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aspect of the case, which we have been above considering, was not presented to the acting learned Chief Judge, and was probably not present to his mind when he was stating the case and framing the questions to be submitted to the Court for opinion, we ought to give our opinion upon it. But we think that, as the question (5) "whether on the facts found the Court was not in error in dismissing the claim" is in the widest possible terms, we are at liberty to determine it; and as the facts are all before us, that we ought not to make shipwreck of a good cause upon the rock of overfine technicality by refusing to entertain it. We answer the fifth question in the affirmative, but do not consider it necessary to answer the other questions submitted for our opinion, as our answer to the fifth question is sufficient to dispose of the case. Costs of the reference will be costs in the case.

Attorneys for the claimants:—Messrs. *Maganlál and Rustomji.*

Attorneys for the attaching creditors:—Messrs. *Ohitnis, Motilál and Málvi.*

## ORIGINAL CIVIL.

*Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.*

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September 25.

IMPERIAL BANK OF PERSIA, PLAINTIFF, v. FATTECHAND KHUB-  
CHAND, DEFENDANT.\*

*Hundi—Bill of exchange—Suit by holder and indorsee against payee and indorser—Presentment to acceptor—Local usage as to presentment—Usage of presentment at Bushire—Negotiable Instruments Act (XXVI of 1881), Secs. 70, 71.*

The plaintiff as holder and indorsee of a *hundi* drawn on one Hájí Mirza sned defendant as payee and indorser to recover Rs. 1,193-4-0 on a *hundi* which had been dishonoured by the acceptor.

It was found by the Court (1) that the local usage at Bushire was to present the *hundi* for payment at the bank and for the acceptor to call at the bank at due date and effect settlement; (2) that the *hundi* in question was presented for payment to the authorized agent of the acceptor at the bank on the due date; (3) that the said agent refused payment and informed the bank that the acceptor would not pay the *hundi*. It was argued that presentment at the bank was not good presentment, having regard to sections 70, 71 and 137 of the Negotiable Instruments Act (XXVI of 1881).

*Held*, that the local usage made the presentment a good presentment.

\* Small Cause Court Suit No. <sup>115</sup>/<sub>5514</sub> of 1896.

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CASE stated for the opinion of the High Court by Rustomji Merwánji Patell, Acting Chief Judge, Bombay Small Cause Court, under section 69 of Small Cause Court Act (XV of 1882) :—

“1. This was a suit by the holders and indorsees of a *hundi* written in the Persian character and drawn in Bombay on one Háji Mirza Ahmed Shirázi for 350 tumans payable fifty days after date. The defendant was the payee and the indorser of the *hundi*. The plaintiffs sent the *hundi* from Bombay to their branch bank at Bushire on the 4th of August, 1895. On that day the acceptor refused payment, and plaintiffs after due notice to the defendant in Bombay filed this suit to recover Rs. 1,193-4-0 as on a dishonoured *hundi*.

“2. The case first came on for hearing on the 11th May, 1896, when the only defences raised were want of notice of dishonour, and payment of the *hundi*, either in whole or in part, by the acceptor. On the application of the defendant's solicitor a commission was issued to Bushire to prove the plea of payment.

“3. On the return of the commission evidence, the suit was heard on 10th August last, when the plea of payment was abandoned by the defendant's solicitor and a fresh defence raised denying that the presentment for payment to the acceptor was made as required by the Negotiable Instruments Act (XXVI of 1881).

“4. The plaintiffs relied on the evidence of the manager, accountant and clerk of the bank at Bushire as taken on commission on the defendant's behalf, and I held as proved (1st) that the *hundi* was presented for payment to the authorized agent of the acceptor at the bank on the due date; (2nd) that the said agent refused payment and informed the bank that the acceptor would not pay that *hundi*; (3rd) that the local usage or custom at Bushire was to present the *hundis* for payment at the bank and for acceptors of *hundis* to call at the bank on the due date to effect settlement.

“5. For the defence it was argued that reading sections 70, 71 and 137 together, the presentment at the bank could not be held valid, and that the suit must fail. This defence was disallowed, as I held that the latter part of section 137 should be read with

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the proviso to section 1, which provides that nothing contained in the Act affects any local usage relating to any instrument in an oriental language. I was of opinion that in the case of native *hundis* the rules of English law were not strictly applicable, and gave judgment for the plaintiff.

“6. At the request of the defendant's solicitor I beg respectfully to submit the following question for their Lordships' opinion :—

“Whether, under the circumstances hereinabove-mentioned and referring to the proviso as to local usage in section 1 of the Act, the presentment at the bank was a presentment that satisfied the requirements of the Act.

“7. The defendant has paid into Court the amount of judgment and professional costs, with Rs. 50 for costs of reference.”

*Macpherson* appeared for the plaintiff.

*Branson* for the defendant.

FARRAN, C. J.:—As we read the case, the local usage or custom found to prevail in Bushire does not exclude the usual presumption which accords with the law as laid down in section 75 of the Negotiable Instruments Act, that what a person can himself do he can do by an authorised agent.

Reading it in that light we have no doubt that the local usage in this case makes the presentment a good presentment, and that the question referred to us must be answered in the affirmative.

Costs of reference to be costs in the suit to be taxed as on the original side of the High Court.

Attorneys for the plaintiffs :—Messrs. *Craigie, Lynch and Owen*

Attorneys for the defendant :—Messrs. *Chalk, Walker and Smelham*.