REVISIONAL CIVIL

Before Mr. Justice Ismail

1938 *March*, 8

PIRBHU DAYAL (PLAINTIFF) *v.* JWALA BANK (DEFENDANT)*

Negotiable Instruments Act (XXVI of 1881), sections 5, 6—Cheque—Forged signature of drawers—No cheque but a nullity—Banker's liability on payment—Customer's contributory negligence—Bank's rule requiring cheque book to be kept under lock and key.

A document in cheque form to which the customer's name as drawer is forged is not a cheque but a mere nullity; and a banker making payment thereupon cannot make the customer liable except on the ground of negligence imputable to the customer, which negligence was intimately connected with the transaction and was the proximate cause of the loss to the banker. Where the only negligence imputed to the customer was that he allowed his cheque book to remain in an unlocked box, it was *held* that the customer was not liable to be debited with the loss, although one of the rules of business of the bank said that "Constituents should keep all bank cheque form under lock and key, otherwise the bank is not responsible for any loss in this connection."

Mr. *J. Swarup*, for the applicant.

Mr. *B. S. Darbari*, for the opposite party.

ISMAIL, J.:—This is an application in revision directed against an order of the learned Jndge of the small causes court, Agra. The plaintiff is a customer of the defendant bank. On the 16th of March, 1936, cheque No. 23958 for Rs.57-8-0 was presented at the bank purporting to have been signed by the plaintiff Pirbhu Dayal in favour of one Bhai Kashi Nathji. A servant of the defendant bank honoured the cheque and paid the amount to the person presenting the cheque. The plaintiff on finding himself debited with this amount informed the bank that he had not drawn the sum of Rs.57-8-0 debited to him. The bank however refused to make good the amount on the ground that the cheque in question was received in the bank in the usual course

*Civil Revision No. 342 of 1937.

of business and that the plaintiff's signature on the cheque fully tallied with his specimen signatures. The plaintiff thereupon brought the present suit. The learned Judge in the court below upon a consideration of evidence found that the signature on the forged cheque did not tally with the plaintiff's admitted signatures. It was also found that if the bank had acted with slight care and caution in the matter the forgery could have been detected at once and the payment of the amount entered in the cheque would have been refused. Ultimately the court below held as follows: "Therefore while holding that the bank was also quite negligent in ascertaining the signature of the plaintiff on the cheque in question it was not legally liable to return the amount of the cheque to the plaintiff as it has not been shown that the payment of the same was made by it dishonestly and knowing that it was a forged cheque." The court was further influenced by the fact that the plaintiff had admitted in his evidence that the cheque book often remained in the small "baithak" of his house where other persons had also access and that the box containing the cheques remained unlocked in day time. Learned counsel for the applicant has assailed the finding of the court below and has argued that the view of law taken by the court below is erroneous. It has been held in numerous cases that a document in cheque form to which the customer's name as drawer is forged or placed thereon without authority is not a cheque but a mere nullity and that unless the banker can establish adoption or estoppel he cannot debit the customer with any payment made on such a document. In the present case there is a clear finding that the cheque in question was forged and the signature on the cheque bore no resemblance to the admitted signatures of the plaintiff. It was therefore incumbent on the defendant bank to show affirmatively that the servants of the bank were misled by some negligence on the part of the plaintiff which led them

1938

PIRBHU DAYAL v. JWALA BANK

to cash the cheque. In *Bhagwan Das* v. *Creet* (1) it was held that when a banker makes a payment on a forged cheque, he cannot make the customer liable except on the ground of negligence imputable to the customer. The only negligence imputed to the customer in the present case is that he did not take sufficient care of his cheque book and because of that some one was in a position to steal a form from the cheque book which was utilised in drawing money from the defendant bank. In the case of the *Bank of Ireland* v. *Trustees of Evan's Charities* (2) MR. BARON PARKE observed as follows: "If such negligence could disentitle the plaintiffs, to what extent is it to go? If a man should lose his cheque book or neglect to lock the desk in which it is kept, and a servant or stranger should take it up, it is impossible in our opinion to contend that a banker paying his forged cheque would be entitled to charge his customer with that payment. Would it be contended that if he kept his goods so negligently that a servant took them and sold them, he must be considered as having concurred in the sale, and so be disentitled to sue for their conversion on a demand and refusal? It is clear, we think, that the negligence in the present case, if there be any, is much too remote to affect the transfer itself, and to cause the trustees to be parties to misleading the bank in making the transfer on the forged power of attorney." The following passage from Beven on Negligence, fourth edition, volume II, chapter III, page 1471, has been relied upon by learned counsel for the applicant: "The banker's obligation is to honour his customer's cheque. To that end he is bound to know his customer's handwriting. If in any way he is deceived without the instrumentality of his customer, he must himself abide the loss."

The main reason for dismissing the claim of the plaintiff was that he was negligent in leaving his cheque book in an unlocked box. This negligence to my mind was

(1) (1903) I.L.R. 31 Cal. 249. (2) (1855) 5 H.L.C. 389(410).

not the proximate cause of the loss to the defendant bank. It was the duty of the employees of the bank to be able to identify the signatures of their customers and if they failed to discharge their duty and thereby suffered loss there is no reason why the plaintiff should make good that loss. In *Ahmed Moolla Dawood* v. *Pereinan Chetty Firm* (1) on similar facts it was held that the money paid by the bank under a forged cheque could not be debited to the customer merely on the ground that the customer was negligent to this extent that he allowed his cheque book to remain unlocked. The following observations of the learned Judges strongly support the contention of the applicant: "That it would not be sufficient to make appellants bear the loss which resulted from the forgery of a cheque stolen from their cheque book and the fraudulent use of their stamps, if the respondents bankers cashed the forged cheque and have not been able to establish such negligence as would in law render appellants liable. In order to make the customer liable for the loss, the neglect on his part must be in or intimately connected with the transaction itself and must have been the proximate cause of the loss." Learned counsel for the opposite party has relied on rule 4 of Rules of Business which runs as follows: "Constituents should keep all bank cheque forms under lock and key, otherwise the bank is not responsible for any loss in this connection." The loss in the present case was entirely due to the negligence of the employees of the bank in not comparing the signature on the forged cheque with the specimen signatures of the plaintiff. I see no reason under the circumstances to hold that the plaintiff was responsible for the loss that was sustained by the bank.

In the result I allow the application, set aside the order of the court below and decree the plaintiff's suit. The applicant should get the costs of this Court; the costs of the court below should be borne by the parties.

(1) A.I.R., 1924 Ran. 264.