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of the lease, and that he did so with full knowledge of all the circumstances. There is no suggestion of any pressure or deceit in the matter. Such being the case and the bond having been executed for consideration, we hold that defendant No. 2 is liable to the plaintiff to the extent of Rs. 5,000, the amount stated in the bond, and that the plaintiff is entitled to a decree against him for that amount. To this extent, therefore, we decree the appeal, and, in modification of the judgment and decree of the lower Court, direct that plaintiff's claim to the extent of Rs. 5,000 against respondent No. 2 be decreed.

Appellant will recover his costs in this appeal on the value only to which it has been decreed. Respondent will pay his own costs.

*Appeal allowed.*

M. N. R.

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*Before Mr. Justice Banerjee and Mr. Justice Pargiter.*

## BHAGWAN DAS
*v.*
## CREET.*

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*May* 25.

*Cheque—Bill of Exchange—Payment on a forged cheque—Principal and Agent Negligence—Banker, liability of.*

When a banker makes a payment on a forged cheque, he cannot make the customer liable except on the ground of negligence imputable to the customer.

*Young* v. *Grote* (1) distinguished.

*Scholfield* v. *Earl of Londesborough* (2) referred to.

SECOND APPEAL by the plaintiffs, Bhagwan Das Marwari and others.

The plaintiffs' father, Lopechand Marwari, instituted a suit in the Court of the Munsif of Ranigunge for the recovery of Rs. 522-4 due on a *hundi* or bill of exchange. It was alleged

* Appeal from Appellate Decree, No. 1631 of 1900, against the decree of B. C. Mitter, District Judge of Burdwan, dated May 29, 1900, reversing the decree of Shoshi Bhushan Chatterjee, Munsif of Ranigunge, dated April 27, 1899.

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that Lopechand had formerly a *hundi* business with the defendant No. 1, S. T. Creet, through the defendant No. 2, Ramsukh Roy, who was in the employ of the defendant No. 1; that Lopechand having obtained through the defendant No. 2 a *hundi* on the Simla Alliance Bank, Limited, dated the 11th March 1897, for Rs. 500, bearing signature of the defendant No. 1, and believing in good faith that the money was wanted by the defendant No. 1, he paid to the defendant No. 2, as an officer of the defendant No. 1, the sum of Rs. 500, mentioned in the said *hundi* payable at sight; that upon Lopechand having presented the said *hundi* to the Simla Alliance Bank, Limited, on the 12th March 1897, it was dishonored; and that the defendants declined to pay him the money. It was accordingly prayed that the defendants might be declared jointly and severally liable for the money with interest, and that the plaintiff might be given a decree either against both the defendants or against one of them, whoever might be held to be liable in the opinion of the Court.

The suit was instituted on the 9th December 1897. But it appears that the defendant No. 2 was tried in the Burdwan Sessions Court for presenting to Lopechand a cheque with the forged signature of the defendant No. 1 and getting payment on it, and convicted and sentenced to five years' rigorous imprisonment on the 24th June 1897.

Lopechand having died during the pendency of the suit, his sons, the present plaintiffs, were substituted in his place.

The defendant No. 1 denied that he ever had any *hundi* transaction with the original plaintiff and that he ever received any money on account of the alleged *hundi* either from the said plaintiff or any other person. He contended that he never authorised the defendant No. 2 to receive the money on his behalf, and that if the plaintiff, being deceived, had paid any money to the defendant No. 2, he was not entitled to recover the same from the answering defendant.

The Munsif decreed the suit against both the defendants, holding that the act of the defendant No. 2, who was the agent of the defendant No. 1, although fraudulent, must bind his principal, on the principles laid down in ss. 237 and 238 of the Contract Act.

Thereupon, the defendant No. 1 appealed to the District Judge, who held that, even supposing that Ramsukh was the agent of the appellant before him, it could not be said that a principal was bound not only by fraudulent, but by positive criminal, acts committed by his agent. The appeal was accordingly decreed.

*Babu Lal Mohan Das* (*Babu Joy Gopal Ghose* with him) for the appellants submitted that Lopechand was a "holder in due course:" see s. 9 of the Negotiable Instruments Act, XXVI of 1881. The defendant No. 1 was liable, because although the defendant No. 2 had obtained the *hundi* by means of an offence, Lopechand became its possessor for valuable consideration, without having sufficient cause to believe that any defect existed in the title of the person from whom he obtained it. The effect of the judgment in *Young* v. *Grote*(1), as stated in the decision of the House of Lords in *Scholfield* v. *Earl of Londesborough* (2), is to make the customer liable under practically similar circumstances. It was owing to the negligence of the defendant No. 1 that the defendant No. 2 obtained possession of the cheque-book and was able to forge his signature. The payment by Lopechand was made in the *bonâ fide* belief that the cheque bore the genuine signature of the defendant No. 1. Lopechand had previously been in the habit of paying cheques drawn by the defendant No. 1 and presented to him for payment by the defendant No. 2; and the previous conduct of the defendant No. 1 had induced Lopechand reasonably to believe that the defendant No. 2 was acting as the agent of the defendant No. 1.

*Mr. Morrison* (for *Mr. J. B. Macnair*) for the respondent, was not called upon.

BANERJEE AND PARGITER JJ. In this appeal, which arises out of a suit brought by the plaintiff-appellant to recover a certain sum of money due upon a cheque, two questions have been raised on behalf of the plaintiff-appellant: *first*, whether the Court of Appeal below was right in holding that the defendant No. 1 was not liable for the money which defendant No. 2 had obtained from the plaintiff on the presentation of a forged cheque, when

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defendant No. 2 presented the cheque as the agent of the defendant No. 1; and, *secondly*, whether the lower Appellate Court was right in holding that the defendant No. 2 was not the agent of the defendant No. 1, without considering the evidence of agency furnished by the fact of defendant No. 2 having presented other cheques on behalf of defendant No. 1 previously.

Upon the first point the case of *Young* v. *Grote*(1) is relied upon. That case, as Lord Macnaghten observes in *Scholfield* v. *Earl of Londesborough*,(2) "is a case which has excited as much diversity of opinion as any case in the books." But even accepting its authority as clear and unquestionable, we do not think that it helps the appellants in any way. There Best C.J., at the outset of his judgment observes:—"Undoubtedly, a banker who pays a forged cheque is in general bound to pay the amount again to his customer, because in the first instance he pays without authority. On this principle the two cases which have been cited were decided, because it is the duty of the banker to be acquainted with his customer's handwriting, and the banker, not the customer, must suffer if a payment be made without authority. But though that rule be perfectly well established, yet if it be the fault of the customer that the banker pays more than he ought, he cannot be called on to pay again."

That shows that it was on the principle of negligence imputable to the customer that a banker can make the customer liable if payment had been made on a forged cheque; and in this case nothing having been said as to defendant No. 1 being negligent in any way,—no foundation having been laid for a case of negligence, we do not think that the Principle of *Young* v. *Grote*(1) can be applied to it at all.

Then, as to the second point, we are of opinion that it is concluded by the finding of fact arrived at by the Court of Appeal below. That finding is perhaps not so categorically and expressly stated as it might have been. But reading the last two paragraphs of the judgment, we must say that there can be no doubt that the lower Appellate Court has found that, as a matter of fact, the defendant No. 2 is not shown to have been the agent of

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defendant No. 1 upon the whole evidence. The learned Judge in the Court of Appeal below states in his judgment: "Was Ramsukh the appellant's agent at all? Did the appellant by any act of his give the plaintiffs to understand that Ramsukh was his agent?" And after having stated the questions he arrived at his conclusion, which could have been arrived at only upon a complete negative answer to those questions being returned.

The contentions urged before us therefore fail, and this appeal must be dismissed with costs.

*Appeal dismissed.*

M. N. R.

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*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Giedt.*

1903

Aug. 14.

DEBENDRA NATH BISWAS

*v.*

HEM CHANDRA ROY.*

*Executor, debt contracted by—Co-executor, liability of—Liability of estate for debt incurred by Executor.*

The estate of a testator is not liable for debts, contracted by one of the several executors, for goods apparently supplied to the estate. The executor who contracted the debt is personally liable for it.

*Farhall* v. *Farhall* (1) and *Labouchere* v. *Tupper* (2), referred to.

SECOND APPEAL by the defendants Nos. 2 and 3, Debendra Nath Biswas and another.

This appeal arose out of an action brought by the plaintiffs, Hem Chandra Roy and another, for the recovery of a certain sum of money due on a promissory note.

* Appeal from Appellate Decree, No. 1841 of 1900, against the decree of W. Teunon, District Judge of Moorshidabad, dated June 30, 1900, affirming the decree of Mohendra Nath Mitter, Subordinate Judge of that District, dated Aug. 17, 1899.

(1) (1871) L. R. 7 Ch. 123. (2) (1857) 11 Moo. P. C. C. 198.