APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Sen.

J. G. ROBINSON
v.
THE CENTRAL BANK OF INDIA, LTD. *

1931
July 21.

Negligence of Banker—Test of negligence—Crossed cheque in favour of Public Body—Cheque tendered for collection by paltry person—Suspicious endorsements—Collecting bank's duty—Alleged usage of banks in Rangoon—Negotiable Instruments Act (XXVI of 1881), s. 131.

Whether or not a collecting bank is guilty of negligence within s. 131 of the Negotiable Instruments Act must depend upon the particular circumstances obtaining in each case. The test of negligence is whether the transaction of paying in any given cheque, coupled with the circumstances antecedent and present, was so out of the ordinary course that it ought to have aroused doubts in the banker's mind, and caused him to make inquiry.

A person, known to the defendant bank to be a mere clerk, tendered to the bank a crossed cheque for Rs. 2,361-12 as for collection and payment into a small savings bank account which the clerk had opened on behalf of a minor of whom he was the guardian. The cheque was drawn by the plaintiff's agent (who was also the manager of the paying bank) in favour of the Corporation of Rangoon for the payment of taxes. The cheque was endorsed with a rubber stamp "Chief Superintendent. Corporation of Rangoon" and an illegible scribble purporting to be the name of such official. There was no such official, but the person tendering the cheque purported to guarantee the genuineness of the endorsement. The defendant bank without any inquiry credited the cheque to the minor's account, and the clerk withdrew the sum on the next day. The cheque was never received by the Corporation, and the endorsement was a forgery by the clerk, who absconded with the proceeds of the cheque.

Held, that the circumstances were such that the defendant bank was put on inquiry, and having failed in its duty was liable to the true owner of the cheque, the plaintiff. It could not evade such liability by conforming to an alleged usage of bankers in Rangoon that, if a collecting bank refrained from endorsing on a crossed cheque a guarantee that an endorsement was genuine, it was absolved from all further responsibility and that the paying bank, if it elected to pay the cheque in such circumstances, did so at its peril.

A. L. Underwood, Ltd. v. *Bank of Liverpool*, (1924) 1 K.B. 776; *Commissioners of Taxation* v. *English, Scottish and Australian Bank, Ltd.*, (1920) A.C. 683; *Ross* v. *London County Westminster and Parr's Bank*, (1919) 1 K.B. 678—*followed*.

Leach for the appellant. The evidence did not justify the finding that it was the practice and rule

* Civil First Appeal No. 78 of 1931 from the judgment of this Court on the Original Side in Civil Regular No. 346 of 1930.

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in Rangoon that the paying banker would not pay crossed or order cheques unless the endorsements were guaranteed by the collecting banker and that if the paying banker paid without such guarantee he took all the responsibility. The trial Judge had misconstrued the evidence of the accountant of Dawsons Bank and his finding rested merely on the evidence of the agent of the respondent bank. That was not sufficient to prove a custom. No other bank managers had been called and it was most improbable that there was any such custom. The real question was whether the respondent bank had been guilty of negligence. A banker who does not act in good faith and without negligence is not protected by Section 131 of the Negotiable Instruments Act. To get the benefit of that section there must be no negligence whatever on the part of the collecting bank. Officials of the Corporation are prohibited by law from indorsing over to third parties cheques drawn in favour of the Corporation. Such cheques must be paid into the Corporation's banking account with the Imperial Bank of India (*vide* sections 61, 64 and 65 of the Rangoon Municipal Act, 1922). The respondent bank had been guilty of negligence in that it had collected a crossed cheque which had been drawn in favour of the Corporation of Rangoon and paid into the savings bank account of a minor without making any inquiry with a view to ascertaining whether the endorsement was in order and the person paying in the cheque had a right to it. The respondent bank was clearly put on inquiry and in collecting the cheque without making any inquiry it had acted negligently. *Hannan's Lake View Central, Limited* v. *Armstrong & Co.* (1) ; *Ross* v. *London County Westminster and*

(1) 16 T.L.R. 236.

Parr's Bank (1); *Commissioners of Taxation* v. *English Scottish Bank, Ltd.* (2); *A. L. Underwood* v. *Bank of Liverpool* (3); *Lloyds Bank* v. *Chartered Bank* (4). Even if Dawsons Bank had also been guilty of negligence this would not relieve the respondent bank from liability.

F. Jeejeebhoy for the respondent. A usage of bankers in Rangoon has been established whereby the paying bank refuses to pay cheques which are payable to order and crossed unless the collecting bank guarantees the payee's endorsement. If the paying bank pays without such guarantee of the collecting bank, it pays on its own responsibility. In the present case the Central Bank as collecting bank refused to guarantee the payee's endorsement. Robinson in banking with the paying bank must be deemed to be bound by the usage of his own bank. The question has to be judged by the practice of bankers. The test is whether the transaction is so out of the ordinary as to rouse doubts in the banker's mind. *A. L. Underwood* v. *Bank of Liverpool* (3); *Commissioners of Taxation* v. *English, Scottish and Australian Bank* (2).

Judged by that standard the Central Bank is absolved. Apart from such usage, the cheque had been endorsed by means of a rubber stamp and a signature purporting to be that of the payee. There was nothing on the face of the cheque to arouse suspicion or put the Central Bank on enquiry. If the payee's endorsement is ostensibly in order, the collecting bank is protected, for upon such endorsement the cheque becomes a bearer cheque payable

(1) (1919) 1 K.B. 678.
(2) (1920) A.C. 683.
(3) (1924) 1 K.B. 775.
(4) 44 T.L.R. 534.

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to a banking account. It, therefore, makes no difference whether it is paid into a savings bank account of a minor or to any other account, specially as the cheque could conceivably have passed through several hands before being handed for collection. The collecting bank exercised all due care and diligence in the ordinary course of business and there was no departure from the usual precautions. If the collecting bank is required to investigate the title of the holder and all intermediaries through the payee, banking business will become impossible. The Corporation of Rangoon does not invariably pay all moneys received by it into the Imperial Bank, as is shown by two instances where the Central Bank's own pay orders in favour of the Corporation have been endorsed and handed over to individuals for collection. The provisions of the City of Rangoon Municipal Act relating to payment of all moneys into the Imperial Bank is a matter of interal management and cannot bind the collecting bank. There was nothing suspicious about the account into which the money was paid. The Privy Council in *Commissioners of Taxation* case found nothing to rouse suspicion where an account was opened with an initial payment of £20, followed by a payment of £786 18*s.* 3*d.* Although the account in suit was in the name of a minor, the guardian had all along operated on it as if it was his own, and the bank had no reason to be suspicious.

PAGE, C.J.—This is a suit brought by the drawer of a crossed cheque against the respondent bank to recover damages for conversion or, in the alternative, for the value of the cheque as money had and received by the respondent bank to the plaintiff's use. The material section of the Negotiable Instruments Act

(XXVI of 1881), is section 131, which runs as follows :

"A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment."

Now, it is not contended on behalf of the appellant that in connection with the receipt of this cheque by the respondent bank the bank was not acting *bona fide*. The allegation of the appellant is that in receiving payment of this cheque and crediting the proceeds to the account of a customer the respondent bank was guilty of negligence. It is common ground that the customer to whose account the proceeds were credited had no title to the cheque, and that, as the cheque was not delivered to the Corporation, the plaintiff at all material times was the true owner of the cheque within section 131. In these circumstances the plaintiff alleged that the respondent bank were guilty of conversion, or, in the alternative, that the plaintiff was entitled to recover the proceeds of the cheque as money had and received to his use.

It appears that on the 12th October the cheque in question was drawn on Dawsons Bank, Limited, Rangoon, in favour of the Corporation of Rangoon or order for Rs. 2,361-12-0. It was drawn on behalf of the plaintiff J. G. Robinson by his attorney R. S. Dantra, and it is common ground that Mr. Dantra had authority to draw this cheque as the attorney and agent of the plaintiff. The cheque was drawn in favour of the Corporation of Rangoon in payment of municipal taxes due from the plaintiff to the Corporation. Now, Mr. Dantra had in his employment a clerk, Manilal Shivchand Shah, who was known to Mr. Dantra, and to those who worked with and under him, as M. S. Shah. It so happened that Mr. Dantra at the

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time when this cheque was drawn was also the agent of Dawsons Bank, and there can be little doubt that Manilal Shivchand Shah had become acquainted, at any rate to some extent, with the nature of the business carried on by bankers. Mr. Dantra having drawn this cheque on behalf of the plaintiff in favour of the Corporation, handed the cheque to Shah with a direction that Shah should deliver it to the Corporation. Shah failed to do so, and nothing more is known about the history of this cheque until the 9th of December, 1929, when Shah, having forged what purported to be an endorsement on the cheque on behalf of the Corporation, proceeded to the respondent bank, and tendered this cheque over the counter to one of the clerks of the bank for collection. At the same time Manilal Shivchand instructed the bank to credit the proceeds of the cheque to a savings bank account which he had opened with the respondent bank on the 8th of October, 1929, in favour of an infant girl, Savitabai, of whom he asserted that he was the guardian. The clerk to whom the cheque was tendered accepted the cheque ; endorsed it with a rubber stamp to this effect " Payee's endorsement guaranteed. For the Central Bank of India, Ltd., Agent," and took the cheque to one Tracy, who was the assistant accountant of the respondent bank, and at that time was acting as the chief accountant. What Tracy did after he had received the cheque may be stated in his own words :

"I received Exhibit 'A' (*i.e.*, the cheque in suit) from Maung Nyun Pe (the clerk to whom the cheque had been tendered by Shah), with several other cheques. I remember receiving this cheque Exhibit A, and I noticed that it was to order and was a crossed cheque payable to the Corporation of Rangoon. I also noticed that it purported to be endorsed by the Chief Superintendent of the Corporation of Rangoon. I did not know that there was such an official as the Chief Superintendent of the Corporation of Rangoon. I knew that Manilal Shivchand was

not a person whose endorsement I could guarantee. That was why I did not sign the guarantee-stamp. I knew that there was a savings bank account which Manilal Shivchand had opened in the name of his infant daughter. I had no time to enquire why Manilal Shivchand was paying into this savings bank account a crossed cheque drawn in favour of the Corporation of Rangoon.

"*Q* : The reason that you did not enquire why this crossed cheque drawn in favour of the Corporation was being paid into the savings bank account of this infant was that you had no time?

"*A* : I knew that the cheque had been drawn by Mr. R. S. Dantra, who was the agent of Dawsons Bank, and I thought that he would be in the best position to know whether the cheque was properly endorsed. I knew his signature very well. Those are the reasons why I did not enquire. I did not communicate with Mr. Dantra when the cheque had been presented to me for signature. I passed them on to the cashier for collection. I do not know who was the cashier of Dawsons Bank at that time. The money was collected by my bank from Dawsons Bank and credited to the savings bank account."

The cheque, without the guarantee of the payee's endorsement having been signed on behalf of the respondent bank, was returned to Dawsons Bank, and cleared the same day through Lloyd's Bank, and the proceeds of the cheque were immediately credited to the savings bank account of the infant of whom Manilal Shivchand had stated that he was the guardian. On the 9th December, when this cheque for Rs. 2,361-12-0 was credited to the savings bank account of Savitabai, that account stood in credit to an amount of Rs. 5. On the 10th December Manilal Shivchand drew out of the savings bank account Rs. 2,360 leaving a balance of Rs. 6-12-0. This account was not further operated upon. In January 1930 Manilal Shivchand Shah absconded, and when the Corporation served upon the plaintiff a further demand for payment of the taxes the fraud was discovered.

The question that falls to be determined is whether in those circumstances the respondent bank in

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receiving payment of this cheque, and crediting the proceeds to the savings bank account of the infant Savitabai, was guilty of negligence.

Now, what is the duty of a collecting bank having regard to the terms of section 131 of the Negotiable Instruments Act (XXVI of 1881)? In *Commissioners of Taxation* v. *English, Scottish and Australian Bank, Limited* (1), Lord Dunedin, delivering the judgment of the Privy Council, observed :

"In the case of *Commissioners of State Savings Bank* v. *Permewan, Wright & Co.* (2), in the High Court of Australia, Isaacs, J., says : 'Apart from the well-established rule that whether or not the evidence establishes that a person acts without negligence is a question of fact, the legal principles found in *Morison* v. *London County and Westminster Bank* (3) and relevant to the present case are (i) that the question should in strictness be determined separately with regard to each cheque ; (ii) that the test of negligence is whether the transaction of paying in any given cheque was so out of the ordinary course that it ought to have aroused doubts in the bankers' mind, and caused them to make inquiry.' If there be inserted after the words 'given cheque' the words 'coupled with the circumstances antecedent and present,' their Lordships think this is an accurate statement of the law."

Applying the law thus laid down to the facts of the present case the question is whether in the circumstances disclosed in the evidence the respondent bank was guilty of negligence in receiving payment of the cheque in suit.

On behalf of the respondent bank it is contended that however suspicious might be the circumstances in connection with the presentation of a crossed cheque for collection, the collecting bank is under no obligation to make any enquiry for the purpose of ascertaining whether the cheque is a genuine cheque, or whether the endorsements upon the cheque

(1) (1920) A.C. 683, 688.
(2) 19 C.L.R. 457, 478.
(3) (1914) 3 K.B. 356.

are genuine or forged endorsements. It is urged that the sole obligation of a collecting bank, if it suspects, or is put on enquiry as to, the genuineness of a crossed cheque or the endorsements thereon is to refrain from signing the guarantee of the collecting bank that the endorsements are genuine, and that if it forwards the cheque to the paying bank in that condition it is absolved from further responsibility in the matter. It is contended that in such circumstances, according to the usage of bankers obtaining in Rangoon, the paying bank must elect to pay or not to pay the cheque on its own responsibility and if it pays the cheque the collecting bank is at liberty, however extravagant the endorsements on the cheque might be, to credit the proceeds to the account of the customer who had tendered it for collection. In the first place I am not satisfied that any such usage has been proved in the present case. Whether the usage exists or not is a question of fact, and the usage upon which the respondent bank relies is that in the case of every crossed cheque the collecting bank signs a form guaranteeing the genuineness of the endorsement on the cheque. The only evidence in support of such an usage is to be found in the testimony of Mr. Thakur, the agent of the respondent bank. In corroboration of the usage as stated by Mr. Thakur reliance was placed on the evidence of Mr. Wing, the accountant of Dawsons Bank. The evidence of Mr. Wing, however, is not to the same effect. He stated that "*If there is any irregularity in the cheque* it is usual for the collecting bank to guarantee the endorsements. If there is no such guarantee it is the usual practice to return the cheque unpaid. If there is no such guarantee the paying bank pays the amount of the cheque on its own responsibility." I am not satisfied upon the evidence

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adduced in the present case that an usage in the form stated by Mr. Thakur has been proved, but, in my opinion, assuming that an usage of this nature obtains amongst bankers in Rangoon, whatever rights or obligations may arise thereunder as between the collecting and the paying bank, conformity to such an usage would not *ipso facto*, as held by the learned trial Judge, absolve the collecting bank from all further responsibility in connection with the receipt of a crossed cheque. In every case the test to be applied in order to ascertain whether the collecting bank was guilty of negligence within section 131 of the Negotiable Instruments Act is that laid down by Lord Dunedin in the *Commissioners of Taxation* v. *English, Scottish and Australian Bank, Limited* (1).

Now, did the collecting bank in the present case, having regard to the facts disclosed in the evidence, take such reasonable care in connection with the payment of this cheque as a member of the mercantile community conversant with banking business would be expected to take? What information had the respondent bank in its possession when Manilal Shivchand tendered this cheque for collection? Manilal Shivchand was known to the accountant Tracy, whose duty it was to exercise reasonable care in this matter on behalf of the respondent bank. Tracy knew that Manilal Shivchand was merely a clerk, and in his evidence Tracy admitted that Manilal Shivchand was not a person upon whose statement the bank would guarantee the endorsement on a cheque. The respondent bank knew that this crossed cheque had been drawn in favour of a public body, the Corporation of Rangoon, for Rs. 2,361-12-0. It knew that the cheque was being tendered for collection by

(1) (1920) A.C. 683, 688.

Manilal Shivchand, a man of no substance. It knew that the cheque was presented for collection with instructions that the proceeds should be credited to the savings bank account of an infant, of whom Manilal Shivchand claimed to be the guardian. And the Bank also knew that the cheque was endorsed with a rubber stamp " Chief Superintendent, Corporation of Rangoon," and an illegible scribble purporting to be the name of that official written in ink under the rubber stamp. I should have expected that a gentleman entrusted with the duties of the chief accountant of the respondent bank would have been acquainted with the names and designation of the senior officials of the Corporation. As a matter of fact, there is no such official as the chief superintendent of the Corporation of Rangoon. But for the purpose of this case I will assume that the chief accountant of the respondent bank was not to be deemed to have notice that there is not such an official as the chief superintendent of the Corporation of Rangoon. Tracy in his evidence stated that he did not know whether there was such an official or not, and there is no reason why his statement should not be believed. At any rate, the endorsement of the cheque would no have enlightened him, because what purported to be the signature of that official was a mere scribble that was wholly illegible.

In my opinion, however, the most casual perusal of the cheque ought to have aroused suspicion, and put the bank on enquiry as to the genuineness of this endorsement, for it was a crossed cheque drawn in favour of a public body for Rs. 2,361-12-0, and tendered by a mere clerk for collection and payment into a small savings bank account opened by the clerk in favour of an infant of whom he was the guardian. In *Commissioners of Taxation* v. *English*,

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Scottish and Australian Bank, Limited (1) where the question was whether the bank was negligent in crediting a customer's account with the proceeds of a stolen bearer cheque drawn in payment of taxes, Lord Dunedin observed :

" If the cheque had been in a different form things might well have been otherwise. Their Lordships cannot help remarking that to a certain extent the appellants have themselves to thank for what has happened, owing to the terms of their instructions. If they had insisted that in the case of payments made at the office, as they did insist in the case of drafts sent by post, the cheques should be made payable to the Commissioners of Taxation, then there would have been something on the face of the cheque to arouse inquiry. The fact that the cheque was to bearer distinguishes this case from *Commissioners of State Savings Bank* v. *Permewan, Wright & Co.* (2). In that case, in the case of thirty-six cheques, the cheques were drawn in favour of the Commissioners, or had such markings on them as showed that they were drawn for the purpose of paying duties. This was held, their Lordships think rightly, to be a circumstance which ought to have put the bank on inquiry when such cheques were presented by a private individual."

Again, in *Ross* v. *London County Westminster and Parr's Bank, Limited* (3), Bailhache, J., stated that " the question is whether the employees of a bank authorised to receive its customers' cheques, to whom a private customer presents for collection a crossed cheque payable to and endorsed by a public official, ought, before treating the customer as the person entitled to the cheque and receiving payment of it for him, to make inquiry as to the customer's title to the cheque, and in the event of their failing to do so are guilty of negligence. . . . It is therefore necessary to consider whether a bank cashier of ordinary intelligence and care on having these cheques presented to him by a private customer of the bank would be informed by the terms of the cheques themselves that it was open to doubt whether the customer had a good title to them. Each of the cheques in question was drawn payable to—" The Officer in charge, Estates Office, Canadian Overseas Military Forces," and was

(1) (1920) A.C. 683, 688. (2) 19 C.L.R. 457.
(3) (1919) 1 K.B. 678, 685, 686.

endorsed by that officer under the same description. Each cheque bore upon its face the fact that it was payable to the officer of a public department and not to a private person, and the endorsement on each cheque showed that it was being negotiated by that officer. It is not in accordance with the ordinary course of business that a cheque so drawn and endorsed should be used for the purpose of paying the debt of a private individual. It was highly improbable that the officer in charge of the Estates Office would hand to de Volpi cheques in this form with the intention that the latter should pay them into his private account. It, therefore, seems to me that when de Volpi presented these cheques with a view to having them credited to his private account a cashier of ordinary intelligence and experience should have been put on inquiry whether or not the credit ought to be made. I have come to the conclusion that the employees of the defendants in treating de Volpi as the person entitled to the cheques and in receiving or assisting in receiving payment of the cheques for him without making any inquiry whether he was entitled to the cheques, failed to exercise due care and were guilty of negligence, and, therefore, that the defendants are not within the protection of section 82."

In that case the statute that was applicable was section 82 of the English Bills of Exchange Act, 1882, which is to the same effect as section 131 of the Indian Negotiable Instruments Act. I respectfully agree with the observations of Bailhache, J., in *Ross's* case, confirmed as they were by the Court of Appeal in *A. L. Underwood, Limited* v. *Bank of Liverpool and Martins* (1), and applying the test laid down by Lord Dunedin in *Commissioners of Taxation* v. *English, Scottish and Australian Bank, Limited* (2), I am clearly of opinion that the respondent bank on receiving the cheque in suit tendered for collection by Manilal Shivchand in order that the proceeds should be credited to Savitabai's account was under an obligation to make enquiry as to whether the

(1) (1924) 1 K.B. 776 at p. 793. (2) (1920) A.C. 683.

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customer was entitled to receive the proceeds of this cheque, having regard to the form of the cheque and its endorsement, and the circumstances in which it was tendered for collection. But the case does not rest there, because at the time when it was tendered for collection there was also a further endorsement on this cheque "Pay signature guarantee for Savitabai Manilal Shivchand." Now, although these words do not make sense if strictly read, it may be taken, I think, that Manilal Shivchand endorsed the cheque in this way because he thought it well to volunteer his personal guarantee of the genuineness of the endorsement which purported to be that of the chief superintendent of the Corporation of Rangoon. Why should Manilal Shivchand have volunteered to give such a guarantee unless he was afraid that the respondent bank, acting with such prudence as a banker is bound to exercise in the course of his business, would suspect the genuineness of what purported to be the endorsement of the Corporation of Rangoon? Tracy, observing this endorsement by Manilal Shivchand on the back of the cheque, at once decided that he could not act upon such an endorsement, or place any reliance on a guarantee by such a person as Manilal Shivchand. In those circumstances, in my opinion, the respondent bank was bound to satisfy itself that Savitabai was entitled to receive payment of this cheque before it credited the proceeds to the savings bank account that had been opened in her name.

Now, with all this information in its possession creating suspicion as to the genuineness of this endorsement, were any enquiries instituted by Tracy or any one else on behalf of the respondent bank to ascertain whether the endorsement was genuine or a forgery, or whether Savitabai was entitled to receive

payment of the cheque? None whatever. Why not? Because the respondent bank, forsooth, contended that it was absolved from all responsibility in connection with the collection of this cheque after having sent the cheque to Dawsons Bank without a guarantee by the bank that the endorsement was genuine. Such a contention, in my opinion, is wholly misconceived and unsustainable. Why was it that this cheque was paid? I am satisfied and hold that it was paid because of the negligent conduct of the respondent bank. The simplest inquiry would have disclosed that the endorsement on this cheque, purporting to be that of the Corporation, was a forgery. If the respondent bank had sent the cheque to the officers of the Corporation of Rangoon for perusal and information as to whether the endorsement purporting to be that of the chief superintendent of the Corporation of Rangoon was genuine or not, they would have received an answer back in less than ten minutes. The answer would have been that the endorsement was a forgery, and the reasonable suspicion as to its genuineness that the respondent bank had entertained would have been justified. Or, again, if the respondent bank had informed Dawsons Bank of the facts in its possession in connection with the receipt of this cheque, and the circumstances in which it had been tendered for collection by Manilal Shivchand, no one can doubt that Dawsons Bank would not have paid the cheque. Mr. Tracy in his evidence stated that he made no enquiries because he had "no time", and it was urged by the learned advocate on behalf of the respondent bank that business could not be carried on if banks were bound to investigate the right of their customers to receive the proceeds of all cheques that were tendered for collection. No doubt that is so, and I do not suggest that banks

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are under any such obligation, but the answer to the respondent's contention is that

"if banks for fear of offending their customers will not make inquiries into unusual circumstances, they must take with the benefit of not annoying their customer the risk of liability because they do not inquire;"

per Scrutton, L.J., in *A. L. Underwood, Limited* v. *Bank of Liverpool and Martins* (1). Now, this case turns solely upon an issue of fact, and no question of law is involved, for whether or not a collecting bank is guilty of negligence within section 131 of the Negotiable Instruments Act must depend upon the particular circumstances obtaining in each case. In the present case, with all due respect to the learned trial Judge, I have no doubt that the respondent bank was guilty of negligence in receiving payment of this cheque for Savitabai, and that the plaintiff is entitled to a decree. The result is that the appeal is allowed, the decree of the trial Court set aside, and a decree passed in favour of the plaintiff for the sum claimed, and interest thereon at 6 per cent. from the date of judgment, and costs in both Courts. The learned advocate on behalf of the appellant is entitled to special costs as awarded to the learned advocate for the respondent bank in the trial Court.

SEN, J.—I agree.

(1) (1924) 1 K.B. 776.

G.B.C.P.O.—No. 42, H.C.R., 20-10-31—3,000.