transactions impugned in this suit were proper transactions and that there is no evidence in the record to rebut that presumption. That being so, the judgment of the learned Subordinate Judge must be affirmed and this appeal must be dismissed with costs.

Ross, J.—I agree.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Das and James, JJ.*

RAJA JOYTI PRASAD SINGH DEO BAHADUR

*v.*

CHOTA NAGPUR BANKING ASSOCIATION.*

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*Banker and Customer—payment by a branch other than where customer keeps account, whether operates as discharge of cheque—dishonour, power to issue notice of, when payment made.*

A bank which pays a cheque at any branch except that at which the customer keeps his account must be assumed to have paid it not on the credit of the customer but on the endorsement itself.

*A* drew a cheque in favour of *B* upon the Bank *C*, Dhanbad Branch, and *B* endorsed it for collection in favour of *D* who received payment from the Purulia Branch of the Bank, which sent the cheque on to the Dhanbad Branch. The latter dishonoured the cheque whereon the Purulia Branch gave notice of dishonour and instituted a suit against *B* and *D* for the recovery of the sum paid. The defence was, inter alia, that the cheque having been discharged by payment, there was no power left in the Purulia Branch to give notice of dishonour.

*Held*, that the payment by the Purulia Branch did not operate as a discharge of the cheque, the payment having been made not on the credit of *A* but on the credit of *B*, and therefore, that the plaintiff was entitled to recover the sum from the defendants.

*Appeal from Original Decree no. 132 of 1925, from a decision of Babu Jatindra Chandra Bose, Subordinate Judge of Purulia, dated the 27th April, 1925.

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*Woodland* v. *Fear* (1), followed.

*Prince* v. *Oriental Bank Corporation* (2), distinguished.

*Clode* v. *Bayley* (3), referred to.

Appeal by the defendant.

*N. C. Sinha* and *B. B. Ghosh*, for the appellant.

*Pugh* (with him *B. C. De*) for the respondents.

DAS, J.—The case of *Woodland* v. *Fear*(1) supports the view which has been taken by the learned Subordinate Judge in this case. Shortly stated the facts are as follows: On the 30th January, 1924, defendant no. 3 drew a cheque in favour of defendant no. 1 for Rs. 5,000 upon Chota Nagpur Banking Association, Dhanbad Branch. Defendant no. 1 endorsed it in favour of his manager defendant 2 for collection who received payment from the Purulia Branch of the Chota Nagpur Banking Association on the 1st February, 1924. The Purulia Branch sent the cheque on to the Dhanbad Branch. On the 2nd February the Dhanbad Branch informed the Purulia Branch that the money was not arranged for. In other words, it dishonoured the cheque. On the 4th February the Purulia Branch gave notice of dishonour to defendants 1 and 2 and on the 4th April, 1924, instituted the present suit for recovery of the money. The suit was resisted on behalf of defendant no. 1 substantially on the ground that the cheque was discharged by payment made on the 1st February, 1924, and there was no power left in the Purulia Branch of the Bank to give notice of dishonour. The learned Subordinate Judge relying upon *Clode* v. *Bayley*(3) held that the payment by the Purulia Branch could not operate as satisfaction of the cheque. He substantially held that the Purulia Branch paid the money to the defendant no. 1 not on

(1) (1857) 7 El. & Bl. 519; 119 E. R. 139.
(2) (1877-78) 3 A. C. 325.
(3) (1849) 12 M. & W. 51; 152 E. R. 110.

the credit of defendant no. 3 but on the credit of defendant no. 1 who was a substantial zamindar in Purulia and on the faith of his endorsement.

We were much pressed in this Court by Mr. N. C. Sinha with the case of *Prince* v. *Oriental Bank Corporation* (1). The facts of that case were as follows: The defendant-bank had branches at three different places Sydney, Murrumburrah and Young. Messrs. Hopkins and Gate were store-keepers at Young and had a banking account at the defendants' Bank at Young. They gave a promissory note to the plaintiff for a certain sum of money payable not at Young but at Murrumburrah; but at Murrumburrah it appeared they had no banking account. Their Lordships in their judgment state that this was done at the instance of the Bank Manager at Young so that the branch might make some money as their commission. The note fell due on the 3rd April, 1875. The plaintiff in whose favour the note was made out lodged it with their bank for collection. The plaintiff-bank handed it over to the Sydney branch of the defendant-bank for collection. The Sydney branch transmitted it to the Murrumburrah branch, which stamped the note as having been paid and then sent a transfer draft to Sydney for the amount of the note for payment to the plaintiff-bank. So far as the books of account of the Murrumburrah branch are concerned they showed that the amount had been paid to the plaintiff-bank and it appears they actually debited the Young branch with the amount for which the transfer draft had been sent. It appears however that on the 4th April Messrs. Hopkins and Gate's store at Young was destroyed by fire and on the 5th April the manager of the Murrumburrah branch wrote to the manager of the Sydney branch requesting him to cancel the transfer draft in favour of the plaintiff-bank. This was done and the plaintiff sued the defendant-bank for recovery of the money as

(1) (1877-78) 3 A. C. 325.

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money had and received to his use. Now the Judicial Committee pointed out that the whole case of the plaintiff rested upon the foundation that the different branches were to be treated for the purpose of payment as if they were separate and independent banks. Having considered the matter the Committee came to the conclusion that the banks were not separate and distinct banks but branches of one and the same banking corporation or establishment and that they were separate agencies although agencies of one principal, that principal being the corporation of the Oriental Bank. In this view they came to the conclusion that the defendant-bank was not liable as they had not received the money; nor anything equivalent to money from any source outside their own establishment. Now this case is no doubt an authority for the view that the different branches of a banking corporation are not separate and distinct banks but are agencies of one principal. No doubt this is one of the questions at issue in this case; but a further question arises whether there was any obligation on the Purulia branch to pay the cheque which had been drawn not on the Purulia branch but on the Dhanbad branch. Now as I have said on this question the case of *Woodland* v. *Fear*(1) is decisive. The facts of that case were as follows: The plaintiff-bank had branches all over Somersetshire and amongst others at Glastonbury and Bridgwater. One Helyar gave a cheque to the defendant on the plaintiff-bank at Glastonbury. The defendant who was well known to the bank at Bridgwater presented it at Bridgwater and received payment. It appears however that Helyar had not sufficient funds at Glastonbury branch which refused to honour the cheque when the Bridgwater branch forwarded the cheque in question to the former branch for collection. Now upon these facts the plaintiff-bank instituted a suit against the defendant for recovery of the money paid out to him and the question which fell to be

(1) (1857) 7 El. & Bl. 519; 119 E. R. 139.

considered was whether the plaintiff-bank was entitled to recover the money from the defendant. It was pointed out in the course of the judgment of Campbell, C.J., that Helyar kept no account at Bridgwater, that he drew no cheque on that establishment and that he and it did not stand in the relation of Banker and customer and that the cheque in question therefore must be considered as having been cashed not on Helyar's credit, but on the credit of the defendant and that as there were no laches on the part of the Bridgwater establishment the case was within the authority of *Timmins* v. *Gibbins* (1) and the learned Chief Justice proceeded to say as follows: "It appears to us that this is the true view of the case: the cheque was not drawn on the banking Company generally, but on the banking Company at Glastonbury; and this, coupled with the fact that Helyar kept his account and his balance only there, shews that the Bridgwater establishment was not bound to honour his cheque (even supposing he had assets at Glastonbury), as a banker, under the same circumstances, as to assets, is bound to honour the cheque of his customer. To hold that the customer of one branch, keeping his cash and account there, has a right to have his cheques paid at all or any of the branches, is to suppose a state of circumstances so inconsistent with any safe dealing on the part of the banker, that it cannot be presumed without direct evidence of such an agreement; and the giving on the one hand, and accepting on the other, of a limited cheque book, seems intended to guard against such an inference." This case was considered by the Privy Council in *Prince* v. *Oriental Bank Corporation* (2) to which I have already referred and in reference to this case their Lordships said as follows: "In the case of *Woodland* v. *Fear* (3) it was held that a joint stock bank was bound to pay the cheques of a customer at that branch only at which he kept his account, and

(1) 118 E. R. 273, 18 Q. B. 722. (2) (1877-78) 3 A. C. 325.
(3) (1857) 7 El. & Bl. 519 E. R. 189.

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had not violated its engagement with the customer by refusing to pay his cheque at another branch. The reason of this decision is obvious. It would be difficult for a bank to carry on its business by means of various branches if a customer who kept his account at one branch might draw cheques upon another branch, however distant from that at which he kept his account, and demand that they should be cashed there. The latter branch could not possibly know the state of his account. The case decides no more than this, that the bank came under no engagement or promise to their customer to honour his cheques at any branch except that at which he kept his account." Now if this be so it must follow that a bank which pays the cheque at any branch except that at which the customer kept his account must be assumed to have paid it not on the credit of the customer but on the endorsement itself. In my opinion the case upon which Mr. Pugh relies is directly in point and as this case has not been overruled in any of the subsequent cases we must follow it.

I would therefore dismiss this appeal with costs.

JAMES, J.—I agree.

S. A. K. *Appeal dismissed.*

## APPELLATE CIVIL.

*Before Das and James, JJ.*

1928.

*Dec., 1.*

HAFIZ ZEYAUDDIN

*v.*

JAGDEO SINGH.*

*Rent suit—Produce rent—onus.*

In a suit for produce rent the onus lies on the tenant to show what the produce was during the years in suit.

Appeal by the plaintiffs.

*Khurshed Husnain* and *B. C. Mitra*, for the appellants.

*First Appeal no. 141 of 1925, from a decision of Babu Jatindra Nath Ghosh, Subordinate Judge of Patna, dated the 12th June, 1925.