsements upon them were correct. The defendants accepting his word as to the genuineness of the endorsements purchased the hundis and sent Rs. 700 portion of the price to Bhola Nath Moti Ram, the supposed endorsers. Then the plaintiffs after requiring payment of the hundis without effect and making inquiry brought the present suit against the defendants, including the broker, Kunji Lal, for recovery of the amount due on the hundis. The plaintiffs endeavoured to stop payment of the hundis, but were too late.

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The Court of first instance decreed the claim in part, but upon appeal the lower appellate Court reversed the decree on the ground that the defendants 1 and 2 were the holders of the hundis in due course, within the meaning of section 9 of the Negotiable Instruments Act, and that they had no sufficient cause to believe that any defect existed in the title of the person from whom title was derived; that in fact they had not the remotest idea that the intermediate endorsements were fictitious and were made by Kunji Lal fraudulently and dishonestly.

From this decision the present appeal has been preferred. We are wholly unable to agree in the view of the lower appellate Court and for this reason. Section 9 of the Negotiable Instruments Act appears to us to afford no protection to the defendants because they were not the payees or endorsees of the hundis. The section contemplates a person who is the payee or endorsee from the payee. In this case it has been found that the endorsers to the defendants had no existence whatever. Therefore the defendants acquired no title whatever to the hundis. It is not a case in which endorsees have obtained a defective title: the defendants obtained no title whatever. The case seems to fall within the class of cases which are dealt with by a Judge of the Bombay High Court in the case of *Hunsraj Purmanand v. Ruttonji Walji* (1). In that case the plaintiff as administrator of a Hindu sued to recover from the defendants certain shares, debentures and Government promissory notes, which he alleged belonged to the estate of the deceased, but which the first four defendants had stolen and by means of forged endorsements sold to the other defendants and received the purchase-money. The defendants who had purchased the Government promissory notes contended that they were innocent purchasers for value and were entitled to retain the notes, etc.; but it was held that the plaintiff was entitled to recover all the shares, debentures and Government promissory notes from the defendants. In the course of his judgment Russell, J., observed as follows: "Now it appears to me, as was argued by Mr. Macpherson, that there is a very great distinction between a defect in title and no title at all, the latter being the case where the

(1) (1899) I. L. R., 24 Bom., 65.

endorsement is forged. 'The Law Merchant never recognised a forger of another man's name as a real mercantile drawer' per Lord Esher, M.R., in *Vagliano Brothers v. The Bank of England*. 'Bills of Exchange or promissory notes, whether payable to order or to bearer are by the Law Merchant negotiable in both senses of the word. The person who by a genuine endorsement, or, where it is payable to bearer, by a delivery, becomes holder, may sue in his own name on the contract, and if he is a *bond fide* holder for value he has a good title notwithstanding any defect of title in the party (whether endorser or deliverer) from whom he took it,' per Blackburn, J., in *Crouch v. Credit Foncier of England*." Then the learned Judge refers to the law in America and observes: "Suppose a thief should erase the name of the maker of a note and then forge the same signature, could he give a *bond fide* purchaser for value title to the paper? I am clearly of opinion he could not. The paper is not fair upon its face. There is a forgery, and although the purchaser may be ignorant of it, the Law Merchant does not protect him against such ignorance. He must know at his peril that the signatures are genuine." These observations appear to us to be applicable to the present case, and we entirely agree in the view of the law presented by the learned Judge. We may refer also to the case of *Arnold v. The Cheque Bank* (1) which has been relied upon by the learned advocate for the appellants as supporting his case. For these reasons we are unable to agree in the view of the lower appellate Court and must allow the appeal. We allow the appeal, set aside the decree of the lower appellate Court, and restore that of the Court of first instance with costs both here and in the Courts below.

Appeal decreed.

(1) (1876) L. R., 1 C, P. D., 578.

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