1870.
Umed Kika
v.
Nagindas
Narotamdas

decree be substituted:—That the defendant do return to the plaintiff the two promissory notes for Rs. 200 each, delivered to him by the plaintiff on or about the 2nd of May 1866; declare that the amount now due in respect of the deposit made with Dosábhái Kharsetji Wádiá, in the joint names of the plaintiff and Bái Jharmá, on the 1st of May 1866, is discharged from any claim in respect of the betrothal or the contract to marry in the plaint mentioned; and that the plaintiff is also entitled to receive from the Prothonotary the ornaments and clothes delivered to him by the defendant (as a condition of being allowed to appeal *in forma pauperis*); and decree that the plaintiff do recover from the defendant, as damages in respect of the breach of the contract of betrothal in the plaint mentioned, the sum of Rs. 301, and the sum of Rs. 819-12-0, his costs of the suit in the court below, the Court being of opinion, and certifying, that by reason of the general importance of the case it was fit to be brought in the High Court. With regard to the costs of the appeal, we order that the same be paid by the respondent The Court also orders the immediate discharge of the defendant from custody.

Decree accordingly.

Attorney for the appellant: *R. A. Dallas*, Attorney for Paupers.

Attorneys for the respondent: *Acland, Prentis, and Bishop.*

Suit No. 814 *of* 1868.

Nov. 17.

MEGRÁJ JAGANNÁTH.....(*Defendant*) *Appellant.*

GOKALDÁS MTHURÁDÁS.....(*Plaintiff*) *Respondent.*

Hindu-Law Merchant—Hundi—Notice of Dishonour—Fraudulent Detention of Hundi—Peth—*Notice of Loss.*

In order to charge the indorser of a dishonoured *hundi*, the holder must give reasonable notice of such dishonour to the indorsor he seeks to charge. The demand of a *peth* cannot be deemed to be equivalent to a notice of dishonour.

THE plaint in this case stated (1) that on the 8th of March 1868 one Shivnáráyan Javerimal by his *hundi* directed to Lachhmandás Choturám at Haidarábád in the Dakhan,

1870.

Megraj Jagannath v. Gokaldas Mathuradas

directed the said Lachhmandás Choturám to pay to Khánsurám Sháligrám or *order* Rs. 2,500 (Haidarábád currency) fifteen days after date; that Khansurám Sháligrám indorsed the said *hundi* to one Motichand, who indorsed it to one Harrakchand, and that Harrakchand indorsed the said *hundi* to the defendant, who indorsed the same to the plaintiff. That the said *hundi* was duly presented for payment and was dishonoured, *whereof the defendant had due notice*, but did not pay the same. (2) On the 23rd of March 1868 the plaintiff, at the request of the drawee, delivered the said *hundi* to the drawee at Haidarábád, that he might make a copy of it and on the plaintiff demanding the *hundi* the drawee refused to redeliver it, and alleged that it had been lost.

The third paragraph of the plaint then stated that, according to the usage and customs of Márvádi and Gujaráti shroffs and bankers, in the event of a *hundi* being lost, *or being fraudulently detained from the rightful holder thereof* by any of the parties thereto, every indorsor is bound to deliver to his immediate indorsee a *peth* or duplicate of the *hundi* so lost or detained. It was then stated that the plaintiff had demanded a *peth* from the defendant, which the defendant had refused to give.

The plaintiff prayed that the defendant might be decreed to pay to the plaintiff the sum of Rs. 2,000 (being the equivalent of Rs 2,500 Haidarábád currency), the amount of the said *hundi* with interest at nine per cent. per annum from the 23rd of March 1868. The plaintiff in the alternative sought to recover the same sum as damages for the wrongful refusal by the defendant to deliver the *peth*.

The defendant, by his written statement (*inter alia*), denied the notice of dishonour, and the existence of the usage or custom set up by the plaintiff.

The case came on for hearing before ARNOULD, J., on the 6th of April 1869, when, the *hundi* not being produced, and its loss not having been satisfactorily proved, a commission was directed to issue to Haidarábád that witnesses might be examined as to the alleged loss of the *hundi*.

On the return of the commission the case came on for hearing before SARGENT, J., on the 24th of March 1870

From the evidence given under the commission, it appeared that the messenger of the Haidarábád firm of the plaintiff, one Bandá Alli, presented the *hundi* about ten days after its date at the drawee's firm, and that the drawee received the *hundi* for the purpose (as he alleged) of carrying its amount to the credit of the plaintiff, who was indebted to him. The drawee, after making an entry in his *nakal*, sent the *hundi*, but not as a paid-off *hundi*, to Shivnáráyan Javerimal, the drawer at Bombay, about seven days after its presentation, as he had written to ask for it. This was the usual custom. The *hundi* was produced by the drawer at the hearing before Sargent, J.

The plaintiff's Haidarábád *munim* alleged that the drawee had retained the *hundi* by force (*zabardasti*); that he had business to keep it, and that his so doing was opposed to *sarkari* custom; that his master's firm did not owe any money to the drawee, Lachhmandás Choturám, at that time, and had not, then or since, had any transactions with Lachhmandás Choturám.

On the 22nd of April 1868, the plaintiff, through his attorney, sent the following letter to the defendant :—

"To MEGRA'J JAGANNA'TH.

I am instructed by my client Govindás Mathurádás to give you notice that the *hundi* for Rs. 2,500 drawn by Shivnáráyan Javerimal upon Lachhmandás Choturám of Haidrábád, dated Phálgun Shud 15th and sold and indorsed over by you to my client, has been lost. You are, therefore, hereby required to give him the second of exchange, or *peth*, of the *hundi* within two days from the service hereof, otherwise my client will hold you responsible for the said sum of Rs. 2,500 and interest thereon, and all costs and charges which my client may incur thereby.

Dated this 22nd of April 1868.

Yours truly,
C. TYABJI,
Attorney at Law."

There was some evidence of an unsatisfactory character given of a verbal communication by the plaintiff to the defendant, regarding the nonpayment of the *hundi* prior to the

The plaintiff.

1870.

Megraj Jagannath v. Gokaldas Mathuradas

letter of the 22nd of April. The plaintiff's Haidarábád firm a few days after the presentment of the *hundi*, wrote a letter to the plaintiff's Bombay firm asking for a *peth* of the *hundi* but giving no reasons why it was required. A decree was given in favour of the plaintiff by SARGENT J., on the 30th of April 1870.

From this decree the defendant appealed, and the appeal came on for hearing before WESTROPP, C. J., and GREEN, J. on the 17th of November 1870.

The Honorable A. R. Scoble (Acting Advocate General) and *starling*, for the appellant :—The evidence shows clearly that notice of dishonour was not given to the defendant in this case prior to the letter of the 22nd of April 1868, and that letter is not a notice of dishonour ; it is a demand for a *peth*, which would lead the defendant to believe that the *hundi* had never been in fact presented. Notice of dishonour is necessary, according to Hindu usage (which in this respect coincides with English law) before the holder of a *hundi* can recover from his indorser : *Sumboonath Ghose* v. *Juddoonath Chatterjee* (*a*) ; *Deobo Moye Dossee* v. *Juggessur Hati* (*b*) ; *Jeetun Loll* v. *Sheo Churn* (*c*); *Radha Gobind* v. *Chundernath Dass* (*d*); *Gopal Dass* v. *Sheikh Syad Ali* (*e*); *Gopal Doss* v. *Seeta Ram* (*f*). These cases show that though the English law of bills of exchange, in all its strictness as to immediate notice of dishonour, may not be applicable to *hundis*, yet that a *reasonable* notice of dishonour must be given in order to charge the indorsor of a *hundi*. As to the English law, and the reasons upon which the rule was found, they cited *Gillcrd* v. *Wise* (*g*), and on the wording of the notice of dishonour *Solarte* v *Palmer* (*h*). They also contended upon the evidence that the *hundi* had in fact been paid, the drawee having given credit to the plaintiff for its amount, and that it was only the made of payment that the plaintiff objected to.

(*a*) 2 Hyde's Rep. 259. (*b*) 1 Calc. W. Rep., Civ. R. 75.
(*c*) 2 *Ibid* 214. (*d*) 6 *Ibid*. 201.
(*e*) 3 Ben. L. Rep., A. J. Civ. 198. (*f*) 3 Agra Rep. 268.
(*g*) 5 B. & C. 134. (*h*) 7 Bing. 530.

Mayhew and *Tyabji* for the respondent. The defendant, if not liable on the *hundi*, is liable for its amount as money had had received to the use of the plaintiff, as the drawee did not pay. The application of English law to *hundis* is disclaimed in all the cases relied on for the appellant, and these cases show that reasonable notice only need be given, without determing what is reasonable notice. Discarding the ideas insensibly imbibed from English law, it must be held that the notice given on the 22nd of April 1868 was given within a reasonable time; and what was stated in that notice was sufficient to put the defendant upon his guard, and throw upon him the *onus* of making further inquiry, and so ascertaining the true facts of the case. [WESTROPP, C.J.:—That is not enough; unless direct information, or such as would raise a clear implication, that the *hundi* had been seen by the drawee and dishonoured, is afforded, the notice is insufficient.] The defendant promised to give a *peth*, as he was bound to do on a fraudulent detention of the *hundi*, and as he has not done so, the plaintiff is entitled to recover: Steel on Caste, pp 318,325: *Davlatram Shriram* v. *Bulakidas Khemchand* (*i*)

The Advocate General was not called upon to reply.

WESTROPP, C.J. (after reading the plaint, continued):—In the first paragraph of his plaint the plaintiff himself treates it as necessary for the holder of a dishonoured *hundi* to give notice of dishonour to his immediate indorser. The second paragraph is not candid, for it alleges that the *hundi* was handed to the drawee for the purpose merely of being copied, while in fact it was presented for acceptance or payment: and the third paragraph sets up a custom to the effect that on a *hundi* being fraudulently detained by any of the parties to it, each indorsor is bound to give a *peth* or duplicate of the *hundi* to his immediate indorsee.

The plaint seems to have been framed with a double aspect. The first branch alleges dishonour of the bill, and notice of that fact to the defendant; while the second branch avers loss of the bill, and a consequently liability on each indorsor

(*i*) 6 Bom. H. C. Rep., O. C. J. 24.

1870.

Megráj Jagannáth v. Gokaldás Mathurádás.

to give a *peth*; and it then goes on to allege a custom (which apparently goes further then the necessity of the case) that on a fraudulent detention of the *hundi* by any of the parties to it, each indorsor is bound to give a *peth* to his immediate indorsee.

No evidence in the present case has been given of the existence of such a custom, nor is it necessary for us to give an opinion as to whether there is such a custom known to the Hindu-law merchant, for there is no allegation in the plaint hat the *hundi* was in fact fraudulently detained by the drawee—the second paragraph, on the contrary, alleges that the *hundi* was lost, not that it was fraudulently detained; but even if we were to hold that there is such a custom amongst Hindu merchants, and the fact of a fraudulent detention of the *hundi* were alleged or proved, it would not benefit the plaintiff; for there is no allegation, much less proof, nor has it even been contended, that the fact of such fraudulent detention was communicated to the defendant, which it would clearly lie upon the plaintiff to do, in order to entitle himself on that account to demand a *peth* from his indorsor. The evidence, on the other hand, goes to show that the verbal notice given to the defendant was notice of loss, but the plaintiff cannot rely upon that, for no proof has been given of loss, nor could there be, as the *hundi* in fact was not lost. Whether, therefore, the right or the plaintiff to demand a *peth* is rested upon the loss or the fraudulent detention of the *hundi*, the second branch of his case must necessarily fail.

Then as to the first branch of the plaintiff's case. Has reasonable notice of dishonour been given to the defendant? The Hindu-law merchant on this point is not so strict as the English-law; reasonable, not immediate, notice to dishonour is all that the Hindu law requires. What notice then was is all that the Hindu law requires. What notice then was there of dishonour? The Haidrábád first asks the Bombay firm to send a duplicate of the *hundi*, and in the letter in which they make that request it is to be observed that nothing is said of the loss of the *hundi*. The plaintiff then sends the letter of the 22nd of April, in which he alleges that the

hundi has been lost, and demands a *peth* from the defendant. What would be the defendant conclude from that? Certainly not that the *hundi* had been presented to the drawee and refused acceptance or payment, but rather that the plaintiff wanted a *peth* for the purpose of presenting it to the drawee. There is not a word in the letter to lead to the inference that the drawee had ever seen the *hundi*, or that the loss (if any) occurred after it had been so seen. Asking for a duplicate of a lost bill cannot, in our opinion, be deemed notice of dishonour. In the present case, therefore, there has been no notice of dishonour, and the plaintiff must fail on the first branch of his plaint, as well as upon the second. That is sufficient to dispose of the case, but I may add that it is the strong impression of the Court that there was some dispute at Haidarábád, between the plaintiff and the drawee of the *hundi*, whether payment of it should be made, or credit only given; and the plaintiff is keeping back the facts from the knowledge of the Court. The letter that has been produced merely asks for a *peth*, and does not state the reason for requiring it. No writing has been produced by the plaintiff to show from the correspondence why the duplicate was required, and it is probable that the plaintiff is keeping back the correspondence on the subject. The plaintiff has not been candid either with the defendant or the court. He has failed to show notice either of dishonour or fraudulent detention; and having thus failed upon both branches of his case the decree must be reversed, and the plaintiff must pay the costs of this appeal, as well as those in the Division Court.

GREEN, J., concurred.

Decree reversed with costs.

Attorney for the appellant: *Khanderav Moroji.*

Attorney for the respondent: *C. Tyabji.*