ORIGINAL CIVIL.

Before Mr. Justice Harington.

JAMESON & Co.

v.

SCOTT.*

1908

November 19.

Bill of exchange—Return of bill by indorsee to drawer—Re indorsement, whether, necessary—Drawer's right of action against acceptor.

A bill of exchange drawn by J. & Co. to their order was accepted by S. and was endorsed by J. & Co. to C., who discounted the bill. The bill was presented at maturity and was dishonoured, whereupon C. debited J. & Co.'s account with the amount of the bill, and returned the bill to them, but without re-indorsement. On an action by J. & Co. against S. on the bill.

Held, that the drawers had the right to sue the acceptor on the bill, by virtue of being a party to the bill and as suing on the contract contained in the bill between themselves and the acceptor.

ORIGINAL SUIT.

THIS was a suit on a bill of exchange for the sum of £471-4-3, instituted by Messrs. John Jameson, Ltd., the drawers of the bill, against the defendants, the acceptors thereof.

By a written agreement, dated the 3rd September 1906, Messrs. John Jameson, Ltd., a London firm carrying on business as Wholesale Wine Merchants and Distillers, appointed the firm of Messrs. Elliott & Co., of which firm J. W. Scott was a member, their sole agents in India for the term of seven years, for the sale of certain spirits and wines, and it was provided that the defendants should pay for the wines and spirits supplied to them by bill at six months, but that during the first year only the plaintiffs were to renew any of the bills coming due for a further period of six months, if desired by the defendants.

During September 1906 the plaintiffs despatched four consignments of wines and spirits to the defendants. On the 25th September 1906, the plaintiffs drew a bill of exchange to their order for £471-4-3 at six months' sight in respect of these

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1908

JAMESON & Co. v. SCOTT.

consignments. The defendants duly accepted this bill payable twelve months after date to save the trouble of renewal, and this extension was assented to by the plaintiffs. The plaintiffs discounted the bill with the bankers Messrs. Cox & Co. and indorsed the bill to their order. A further indorsement appeared on the back of the bill purporting to be made by Cox & Co. in favour of the Allahabad Bank. The bill was presented for payment on maturity, was dishonoured and was duly protested for non-payment. Thereupon Messrs. Cox & Co. debited the account of the plaintiffs with the amount of the bill and returned the bill to the plaintiffs, without re-indorsing the bill in their favour.

The defendants admitted acceptance of the bill and that it was dishonoured on maturity, but took the plea that the plaintiffs had not established any cause of action against the defendants, inasmuch as the bill had been indorsed to Messrs. Cox & Co. or order, and the latter had not indorsed it back to the plaintiffs and that in consequence the plaintiffs had no right to recover on the bill.

Mr. Camell (*Mr. Stokes* with him) for the plaintiffs. The plaintiffs-drawers have the right to sue the defendants-acceptors on the bill. Messrs. Cox & Co. the indorsees returned the bill to the drawers as useless, and by so doing abandoned their rights on the bill. See Byles on Bills, 16th edition, page 200. The plaintiffs' account with Cox & Co. was debited with the amount of the bill, and they looked to the acceptors. Each party to a bill is a principal debtor to every succeeding party and can be proceeded against as such. See Negotiable Instruments Act, sections 35, 37. Nothing has occurred to extinguish the acceptors' liability to the drawers. The indorsement did not amount to an absolute transfer of all the right, title and interest of the drawers in the bill to the indorsees. The drawer is in the position of a surety for the acceptor in respect of an indorsee, and would on payment be relegated to the rights of the indorsee. Again, by section 32 of the Negotiable Instruments Act, " the acceptor of a bill

of exchange at or after maturity is bound to pay the amount thereof to the holder on demand," and section 8 defines the term "holder," within which definition, it is submitted, the plaintiffs come. See also section 59. If the bill had been re-indorsed to the plaintiffs, they would have had the right to sue as indorsees: but without indorsement, they have in their original capacity as drawers a right of action on the bill. See *Simmonds* v. *Parminter* (1), *Pownal* v. *Ferrand* (2) and *In re Overend Gurney & Co., Exparte Swan* (3) and Chitty on Pleading, Vol. II., page 102.

Mr. C. R. Das (*Mr. B. L. Mitter* with him) for the defendants. When the plaintiffs indorsed the bill by a special indorsement in favour of Cox & Co., all the right, title and interest in the bill passed from the plaintiffs to Cox & Co. Thereupon Cox & Co. alone had the right to sue on the bill. A negotiable instrument can be transferred only in one way, by indorsement and delivery. See *Harrop* v. *Fisher* (4) and *Whistler* v. *Forster* (5). Hence, until the bill has been re-indorsed to the plaintiffs, they can have no cause of action on the bill. Otherwise, if after this suit the bill got back into the hands of Cox & Co. they, as indorsees, would still be entitled to sue the acceptor. Even if the bill is considered as in the nature of an actionable claim, under section 130 of the Transfer of Property Act, the transfer of such a claim can only be effected by the execution of an instrument in writing. The plaintiff cannot now purport to sue as a surety, as no such case was made in the plaint.

HARINGTON J. This is an action by the drawer of a bill-of-exchange against the acceptor. It is admitted that the bill was accepted by the defendant and that it was dishonoured at maturity. The bill was drawn to the order of the plaintiff and was indorsed by the plaintiff to the order of Cox & Co.

(1) (1747) 1 Wils. Rep. 185.
(2) (1827) 6 B. & C. 439.
(3) (1868) L. R. 6 Eq. 344, 362.
(4) [1861] Scott. N. S. 186.
(5) [1863] Scott. N. S. 248, 256.

1908

JAMESON & Co. v. SCOTT.

HARINGTON J.

On the back of the bill there appears a further indorsement purporting to be made by Cox & Co. in favour of the Allahabad Bank, but as to that indorsement no evidence of any sort has been given and so far as the case stands the drawer indorsed the bill to the order of Cox & Co. It has also been proved that Cox & Co. discounted the bill and credited the plaintiff with the proceeds, and when the bill was dishonoured Cox & Co. debited the drawers' account with the amount of the bill. It has also been proved that after dishonour and after the account of the drawer had been debited with the amount of the bill, the bill was returned to the drawer by Cox & Co. Under these circumstances the defendant says that the plaintiff has no right to recover, because the bill was indorsed to Cox & Co. or order, and Cox & Co. have not indorsed it back to the plaintiff. The answer, I think, is that the plaintiff is suing by virtue of being a party to the bill and is suing the acceptor on the contract contained in the bill between himself and the acceptor. From the fact that the drawer's account was debited with the amount of the bill and the bill was sent back to the drawer, I infer that Cox & Co. returned it to the drawer as a bad bill and left the drawer to take any course they thought proper with regard to it, they having protected their loss by debiting the drawer's account with the amount.

Under these circumstances, is the drawer entitled to sue the acceptor ? He has possession of the bill. The bill expresses what the acceptor agreed to do as between himself and the drawer. In my opinion the drawer is entitled to sue the acceptor, who has failed to carry out the agreement he entered into under the terms of the bill. It has been argued that, if the holder of a bill is entitled to sue the acceptor, the result would be that, if the bill now got back into the hands of Cox & Co., they, as indorsees, would still be entitled to sue the acceptor. I do not think that argument is well-founded and for this reason :—They would have no greater rights on the bill, if they took it now, than the person from whom they got it ; and if they took it from the plaintiff, who had sued for

1908

JAMESON & CO. v. SCOTT.

HARINGTON J.

and recovered judgment on the bill they would not be entitled to recover from the acceptor. The result is there must be judgment for the plaintiff for the amount shown on the bill. There will be interest on the bill from the 28th September 1907 at 6 per cent. and interest on decree at 6 per cent. The defendant must pay the plaintiff's costs.

Suit decreed.

Attorneys for the plaintiffs : *Orr, Dignam & Co.*
Attorney for the defendant : *M. N. Dutt.*

J. O.