APPELLATE CIVIL.

Before Mr. Justice Addison and Mr. Justice Agha Haidar.

ALLAHABAD BANK, LTD., LAHORE,
(PLAINTIFF) Appellant
versus
RATTAN CHAND, CHAWLA, AND OTHERS
(DEFENDANTS) Respondents.

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April 25.

Civil Appeal No. 725 of 1923.

Negotiable Instruments Act, XXVI of 1881, sections 37, 62, 135—Hundis—*handed to Bank and credited to drawer's current account—Dishonoured—and debited—Suit by Bank on* the hundis—*whether competent*—"*Holder in due course*"—*Discharge by accord and satisfaction—Merger.*

Defendant No. 1 endorsed in full and handed to the plaintiff Bank (of which he was a customer) certain *hundis* which had been drawn in his favour by defendant No. 2. The Bank immediately credited the amounts of these *hundis* to the current account of defendant No. 1, which was overdrawn, accidentally and not by agreement. The account thereupon shewed a balance in defendant No. 1's favour against which he was at once allowed to draw. The *hundis* being dishonoured the amounts were re-entered to the debit of the account and that same day the Bank gave notice of a suit *upon the hundis* both to defendant No. 1 and to the drawer, defendant No. 2, and thereafter brought the present suit accordingly.

Held, that in the circumstances the Bank was clearly a holder in due course of the *hundis*, and had not lost its rights as such after dishonour by carrying the value of the *hundis* (in accordance with banking practice) to the debit of its customer's overdrawn current account. There had been no discharge by accord and satisfaction, or by merger.

Dey v. *Mayo* (1), *Patoju Sangayya* v. *Patoju Sanyasi* (2), and *Ex parte Richdale* (3), relied upon.

(1) (1920) 2 K. B. D. 346, 353. (2) (1914) 23 I. C. 545.
(3) (1882) 19 Ch. D. 409.

Halsbury's Laws of England, Volume I, page 592, section 1212, and page 629, section 1270, also *Brown, Janson and Co.* v. *Cama and Co.* (1), and *Ryder* v. *Willet*, (2), referred to—

Halsbury's Laws of England, Volume I, page 31, distinguished.

Held also, that even if the Bank had discharged defendant No. 1 by debiting his overdrawn account, that would not mean that defendant No. 2 was discharged. The position between him and the Bank would be that laid down in section 37 of the Negotiable Instruments Act ; sections 62 and 135 of the Contract Act being inapplicable.

Loader v. *The Chartered Bank of India* (3), referred to.

First appeal from the decree of Pandit *Omkar Nath*, Zutshi, *Subordinate Judge, 1st class, Lahore, dated the 2nd January 1923, directing the defendants 1 and 2 to pay to the plaintiff the sum of Rs. 36-3-0 with interest, etc.*

SARDHA RAM and PARTAP SINGH, for Appellant.

M. C. MAHAJAN and H. R. MAHAJAN, for Respondents.

JUDGMENT.

ADDISON J.

ADDISON J.—The plaintiff Bank sued for recovery of Rs. 6,677-9-3, principal and interest, on two *hundis*, payable at sight, drawn by defendant No. 2 in favour of defendant No. 1 on a Bombay firm. They were indorsed on the 21st June 1922 to the Bank by defendant No. 1 and were dishonoured by the drawee, due notice of this being given to the defendants. Only defendant No. 1 defended the suit, his principal pleas being (1) that the *hundis* were given for collection only and that, though credit was at once given for them in the current account of defendant No. 1 with the Bank, they had in fact noth-

(1) 6 T. L. R. 250 (2) (1836) 7 C. and P. 608.
(3) (1913) 21 I. C. 222.

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ing to do with that account; (2) that the Bank later agreed to adjust them in the current account, this being done on the 18th July 1922 and that, in this way, they had merged in the current account, which was an overdraft account by agreement; and (3) that the *hundis* were discharged by the amount due on them being debited in the current account and pass-book of defendant No. 1. It was urged that for these reasons there was no cause of action on the *hundis* though there was against defendant No. 1 alone on the overdrawn current account.

It might be mentioned that defendant No. 1 is now an insolvent though this was not the case when the suit was brought. The Bank's case was that there was an indorsement of the *hundis* in their favour for consideration and that they were not given as collateral security against the overdrawn account. The trial Court held (1) that the *hundis* were not given to the Bank for collection; (2) that the liability on the *hundis* had not merged into the general liability on the current account of defendant No. 1 with the Bank; (3) but that, by the Bank's action in debiting the already overdrawn current account of defendant No. 1 with the amount of the *hundis* after they were dishonoured, they were virtually discharged as that was the same thing as the payment by defendant No. 1 of the sum debited. For reasons which need not be detailed the suit was not completely dismissed but a decree was given for the small sum of Rs. 36-3-0 with future interest against the defendant. Against this decision the Bank has appealed.

The current account of defendant No. 1 with the Bank opened in May 1922. It remained a credit account till the 19th June, on which date it became a

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debit account to the extent of Rs. 4,969-4-0. This was due not to an arrangement between the parties but to an oversight on the part of the Bank. Two cheques for Rs. 8,712-11-4, drawn by defendant No. 1, were presented on the 13th June to the Clearing Bank which sent them to the plaintiff Bank. The latter intimated to defendant No. 1 that his account was not in funds to that extent and it also intended to return the cheques unpaid to the Clearing Bank on account of certain irregularities in them so that they might again be presented after correction of the irregularities, by which time defendant No. 1 also might have placed his account in sufficient funds. The cheques were however mislaid and not returned to the Clearing Bank that they with the result that in accordance with the rules they were paid. With the consent of defendant No. 1 the Bank debited his account with their amounts and in this way this account was overdrawn for the first time. The Bank also honoured three very small cheques of defendant No. 1 to the next day, *i.e.*, on the 20th June, though his account was then overdrawn. It could not have refused to do so, seeing that the fact that it had been allowed to become overdrawn was due to the Bank's own act. Thereafter, defendant No. 1 gave the Bank two *hundis* on Jhelum and two on Abbottabad, the amounts of which were credited to his account at once before collection. This brought the debt balance down to Rs. 1,988-8-5. Then defendant No. 1 indorsed the two suit *hundis* in favour of the Bank which immediately on the 21st June gave him credit for their full amount, thereby changing the debit balance to a credit balance of Rs. 4,594-15-7. The same day defendant No. 1 was allowed to draw out on his own behalf Rs. 4,550, thus reducing the

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credit balance to Rs. 44-15-7. The *hundis* were not honoured and their amount was debited by the Bank on the 18th July 1922 in the passbook of defendant No. 1. At that time his current account was already overdrawn.

It is clear from the course of these transactions that the *hundis* were not given for collection. The amounts were credited at once to defendant No. 1 who in fact by means of this credit was able to draw out Rs. 4,550 cash. There can, therefore, be no question but that the Bank was the holder in due course of the *hundis*. The authorities are quite clear on this point. In *Dey* v. *Mayo* (1), it is said:— "There is no doubt that a Bank which credits the customer with the amount of a cheque as soon as it is paid in to his credit is usually in the position of a holder in due course of the cheque and collects the same not for the customer, but for itself". In *Patoju Sangayya* v. *Patoju Sanyasi* (2), it was held by the Madras High Court that where from the terms of an indorsement on a promissory note, no accountability can be inferred between the indorser and indorsee, it is not an indorsement for collection merely, and the holder alone can bring a suit on the note. In *Ex parte, Richdale* (3), it was held that when a customer pays a cheque to his bankers with the intention that the amount of it shall be at once placed to his credit and the bankers carry the amount to his credit accordingly, they become immediately holders of the cheque for value, even though the customer's account is not overdrawn. In Halsbury's Laws of England, Volume I, page 592, section 1212, it is said that the position of a holder for value can be set up by the

(1) (1920) 2 K. B. 346, 353. (2) (1914) 23 I. C. 545.
(3) (1882) 19 Ch. D. 409.

Bank where cash has been given for the cheque over the counter; where the cheque is paid in in reduction of an overdraft; and where the cheque is paid in on the express condition of being at once drawn against and is so drawn against. In the present case, the account was overdrawn, the *hundis* were paid in in reduction of the overdraft which was an accidental overdraft and not one by agreement; the customer was at once allowed to draw against the credit balance thus established; while the indorsement was a full one. In these circumstances there is no doubt that the Bank was the holder in due course of the *hundis*. It does not matter that the amount of the *hundis* was carried to the current account. In the case of a customer of a Bank that is the usual course (See Halsbury's Laws of England, Volume I, page 629, section 1270).

On behalf of the appellant it was argued that by merely adding the amounts of the dishonoured *hundis* to the debit side of an already overdrawn account and by showing this debit in the passbook, the Bank did not discharge the *hundis*. This was the only point found against the appellant by the trial Judge who held that this meant the same thing as the payment by defendant No. 1 of the amounts due on the *hundis* which were thus discharged by payment. This is obviously wrong as it cannot be said that there was a discharge by accord and satisfaction. There appears only to have been the one account and, when the *hundis* were returned unpaid, the Bank, as an account transaction, simply showed in the passbook that defendant No. 1 was liable to the extent of the dishonoured *hundis*. This did not mean that the Bank gave up its rights in the *hundis* as against either of the defendants. On behalf of

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the respondents it was argued that this was a discharge by merger, rather than by accord and satisfaction, and reference was made to Halsbury's Laws of England, Volume I, page 31. It is stated there that a cause of action may be extinguished by merger, as when a person, who takes a security of a higher legal character than he already possesses, extinguishes his remedies upon the existing cause of action, *e.g.*, by taking a bond for a simple contract debt or recovering a judgment. But that obviously did not happen in the case before us. In fact the contention of the learned counsel for the respondents is that the Bank gave up a good cause of action against two persons on a negotiable instrument by exchanging it for the unsecured liability of one of those persons only. The question of merger is one of fact and it is impossible to hold that there was a discharge by merger in the present case.

There are 2 letters of defendant No. 1 to the Bank, dated the 5th and 18th July, stating that he will do his best to adjust his overdrawn account soon; and it is probable that the Bank would not have sued on the *hundis*, had the account been adjusted, as by doing so, the Bank would have been paid. But the Bank never agreed to give up its rights in the *hundis* and in fact gave notice of suit on the two *hundis* to both defendants on the 18th July, *i.e.*, on the same day as it debited their amounts in the pass-book of defendant No. 1. Another letter, Exhibit D. 2, was written by the Agent of the Bank on the same day to defendant No. 1, giving him two days more to settle the account before the suit would be brought, but it cannot be inferred from this letter that the Bank's rights in the *hundis* were given up and that the Bank only held defendant No. 1 liable

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on his current account, though it was prepared not to sue if that account was balanced by payment. There could be no more emphatic declaration by the Bank that it treated the *hundis* as a debt and unpaid than the facts (1) that they gave notice of suit on the *hundis* to the defendants on the 18th July 1922, the date when the debit was made, and (2) that the Bank did bring the present suit on the 31st July 1922 (See in this connection *Brown, Janson & Co.* v. *Cama & Co.* (1). I would therefore hold that there was no discharge by accord and satisfaction, or by merger or in any other way.

A very similar case is *Ryder* v. *Willet* (2). A drew a bill on B and indorsed it to a Bank where he had an account. B accepted the bill but did not pay it. The Bank then entered it on the debit side of A's account. The state of A's account at the time of the entry and up to the action was against A. It was proved that the Bank had, on former occasions, allowed A to overdraw his account, though there was no agreement to this effect. It was held that these facts did not prove a plea that the Bank had received from A £100 6s. in satisfaction of the bill. That case is similar to the present except that this suit is against the drawer, who stands in the same position as the acceptor did in the English case (See section 37 of the Negotiable Instruments Act).

Besides, even if it could be held that the Bank discharged defendant No. 1 from liability by debiting his already overdrawn account, that would not mean that defendant No. 2, who has not defended this suit, was discharged. I have held that the Bank was a holder in due course. That being so, the position between defendant No. 2 and the Bank is that laid

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down in section 37 of the Negotiable Instruments Act. Defendant No. 2 is liable on the *hundis* as principal debtor while defendant No. 1 is liable as surety for the debt. Section 135 of the Contract Act has therefore no effect while section 62 of the Contract Act does not apply as defendant No. 2 was not a party to the alleged novation. There thus could be no merger of the *hundis*, so far as defendant No. 2 is concerned, into the liability of defendant No. 1 on his current account. (See in this connection *Loader* v. *The Chartered Bank of India* (1).) Defendant No. 2 is obviously liable in any case.

The only other argument advanced was on behalf of the respondents to the effect that there was one current account and one liability on it and that the *hundis* merged in that account and thus the Bank had not an independent right of suit on the *hundis*. Alternatively, it was contended that the giving of the *hundis* was a conditional payment towards the overdrawn balance and that, when they were dishonoured, the Bank had only the right to fall back on the original cause of action, *i.e.*, the overdrawn current account. This argument cannot stand and is answered by the preceding discussion. Once it has been held that the Bank is the holder in due course, it follows, that it has all the rights of such holder. This is clearly laid down at the foot of page 592 of Halsbury's Laws of England, Volume I, section 1212. Further, the case set up by defendant No. 1 is inconsistent with the above contention. He pleaded that the *hundis* were given for collection and had in fact nothing to do with his current account, though he received credit in that account for them. According to his pleadings, it was only later that the Bank

(1) (1913) 21 I. C. 222.

agreed to adjust them in the current account and that, in this way, they merged in that account and were discharged. He has failed in that part of his case. It was also never the case of defendant No. 1 that these *hundis* were conditional payments towards the overdrawn current accounts. This contention of respondents' counsel must therefore fail.

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I would accept the appeal, and decree the suit in full with costs throughout and future interest at 6 *per cent. per annum* from date of suit till date of realization against both defendants.

AGHA HAIDER J.—I concur.

AGHA HAIDAR J.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Jai Lal.

MAZULLA KHAN AND ANOTHER (PLAINTIFFS) Appellants.

versus

GHAZI KHAN AND OTHERS (DEFENDANTS) Respondents

Civil Appeal No. 774 of 1923.

1927

April 28.

Punjab Limitation (Custom) Act, I of 1920, sections 5 and 6—whether plaintiffs who were minors can claim 3 years after attaining majority or must sue within one year after commencement of the Act—Applicability of sections 6 and 8 of the Indian Limitation Act, IX of 1908—Statute—construction of.

* The sale in 1904 of certain ancestral land held under Customary Law was contested by the vendor's sons in a suit instituted in 1924. The plaintiffs were infants at the time when the cause of action accrued to them and they sued within 3 years after attaining majority. They relied upon the provisions of sections 6 and 8 of the Indian Limitation Act, and of Section 5 of the Punjab Limitation (Custom) Act, I of