

holding that the giving of notice was essential to the plaintiffs' right to recover in this action.

The appeal will be dismissed with costs.

Appeal dismissed

Attorneys for the appellants : Messrs. *Collis and Co.*

Attorneys for the respondents : Messrs *Berners and Co.*

Before Mr. Justice Paul.

SOMARIMULL v. BHAIRO DAS JOHURY.

*Bill of Exchange—Subsequent Dishonor of Cheque taken in Payment of Bill
of Exchange when due—Notice of Dishonor—Hindu Law.*

1871
March 31.

The defendant endorsed to the plaintiff a bill of exchange drawn by N. S. & Co. and accepted by C. N. & Co. The bill, at the time it was endorsed to the plaintiff by the defendant, bore the previous endorsement of N. S. & Co. to the defendant. The bill fell due on December 3rd 1870, which was a Saturday, and on that day the plaintiff sent his jemadar to C. N. & Co., the acceptors, to present the bill for payment. The bill was taken by A., one of the members of the firm of C. N. & Co., who gave a cheque for the amount, and took a receipt from the plaintiff's jemadar, striking out the signature of C. N. & Co. as acceptors, but without the plaintiff's consent. The plaintiff's jemadar took the cheque immediately to the bank, but the bank was closed. Thereupon he returned to C. N. & Co., and informed them that the bank was closed, and demanded cash. The plaintiff alleged that it was then stated that the cheque would be honored on Monday. The plaintiff's jemadar then went and informed the gomasta of the plaintiff of what had been done. The plaintiff's gomasta sent him to the defendant's firm to give him notice of what had taken place. It was alleged that at this interview the defendant's liability was admitted in case the cheque was not honored, and the plaintiff's jemadar was advised to wait until Monday, the defendant stating that he also had a cheque for Rs. 7,000 from C. N. & Co., This was denied by the defendant. On Monday, 5th December, the cheque was presented to the bank for payment, and was dishonored. The plaintiff's gomasta went to the defendant's kothi and gave notice of the dishonor of the bill and cheque, and asked him to pay the amount of the bill. The defendant asked for the bill, and plaintiff's gomasta went to C. N. & Co., and brought back the bill with the name of C. N. & Co., which had been struck out, replaced. The defendant seeing the bill was over

1871
SOMARIMULL
v.
BHAIRO DAS
JOHURY

due, refused to pay the amount. The cheque was thereupon returned; to C. N. & Co., and the bill retained by the plaintiff, who, on 6th December, caused written notice of dishonor to be given to the defendant. *Held*, that the cheque must be taken to have been merely a conditional payment; and when it was dishonored the liability on the original bill revived. *Held* also, that reasonable notice of dishonor was given, whether the bill be taken to have been dishonored on the Saturday or on the Monday.

Semble.—Notice of dishonor, as between endorsee and endorser on bill transactions among Hindus, is not necessary, unless, by want of it, [the endorser would be prejudiced.

THIS was a suit to recover the sum of Rs. 2,500, and interest on a bill of exchange endorsed by the defendant to the plaintiff. The plaintiff carried on business in Calcutta, under the name of Hamir Sing Somarimull; the defendant was described as carrying on business also in Calcutta, under the name of Nowbut Roy Joalanath. The plaint stated the cause of action as follows:—That Narayan Sing and Co. on 1st September 1870, made the bill of exchange in question, and directed the same to Messrs. Charles Nephew and Co., and thereby required Messrs. Charles Nephew and Co. to pay to the order of Narayan Sing and Co. Rs. 2,500, three months after the date thereof, which period has now elapsed, and Narayan Sing and Co. endorsed the same to Narayan Sing Amrit Sing, who endorsed the same to the defendant, and the defendant on 22nd November 1870 endorsed the same to the plaintiff, and that Messrs. Charles Nephew and Co. did not pay the bill although it was duly presented to them for payment on the day it became due; of all which the defendant had notice. The plaintiff also sought to recover the said sum of Rs. 2,500 as money lent by him to the defendant at his request, and for money found to be due to the plaintiff from the defendant on an account stated.

The case of the plaintiff, as put forward in his written statement, was that the bill of exchange in suit was discounted by the plaintiff for the defendant's firm, and was at that time endorsed in blank by Narayan Sing and Co., by Amrit Sing Narayan Sing, and by Nowbut Roy Joalanath; that the bill fell due on 3rd December 1870, and was on that day presented by Narayan Sing, the plaintiff's jemadar, to Messrs. Charles Nephew and Co.,

the acceptors, for payment, when Messrs. Charles Nephew and Co. struck out their signature which they had put thereon when accepting it, and ordered payment; that about 2 o'clock in the afternoon of the same day they gave a cheque for the amount of the bill on the Calcutta Bank, which was at once taken by Narayan Sing to be cashed, but being Saturday, the bank was then closed; that thereupon he returned to Messrs. Charles Nephew and Co., and informed them of that circumstance, and then he went to the kothi of the plaintiff, and informed the plaintiff's gomasta of what had taken place, and afterwards, at the request of the plaintiff's gomasta, he called at the kothi of the defendant, and informed the defendant's gomasta Indu Mull that a cheque had been taken on account of the bill, but could not be cashed, and asked him to pay the amount of the bill as the plaintiff had obtained it from their firm. The gomasta stated that the defendant was not then at the kothi; but shortly afterwards Narayan Sing went again to the defendant's kothi, and asked for payment of the amount of the bill, when the gomasta told him there was no fear, for that the defendant also had received a cheque from Messrs. Charles Nephew and Co., which would be honored on Monday; thereupon Narayan Sing replied that he would not wait till Monday, unless the defendant's firm endorsed the cheque, but the gomasta declined to do so, saying that there was no fear, that the defendant was liable, and that the money would be received by the plaintiff on Monday; that on Monday the 5th December the cheque was presented to the bank for payment, but was dishonored, whereupon the plaintiff's gomasta called at the defendant's kothi, and informed his gomasta of the dishonor of the cheque, and asked him to pay the amount thereof; that the defendant's gomasta thereupon asked him to get the bill of exchange, and he would pay the same; whereupon the plaintiff's gomasta went to Messrs. Charles Nephew and Co., and got them to replace their signature as acceptors, which had been struck out, and took the bill and cheque to the defendant's kothi, saying, "Keep either the cheque or the bill, and pay me my money;" that the defendant's gomasta took the bill and said that as the due date had expired he would not pay the amount; that the plaintiff's gomasta thereupon returned

1871

 SOMARIMULL
 v.
 BHAIRO DAS
 JOHURY.

1871
SOMARIMULL
v.
BHAIRG DAS
JOHURY.

the cheque to Messrs. Charles Nephew and Co., and took back the bill of exchange, and on 6th December caused notice of dishonor in writing to be given to the defendant's firm; that when the cheque was given by Messrs. Charles Nephew and Co. Narayan Sing endorsed on the bill, "Narayan Sing has received cheque," but this endorsement was struck out when the dishonored cheque was returned to Messrs. Charles Nephew and Co.

The defendant put the plaintiff to proof that the bill was duly presented for payment to the acceptors on the day it became due; and stated that the acceptance of the cheque for the amount of the bill precluded the plaintiff from suing to recover the amount of the bill; and that if the bill was presented for payment and was dishonored, lawful notice of such presentment and dishonor was not given to the defendant.

Upon the trial, there was a conflict of evidence, which is sufficiently noticed in the judgment.

Mr. *Marindin* (Mr. *Graham* with him) for the plaintiff, in opening the case, contended that the plaintiff, by receiving the cheque for the amount of the bill, had not discharged the defendant from liability on the bill when the cheque was afterwards dishonored—*Chitty on Bills*, 277. The plaintiff did not accept the cheque in exchange for the bill, nor, by accepting it as he did, did he consent to any postponement of payment, although he left the bill with the acceptor—*Russell v. Hankey* (1). A cheque is not payment, unless it is agreed to be received as payment. No notice of dishonor was necessary by Hindu law. [PAUL, J., refers to *Gapinath v. Abbas Hossein* (2), where

(1) 6 T. R., 12.

THE judgment of the Court was
(2) Before Sir Barnes Peacock, Kt., delivered by
Chief Justice, and Sir Chas. Jackson.

The 22nd May 1862.,

GAPINATH AND ANOTHER v. ABBAS
HOSSEIN.

The Advocate-General and Mr. Bell
for the plaintiffs.

Mr. Peterson and Mr. Graham for
the defendant.

PEACOCK, C.J.—This was an action of assumpsit brought by the plaintiffs, who were the holders of a hundi for Rs. 2,000 drawn by the defendant upon one Mirza Abdul Hossein. The plaintiffs allege that the defendant, who was a Mahomedan inhabitant of Calcutta, on 12th October 1860, made this hundi, and directed