1919

June 26.

## APPELLATE CIVIL.

*Before Mr. Justice Shadi Lal and Mr. Justice Bevan-Petman.*

PANNA LAL-LACHHMAN DAS (DEFENDANTS)—
*Appellants,*

*versus*

HARGOPAL-KHUBI RAM (PLANTIFFS)—
*Respondents.*

Civil Appeal No. 884 of 1915.

*Negotiable Instrument*—hundi—*whether by mercantile usage at Delhi oral acceptance is binding—what constitutes a mercantile usage.*

*Held*, that by mercantile usage at Delhi a drawee who has accepted a *hundi* orally is liable on the instrument.

*Held also*, that to establish a mercantile usage it is enough if the usage appears to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract.

*Juggomohun* v. *Manickchand* (1), referred to.

*Second appeal from the decree of C. L. Dundas, Esq., District Judge, Delhi, dated the 26th February 1915, affirming that of Lala Murari Lal Khosla, Sub-Judge, Delhi, dated the 8th October 1914, decreeing plaintiff's claim.*

SHEO NARAIN, SOHAN LAL and GOVIND DAS, for Appellants.

SHAMAIR CHAND, for Respondents.

The judgment of the Court was delivered by—

SHADI LAL, J.—The relevant facts of this case are set out in the order of remand, dated 31st May 1918 (2), which must be read as a part of this judgment. The issue remanded for further enquiry was "whether there is a mercantile usage at Delhi which renders a drawee, who has accepted a *hundi* orally, liable on the instrument." The Subordinate Judge has recorded the evidence of a large number of witnesses produced by both the parties, and has also examined the *khokhas* or discharged *hundis* produced by some of the witnesses in order to show that payments were made by the drawees after the

(1) (1859) 7 Moo. I. A. 263 (282) (P. C.) (2) Printed as 29 P. R. 1919.

*hundis* had been accepted orally. The learned Judge has found that the usage relied upon by the plaintiffs has been established, and his view has been endorsed by the learned District Judge.

We have examined the oral as well as the documentary evidence in the light of the comments made by Mr. Sheo Narian for the appellants and Mr. Shamair Chand for the respondents, and reached the conclusion that the view taken by the lower Courts is correct and should be upheld. There is a consensus of opinion that the mercantile community at Delhi recognize the custom of accepting *hundis* by word of mouth. On this point the witnesses on both sides are unanimous, but while the plaintiffs' witnesses proceed further and state that oral acceptance makes the drawee liable on the instrument, those produced by the defendants demur to this statement and assert that oral acceptance does not import legal liability to pay. Now, we find that while the plaintiffs' witnesses fortify their position by citing a very large number of instances in which oral acceptance has been followed by payment, the witnesses for the defendants are unable to cite a single instance in which no payment was made on the basis of a *hundi* which had been accepted orally. Indeed, some of these witnesses, who had themselves been signifying their assent to *hundis* by oral acceptance, had to admit that they themselves never refused payment.

A perusal of the entire material before us shows that though the acceptance of *hundis* may be made in writing, the majority of them are undoubtedly accepted by a mere word of mouth; that oral acceptance is rather the rule than the exception; that such acceptance has been invariably followed by payment; and that there is not a single instance in which a drawee, after accepting a *hundi* orally, has declined to pay. When we find that the persons accepting *hundis* orally have always made payments, we cannot but conclude that the reason for such payments was that the acceptors knew that the mercantile usage not only recognized the validity of such acceptance but also rendered them liable to the same extent as a person who had reduced his acceptance to writing. If the oral acceptance does not result in any legal liability, it is not easy to under-

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stand why the holder should be satisfied with an acceptance of that character and should not insist upon the drawee either accepting the *hundi* in writing or dishonouring it. A holder would naturally like to know definitely how he stood with respect to the drawee, and would not ordinarily rest contented with an oral acceptance, if it carried with it only a moral, and not a legal, obligation to pay.

As pointed out by their Lordships of the Privy Council in *Juggomohun* v. *Manickchand* (1) to establish a mercantile usage it is enough, if the usage appears to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract. This test has been fully satisfied in the case before us; and we must, therefore, hold that the plaintiffs have succeeded in establishing the existence of a mercantile usage at Delhi making the drawee, who has signified his assent by word of mouth, liable on the *hundi* accepted by him in that manner.

We accordingly dismiss this appeal with costs.

*Appeal dismissed.*

(1) (1859) 7 Moo. I. A. 263 (282) (P. C.).