

1940.
 LALDA
 RAJBALI
 LAL
 v.
 PARTAPPUR
 COMPANY,
 LIMITED.
 ROWLAND,
 J.

carrying the benefits of Chapters V and VI of the Bengal Tenancy Act, which deal with the rights of occupancy raiyats and non-occupancy raiyats. Mr. De argued that the authority of this decision should not be accepted. We have not been shewn any case in which it has been questioned and we see no reason ourselves to doubt its correctness. On the law as there laid down it is clear that the plaintiffs have not acquired the right which they claim in the lands in suit and the decision of the courts below dismissing the suit must be affirmed. I would dismiss the appeal with costs.

AGARWALA, J.—I agree.

K. D.

Appeal dismissed.

APPELLATE CIVIL.

Before Agarwala and Rowland, JJ.

HRIDAY SINGH

v.

KAILASH SINGH.*

Negotiable Instruments Act, 1881 (Act XXVI of 1881), sections 4 and 20—blank piece of paper stamped, signed and delivered by defendant—person to whom delivered, authority, of, to insert any name as payee—document described as hand-note in the endorsement across the stamp—plaintiff specified as payee—defendant, whether competent to challenge the nature of document or right of plaintiff to recover—onus of proof.

Section 20 of the Negotiable Instruments Act, 1881, authorises the person to whom a stamped and signed paper is delivered to insert in it as payee the name of any one besides himself.

* Appeal from Appellate Decree no. 987 of 1938, from a decision of Rai Bahadur Bhuvaneshwar Prasad Pande, Additional District Judge of Patna, dated the 23rd July, 1938, reversing a decision of Babu Bhagwan Prasad, Munsif of Patna, dated the 22nd December, 1936.

1940.

HRIDAY
SINGH
v.KAILASH
SINGH.

There is nothing in section 4 of the Act which curtails the general authority conferred by section 20 on the person to whom a stamped and signed paper is delivered to convert it into a negotiable instrument payable to any specified person.

Cruchley v. Clarence(1) and *M. N. P. L. Firm v. Kirwan Gyan*(2), followed.

Brijbhusan Pande v. Ramjanam Kuer(3), referred to.

In a suit based on a negotiable instrument it is not open to the defendant to plead that the holder of the note, namely, the payee is not the person entitled to recover on it, that is to say, the defendant cannot plead that the person to whom the money is due is not the plaintiff, who is the specified payee, but someone else.

Subba Narayana Vathiyar v. Ramaswami Aiyar(4), *Pearay Pasi v. Gauri Lal*(5), followed *quoad hoc*.

Sarjug Singh v. Deo Saran Singh(6), not followed.

Where in a suit based on a handnote the defence was, *inter alia*, that the defendant had stamped and signed a blank piece of paper which was intended to be collateral security for a loan advanced by *S* to whom it had been delivered, that *S* caused the body of the instrument to be written out and inserted the name of the plaintiff as payee, but it appeared that in the endorsement across the stamp the defendant himself had described it as a handnote;

Held, that inasmuch as the defendant chose to send the instrument in question into the world in a form shewing that the document was a handnote he was answerable for it, and, therefore, that it was not open to him to deny that the document was a handnote or to challenge the authority of *S* to use it as such.

Held, further, that in the circumstances of the case the onus was not on the plaintiff to prove primarily the due execution of the document relied on by him.

(1) (1813) 2 Maule & Selwyn, 91; 105 E. R. 316.

(2) (1912) 17 Ind. Cas. 915.

(3) (1931) 13 Pat. L. T. 506.

(4) (1906) I. L. R. 30 Mad. 88.

(5) (1934) I. L. R. 13 Pat. 655.

(6) (1930) 11 Pat. L. T. 255.

1940.

HRIDAY
SINGH
v.
KAILASH
SINGH.

Ramlakhan Singh v. Gog Singh(1), distinguished.

Sahdeo Mauar v. Pulesar Nonia(2) and *Chulhai Lal Dass Kuldip Singh*(3), referred to.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Agarwala, J.

Sambhu Barmeshwar Prasad, for the appellant.

Sarjoo Prasad, for the respondents.

AGARWALA, J.—This appeal is by the plaintiff from a decision of the Additional District Judge of Patna reversing a decision of the Munsif. The appeal arises out of a suit on a handnote, dated the 12th of June, 1930, and expressed to be for Rs. 1,000. Across the stamps of the handnote are these words in the handwriting of the defendant,

"*Sahi Kailash Singh ek hazar rupaya karza leli wo handnote likhdeli se sahi bakulam khas*".

The case of the defendant was that this endorsement was made by him on a blank piece of paper and was intended to operate as collateral security for a loan advanced by one Shamnandan Prasad Singh to Dhanukhdari Singh, a relation of the plaintiff. The name of the payee in the instrument is that of the plaintiff and not of Shamnandan Prasad Singh. The defence explained this by asserting that when the defendant assigned the instrument it was blank and that Shamnandan Prasad Singh subsequently caused the body of the instrument to be written out and inserted the name of the plaintiff as payee instead of his own. The Court of appeal below has dismissed the plaintiff's suit holding that the transaction was one between the defendant and Shamnandan Prasad Singh and not between the defendant and the

(1) (1930) 12 Pat. L. T. 233

(2) (1930) 11 Pat. L. T. 606.

(3) (1929) 12 Pat. L. T. 231.

plaintiff. The effect of assigning a paper stamped in accordance with the law relating to the negotiable instruments is dealt with in section 20 of the Negotiable Instruments Act, 1881, which provides that where a person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments, then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. It is contended on behalf of the defendant-respondent that this section does not authorise the person to whom the stamped and signed paper is delivered to insert in it as payee the name of any one but himself. In this connection reference was made to section 4 of the Act which defines a promissory note as an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. The promissory note in question does, of course, promise to pay the sum mentioned unconditionally to a certain person, namely, the plaintiff, and I can see nothing in that section which, in any way, curtails the general authority conferred by section 20 on the person to whom a stamped and signed paper is delivered to convert it into a negotiable instrument payable to any specified person. This appears also to be the law in England. In *Cruchley v. Clarence*⁽¹⁾ the facts were that a bill of exchange was drawn in Jamaica upon one Henry Man of London, leaving a blank for the name of the payee. This bill was negotiated in England by one Vashon who endorsed it to the plaintiff in payment of an old debt. The plaintiff inserted

1940.

HRIDAY
SINGH
T.
KAILASH
SINGH.

AGARWALA
J.

(1) (1813) 2 Maule & Selwyn 91; 105 E. R. 316.

1940.

HRIDAY
SINGHv.
KAILASH
SINGH.AGARWALA,
J.

his own name as the payee. In a suit on the bill the defence was that the plaintiff had no right to insert his own name in the bill. Lord Ellenborough, C.J. disposed of this defence in the following words: "As the defendant has chosen to send the bill into the world in this form, the world ought not to be deceived by his acts. The defendant by leaving the blank undertook to be answerable for it when filled up in the shape of a bill". Bayley, J. said, "The signing the bill in blank without the name of the payee was an authority to a bona fide holder to insert the name." Twomey, J. in *M. N. P. L. Firm v. Kirwan Gyan*(1) also held that "a payee can fill in a blank inchoate instrument and sue on it himself after filling it or endorsing it to some one". This case was referred to by Dhavle, J. in *Brijbhusan Pande v. Ramjanam Kuer*(2). Mr. Sarjoo Prasad on behalf of the defendant-respondent contends that under section 20 of the Negotiable Instruments Act Shamnandan Prasad Singh must be taken to have been authorised by the defendant only to execute an instrument of surety for the debt of Dhanukdhari. In my view, the defendant cannot be heard to challenge the authority of Shamnandan Prasad Singh on that particular ground in view of the endorsement which he himself wrote across the stamp on the instrument in which he described the document as a handnote. He chose to send this instrument into the world in a form shewing that the document was a handnote and, therefore, he is answerable for it.

Mr. Sarjoo Prasad also referred to two decisions of this Court dealing with the question of the onus of proof in cases where it is admitted or proved that the thumb impression or signature on a handnote is that of the defendant. In *Chulhai Lal Dass v. Kuldip Singh*(3) it was held that when the execution of a handnote is admitted, the onus of proof of

(1) (1912) 17 Ind. Cas. 915.

(2) (1931) 13 Pat. L. T. 506.

(3) (1929) 12 Pat. L. T. 281.

shewing that no consideration passed is thrown entirely on to the defendant. In *Ramlakhan Singh v. Gog Singh*(¹) it was held that an admission by a defendant regarding the putting of a signature or a thumb mark on a document, while he maintains that the paper when he signed it was blank, is not such an admission of the execution of the document as to throw the burden of proving his case upon him, and it is for the plaintiff in such a case to prove primarily the due execution of the document relied upon by him. This case must be distinguished from the present where the defendant in his own handwriting described the document as a handnote. There is also a decision of a single Judge of this Court in *Sahdeo Mauar v. Fulesar Nonia*(²) in which it was held that in a suit on a handnote, where the defendant admits that he put his thumb mark on a blank piece of paper but asserts that it was intended that a kabuliati should be written out on the paper, the burden of proof lies on the defence to explain how the handnote bearing the defendant's thumb impression came into existence. For the reasons which I have given above I would hold that on the facts of this case the defendant is not entitled to deny that the document is a handnote and the onus of proof does not lie on the plaintiff in such a case.

As in my view the instrument with which we are concerned is a negotiable instrument it is not open to the defendant to plead that the holder of the note, namely, the payee, is not the person entitled to recover on it, that is to say, the defendant cannot plead that the person to whom the money is due is not the plaintiff, who is the specified payee, but Shamnandan Prasad Singh [see *Subba Narayan Vathiyar v. Ramaswami Aiyar*(³)]. Kulwant Sahay, J., sitting singly, disagreed with this decision in *Sarjug Singh v. Deo Saran Singh*(⁴) but the decision of Kulwant Sahay, J. was disapproved by a Division Bench in

(1) (1930) 12 Pat. L. T. 233.

(2) (1930) 11 Pat. L. T. 606.

(3) (1906) I. L. R. 30 Mad. 88.

(4) (1930) 11 Pat. L. T. 255.

1940.

HRIDAY
SINGH
v.
KAILASH
SINGH.

AGARWALA,
J.

1940.

HRIDAY
SINGH
v.
KAILASH
SINGH.

AGARWALA,
J.

Pearay Pasi v. Gauri Lal⁽¹⁾. Although this last mentioned case has been overruled on another point by the Special Bench in *Ghanshyam Das Marwari v. Ragho Sahu*⁽²⁾ it is still good authority for the view that the decision in *Sarjug Singh v. Deo Saran Singh*⁽³⁾ is not good law.

In the result I would allow the appeal of the plaintiff and restore the decision of the Munsif. The plaintiff will have his costs throughout.

The defendant in the present suit also pleaded that he had made certain payments to Shamnandan Prasad Singh in respect of the amount for which he is now sued. In a suit by the payee of a handnote against the drawer the defence that payments have been made to someone who is not the payee cannot be taken into consideration: see section 78 of the Negotiable Instruments Act. We are, therefore, not concerned with the truth of the defendant's allegations regarding these payments.

ROWLAND, J.—I agree.

Appeal allowed.

S. A. K.

APPELLATE CIVIL.

Before Agarwala and Rowland, JJ.

BAIJNATH RAM MARWARI

1940.

Jan. 23.

v.

RAI KUMAR SINHA.*

Bihar Tenancy Act, 1885 (Act VIII of 1885), section 177A—words "and occupied by him", meaning of.

Section 177A of the Bihar Tenancy Act, 1885, provides :

"Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, a decree for arrears of rent obtained against a raiyat or an under-raiyat shall not be executed—

(a) by the detention in the civil prison of the judgment-debtor, or

* Appeal from Appellate Order no. 180 of 1939, from an order of H. R. Meredith, Esq., I.C.S., District Judge of Bhagalpur, dated the 17th July, 1939, affirming an order of Maulavi Muhammad Hasan, Munsif at Bhagalpur, dated the 13th June, 1939.

(1) (1934) I. L. R. 13 Pat. 655.

(2) (1936) I. L. R. 16 Pat. 74, S. B.

(3) (1930) 11 Pat. L. T. 255.