BENGAL LAW REPORTS.

[ORIGINAL CIVIL.]

Before Mr. Justice Macpherson.

1872
April 12.

HAZARI MULL NAHATTA AND ANOTHER *v.* SOBAGH MULL DUDDHA.

Hundis, Property in—Hundis sent to Agent for Realization.

S. R., the plaintiffs' agents in Calcutta, accepted hundis for Rs. 12,000 drawn upon them by a branch house of the plaintiffs' firm, and the plaintiffs at different times sent to S.R. hundis amounting in value to Rs.11,400, with instructions to realize them, and to apply the proceeds towards payment of the Rs. 12,000. S. R. had paid Rs. 7,000 of this amount, and they had realized Rs. 6,400 out of the Rs. 11,400, when they stopped payment. At that time two unmatured hundis, for Rs. 2,500 each, remained in their hands, and these they endorsed over to the defendant after maturity in trust for their creditors. In an action by the plaintiff against the defendant to recover the two hundis.

Held, that the hundis, having been sent to S. R. for the special purpose of enabling them to meet their acceptances for Rs. 12,000, remained the property of the plaintiffs subject to a lien of S. R. for Rs. 600,

THIS was a suit to recover possession of two hundis for sicca Rs. 2,500 each, or their value and damages for their detention, and for an injunction restraining the defendant from negotiating or otherwise alienating them. The hundis were drawn by two up-country firms upon firms in Calcutta, and were made payable to the plaintiffs 61 days after date, The plaintiffs sent them without endorsement to their Calcutta agents, Suratram Rybhun, with instructions to procure their acceptance, and to realize them at due date. Suratram Rybhun had previously to this accepted hundis to the value of Rs. 12,000 drawn upon them by a branch house at Lushkur of the plaintiffs' firm; and the plaintiffs had at different times sent them hundis amounting in value to Rs. 11,400, the two hundis, the subject of the present suit, being among the number, with instructions to realize them

1872

HAZARIMULL NAHATTA v. SOBAGHMULL DUDDHA.

and apply the proceeds towards payment of the Rs. 12,000. Of the hundis so sent them for realization, Suratram Rybhun had realized Rs. 6,400, and they had paid Rs. 7,000 out of the Rs. 12,000 for which they had given their acceptances, when they stopped payment, and the plaintiffs thereupon became liable to the holders of the remaining acceptances. The two hundis sued upon had not then matured and remained unpaid in the hands of Suratram Rybhun. Shortly after stopping payment, Suratram Rybhun convened a meeting of their creditors with a view to effecting some compromise with them, and it was then agreed that they should endorse the two hundis over to the defendant, as a member of the firm of Sadasuk Udoy Mull Sobagh Mull, and that the defendant should realize the hundis, and distribute the proceeds rateably among the Calcutta creditors of the firm of Suratram Rybhun. Suratram Rybhun's gomasta accordingly endorsed and delivered the hundis to the defendant. The plaintiffs demanded the two hundis from the defendant, but the latter declined to give them up on the ground that he had received them from a committee of creditors, without whose authority he could not part with them.

Mr. *Branson* and Mr. *Evans* for the plaintiffs.

Mr. *Marindin* and Mr. *Goodeve* for the defendant.

The arguments are sufficiently stated in the judgment.

MACPHERSON, J.—This action is brought to recover two hundis, each for sicca Rs. 2,500. The one is dated the 3rd day of the dark side of the moon in the month of Jaishta of the Sambat year 1928, corresponding with the 7th May 1871, and drawn by the firm of Mulchand Dhanrup Mull of Jeypore on the firm of Srikissen Das Balkissen of Calcutta, in favor of the plaintiffs, payable 61 days after date; the other is dated the 3rd day of the light side of the moon in the same month and year, corresponding with the 22nd May 1871, drawn by the firm of Ramratan Goberdhun Das of Jeypore on their Calcuttta firm, and payable to the plaintiffs 61 days after date.

These hundis, without having been endorsed by the plaintiffs, were sent by them to Calcutta to the firm of Suratram Rybhun, who were their agents and bankers here. Suratram Rybhun got these hundis accepted by the firms on which they were drawn; but, before they fell due, Suratram Rybhun stopped payment. After the bills became due, a meeting was held at Suratram Rybhun's place of business, which a number of the creditors and neighbours of the firm attended; and in compliance with a resolution come to at that meeting, Suratram Rybhun's gomasta endorsed the two hundis over to the defendant, who undertook to hold them for the benefit of the Calcutta creditors of Suratram Rybhun.

The plaintiffs claim the hundis as having been their property at the time when they were endorsed over to the defendant; and the principal question is, to whom did the hundis belong at that time?

This question depends on the circumstances under which they were sent by the plaintiffs, and under which they were received and held by Suratram Rybhun.

The plaintiffs had long had dealings with Suratram Rybhun; and it appears on the evidence that there were separate accounts kept of separate and independent transactions between different firms of the plaintiffs (who had various branch firms carrying on business at different places up-country) and Suratram Rybhun. The bills, the subject of suit, were two of a series, amounting in value to Rs. 11,400 sent down by the plaintiffs to Suratram Rybhun to enable that firm to meet bills for Rs. 12,000 drawn on them by the plaintiffs' firm at Lushkur (Gwalior.) The plaintiffs' case throughout has been that these two hundis were sent in respect of this particular transaction of Rs. 12,000, and that case, I think, is proved by the evidence of Suratram Rybhun's gomasta. It appears to me that these bills, being sent down for the special purpose of enabling Suratram Rybhun to take up the hundis for Rs. 12,000 drawn by the Lushkur firm, still remained the property of the plaintiffs, and were in the hands of Suratram Rybhun merely as agents of the plaintiffs to obtain payment when due, so as to provide for the hundis for Rs. 12,000.

1872

HAZARIMULL NAHATTA v. SOBAGHMULL DUDDHA.

The case of *Giles* v. *Perkins* (1) shows the principle on which the parties were dealing. In that case Lord Ellenborough, C. J., says:—"Every man who pays bills not then due into the hands of his banker places them there, as in the hands of his agent, to obtain payment of them when due. If the banker discounts the bill, or advances money upon the credit of it, that alters the case; he then acquires the entire property in it, or has a lien on it *pro tanto* for his advance." The remarks of Bayley and Holroyd, JJ., in the case of *Thompson v. Giles* (2) also seem applicable. Bayley, J., says:—" It has been argued for the defendants that we must infer an agreement to have been made between the banker and his customer, that as soon as the bills reached the hands of the former, the property should be changed. Undoubtedly, if there were any such bargain, the defendants would be entitled to our judgment; but if there be no such bargain, then the case of customer and banker resembles that of principal and factor, and the bills remaining in specie in the banker's hands will, notwithstanding the bankruptcy, continue the property of the customer; *Scott* v. *Surman* (3) and *Bolton* v. *Puller* (4) establish that as a general rule." And Holroyd, J., says:—"I am of opinion that the bills in question did not, under the circumstances of this case, become the property of the bankers, and that the defendants, therefore, have not any sufficient answer to this action. It is perfectly clear as a general rule, and indeed is not disputed on the present occasion, that, if a customer pay bills into a banker's hands, although it gives him a right to expect that his drafts will be honored to the amount of the bills paid in, yet the property in the bills is not altered; they still remain the property of the customer, although the banker may have a lien to the extent of his advances. The defendants must, therefore, show such special circumstances as will operate to change the property, and vest it in the assignees, either as standing in the situation of the bankrupts,

(1) 9 East., 11.
(2) 2 B. & C., 422.
(3) Willes, 400.
(4) 1 B. & P., 539.

or by virtue of 21 Jac. 1, c. 19, s. 11." Then he says :—"Now it is hardly to be supposed that the bankers intended to debit themselves presently with the whole sum that was to be received in future. In order to change the property, it must be shown that the bankers bought the bills, or discounted them, which is indeed the same thing; then the customer might have immediately sued the bankers for the price which they agreed to give for the bills, but still retained in their hands; and if the customer did not endorse the bills, and they were afterwards dishonored, the bankers under such circumstances would have no remedy against him."

It is clear that Suratram Rybhun would have been the very last to admit that they would have been liable for the full amount of the hundis, if they had been dishonored on the due date. There is nothing to show that Suratram Rybhun treated these bills as cash. The only thing approaching to evidence of that is the letter of Suratram Rybhun's gomasta set out in paragraph 4 of the plaintiffs' written statement, in which he says after acknowledging receipt of one of these hundis, "I will credit it to you after it has been accepted." But I regard this merely as indicating that, if the bill was accepted, he would (so far as the amount of this hundi went) be ready to pay the bill for Rs. 12,000 drawn upon him. The case is presented to the Court in a very naked form. We have no books of account before us. We do not know with absolute certainty how the bills were intended to be dealt with: but I have myself no doubt they were intended to be treated in the same manner as the bills in the two cases cited.

Mr. Marindin says that Suratram Rybhun had given consideration for the bills, inasmuch as they had accepted the bills drawn upon them. But what Suratram Rybhun had to do was not only to accept but to pay. If they had accepted and paid the bills, that would have no doubt formed a valuable consideration; but the mere acceptance forms no consideration, when it is proved that Suratram Rybhun did not pay these bills, but returned them unpaid, and having advanced nothing on them. It is admitted that Suratram Rybhun paid the bills of the Lushkur firm to the extent of Rs. 7,000, while they accepted

1872

HAZARI MULL NAHATTA v. SOBAGH MULL DUDDHA.

bills to the extent of Rs. 12,000. The total amount which they received from the plaintiffs (including the two hundis now sued for) was Rs. 11,400; so that they paid Rs. 600 more than the value of the other hundis sent. That being so, they had a lien on these two bills for Rs. 600. I think it is clear from the evidence, and it is almost admitted by the plaintiffs, that, when Suratram Rybhun stopped payment, they had a lien on these bills to the extent of Rs. 600.

So far I deal with the case as between Suratram Rybhun and the plaintiffs.

Mr. Marindin, however, contends that the bills were endorsed over for a good consideration (to provide for the body of the creditors of Suratram Rybhun), and that the defendant is entitled to hold them, even if Suratram Rybhun themselves could not have done so. But the defendant took no higher title than Suratram Rybhun had; for the endorsement was after due date, and the circumstances under which Suratram Rybhun held the hundis were known.

The plaintiffs are entitled to recover the bills, subject to the lien for Rs. 600, and to costs on scale No. 2.

Attorneys for the plaintiffs: Messrs. *Beeby* and *Rutter*.

Attorney for the defendant: Mr. *Linton*.

[APPELLATE CRIMINAL.]

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Ainslie.

QUEEN *v.* CHANDRA JUGI (APPELLANT).*

1872
April 9.

Power of a single Judge of the High Court—Appeals in Criminal Cases.

A Judge of the High Court, sitting alone on the Appellate Side, has the power to hear and dispose of appeals in criminal cases.

THE Sessions Judge of Jessore, not concurring with the assessors, found the prisoner Chandra Jugi guilty of an attempt to commit murder, and sentenced him to rigorous imprisonment

* Criminal Appeal, No. 143 of 1872, from an order of the Sessions Judge of Jessore, dated the 18th December 1871.