FULL BENCH (CIVIL).

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, Mr. Justice Baguley, and Mr. Justice Sharpe.

J. K. SHAHA *v.* DULA MEAH.*

1939
Mar. 20.

Burden of proof—Promissory note—Maker's signature admitted or proved—Defendant's plea of not signing the note in the condition produced—Burden of proof on defendant—Negotiable Instruments Act, ss. 20, 118.

If the plaintiff sues on a promissory note, and the defendant admits, or has had proved against him conclusively his signature and/or his thumb impression on the promissory note, but the defendant asserts that he did not sign the promissory note in the condition in which it is filed, the burden of proof is upon the defendant.

Having regard to ss. 20 and 118 of the Negotiable Instruments Act it is for the signer to prove in the first instance that the negotiable instrument is not what it appears to be.

Jagmohan v. *Dube*, I.L.R. 54 All. 375 ; *Mallavarapu* v. *Boggavarapu*, I.L.R. 58 Mad. 841 ; *Moti* v. *Mahomed Mehdi*, I.L.R. 20 Bom. 367, referred to.

Hoe Moh v. *Seedat*, I.L.R. 5 Ran. 527, overruled.

A reference for the decision of a Bench was made in the following terms by

1939
Feb. 14.

BAGULEY, J.—This is a very simple matter, but the point raised is important and I think should be settled once for all as there is a ruling in the Rangoon series which, I understand, has given rise to considerable criticism, and which, with respect, I myself think is not correct. It is a case which happens very often. A sues X on a promissory note. X admits, or has proved conclusively against him, his signature on the promissory note. His plea is "I signed my name on the stamp on a piece of blank paper or a form containing blanks." Does this shift the burden of proof on to the defendant to show that something had been written above the signature which he had never authorized ?

The case which I refer to is *Hoe Moh* v. *I. M. Seedat* (1) and the material passage is to be found at page 529-530 :

> " All that the defendant admitted in this case was that his signature appeared on the document filed. Now it is quite clear that if the plaintiff had merely set forth in

* Civil Reference No. 2 of 1939 arising out of Civil Revision No. 377 of 1938 of this Court from the judgment of the Small Cause Court of Rangoon in Civil Regular No. 1188 of 1938.

(1) (1927) I.L.R. 5 Ran. 527.

1939

SHAHA
v.
DULA MEAH.

BAGULEY, J.

the plaint that the defendant's signature appeared on the document without any further allegation of fact his plaint must have been rejected as disclosing no cause of action. It was a necessary averment to state that the defendant had promised to pay him the sum named with interest. The admission made by the defendant did not establish the plaintiff's case, and if there had been nothing on the pleadings besides the plaint and the defendant's denial, the suit must have failed."

Now it seems to me that this is not quite correct. In addition to the pleadings there was the promissory note itself, and the points on which the Court at that stage would have to decide would be the pleadings and the promissory note with its admitted signature. If no further evidence were available with regard to the note, it seems to me that the defendant would have to fail because, when a document is filed, the assumption is that the document is and means what it says. The document would be a promissory note signed by the defendant, and it will be for the defendant to show that it was other than what it appeared to be. At the stage when the proceedings consist merely of the pleadings and the promissory note the burden of proof, in my opinion, should be regarded as being on the defendant, because he has got to prove that the promissory note is not what it appears to be; *omnia præsumuntur rite esse acta.* I would therefore refer to a Bench of as many Judges as my Lord the Chief Justice may direct the following question:

"If a plaintiff sues on a promissory note, and the defendant admits, or has had proved against him conclusively his signature and/or his thumb impression on the promissory note, but the defendant asserts that he did not sign the promissory note in the condition in which it is filed, is the burden of proof on the plaintiff or on the defendant?"

Hoe Moh's case says that the burden remains upon the plaintiff. With respect I am of opinion that the burden lies upon the defendant to show that the promissory note was not in its existing form at the time that he executed it.

This is a very small case, and I am told that the parties are not in a position to pay any extra costs. I therefore direct that the Bench copies should be prepared free of charge because I make the reference in order that the case referred to may be established

as good law beyond criticism, and criticism it has undoubtedly received in the past, or else that it may be overruled.

Doctor for the applicant. No averment of consideration is necessary in a plaint on a promissory note by the payee against the maker. See Bullen & Leake's Precedents of Pleadings, 9th Ed. pp. 124, 125. A person signing a blank negotiable instrument and handing it over to the holder gives him *prima facie* authority to make or complete the instrument. S. 20 of the Negotiable Instruments Act. Under s. 118 of the Act there is a statutory presumption that every negotiable instrument is drawn up for consideration. In the circumstances it is for the defendant to prove that the document has not been drawn up in the manner authorized by him. The decision in *Hoe Moh* v. *I. M. Seedat* (1) requires reconsideration. See *Percival* v. *Frampton* (2).

A. N. Basu for the respondent. If a document is written out in full and then signed the Court will be justified in drawing the inference that the whole document has been executed. No document can be signed in blank except a negotiable instrument, but when a defendant says that he put his signature on a blank paper he has not thereby executed the document in favour of the plaintiff for consideration. Execution as defined by s. 2 (*12*) of the Stamp Act merely means signing a document, and it is not possible to draw any inference of admission therefrom as to any other thing. See s. 17 of the Evidence Act for the definition of "admission." One has to see what the defendant admits—whether the execution of the document or his signature.

---

(1) I.L.R. 5 Ran. 527. (2) (1835) 4 L.J. Rep. 139.

1939

SHAHA
v.
DULA MEAH.

ROBERTS, C.J.—The question in this reference is :

"If the plaintiff sues on a promissory note, and the defendant admits, or has had proved against him conclusively his signature and/or his thumb impression on the promissory note, but the defendant asserts that he did not sign the promissory note in the condition in which it is filed, is the burden of proof on the plaintiff or on the defendant ?"

The answer is that in the circumstances set out the burden of proof is upon the defendant.

By section 118 of the Negotiable Instruments Act, 1881, until the contrary is proved it shall be presumed that every negotiable instrument is made or drawn for consideration and by section 20 of the same Act where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments and either wholly blank or having written thereon an incomplete negotiable instrument he thereby gives *prima facie* authority to the holder thereof to make upon it, or to complete upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp.

It will be seen that the section requires that the instrument should be stamped in accordance with the law and that it should be delivered. If the signer intends the document to become a negotiable instrument it is for him to take care that it is issued in accordance with his intentions, and for him to prove that the person into whose hands it has found its way had not in fact the authority to make or complete it. If he does not intend the document to be a negotiable instrument at all he will not be liable for the act of a bailee or thief who turned it into one : his signature does not operate as an estoppel against him. But adopting the words of the learned Judge who made the reference, he has to prove that the promissory note is not what it appears to be.

1939

SHAHA v. DULA MEAH.

ROBERTS, C.J.

The order of reference mentions the case of *Hoe Moh* v. *I. M. Seedat* (1). With respect I cannot agree with the decision in that case and the following passage in the judgment is, I think, gravely misleading :

"All that the defendant admitted in this case was that his signature appeared on the document filed. Now it is quite clear that if the plaintiff had merely set forth in the plaint that the defendant's signature appeared on the document without any further allegation of fact his plaint must have been rejected as disclosing no cause of action. It was a necessary averment to state that the defendant had promised to pay him the sum named with interest. The admission made by the defendant did not establish the plaintiff's case, and if there had been nothing on the pleadings besides the plaint and the defendant's denial, the suit must have failed. It is quite true that the fact that the defendant's signature appears on the note is of very great evidentiary value, and in many cases of this nature it might be sufficient corroboration of evidence given by the plaintiff himself to establish the plaintiff's case. That would depend on the circumstances of the particular case. But the defendant did not and never has admitted the material propositions of fact which would give the plaintiff a right to sue, and the burden of proving the loan in our opinion rested on the plaintiff."

Production of the promissory note itself, once the signature is proved or admitted, shifts the burden to the maker. Consideration is presumed in the case of negotiable instruments and need not be proved independently as in the case of an ordinary suit founded upon contract.

The law on this matter is as stated in *Jagmohan Misir* v. *Mendhai Dube* (2). Circumstances may of course exist which would weaken the ordinary presumption that a negotiable instrument has been executed for value received and when all the facts are before the Court the presumption raised by section 118 of the Act may be rebutted and the burden of proof shifted back

(1) (1927) I.L.R. 5 Ran. 527. (2) (1931) I.L.R. 54 All. 375.

1939

SHAHA v. DULA MEAH.

ROBERTS, C.J.

to the plaintiff : [see *Moti Gulabchand* v. *Mahomed Mehdi Tharia Topan* (1) ; *Mallavarapu Narasamma* v. *Boggavarapu Bulli Veerraju* (2)]. It is, however, in plain contravention of the Statute to ignore the presumption raised in the first instance. *Hoe Moh* v. *I. M. Seedat* (3) cannot be taken as good law and must be taken to be overruled. Advocates' fee five gold mohurs.

BAGULEY, J.—I agree and have nothing further to add to what I said in my order of reference.

SHARPE, J.—I agree.

(1) (1895) I.L.R. 20 Bom. 367. (2) (1934) I.L.R. 58 Mad. 841.
(3) (1927) I.L.R. 5 Ran. 527.