

1956

*Present*: Gunasekara, J., and Sinnetamby, J.

H. S. PATERNOTT *et al.*, Appellants, and MONIMPEX  
HUNGARIAN FOREIGN TRADING CO., Respondent

*S. C. 542—D. C. Colombo, 17,976/58*

*Bill of exchange—Restrictive indorsement—Right of drawer to sue on bill thereafter—  
Bills of Exchange Ordinance, ss. 21 (3), 31 (1), 35 (2).*

When a bill of exchange restrictively indorsed for collection is dishonoured on presentation for payment on maturity, the drawer to whom it is returned bearing an indorsement in blank by the indorsee is not entitled to sue upon it.

**A**PPEAL from a judgment of the District Court, Colombo.

*S. Sharvananda*, for the defendants-appellants.

*F. R. Dias*, for the plaintiff-respondent.

*Cur. adv. vult.*

July 30, 1956. SINNETAMBY, J.—

At the conclusion of the arguments in this case we allowed the appeal with costs in both Courts and stated we shall give our reasons later. I now proceed to record my reasons for the decision.

The second and third defendants were sued in this case on a Bill of Exchange drawn on them by the plaintiff company and made payable to the National Bank of Hungary. The Bill which was made payable thirty days after sight was accepted by the defendants but was dishonoured when presented for payment on maturity by Grindlays Bank to whom the Bill had been endorsed. Both the Maker and the Payee are foreign companies and the Acceptor and Indorsee resident in Ceylon.

The Bill itself shows, and there is no contest on this point, that the Payee, viz., The National Bank of Hungary, restrictively endorsed it for collection to Grindlays Bank. The endorsement reads:

“For us to Grindlays Bank, Colombo.”

and is signed by the National Bank of Hungary. The Plaintiff in his complaint accounted for his possession of the Bill by stating that it was

returned to him. The Bill bears an endorsement in blank by Grindlays Bank. Having regard to these indorsements and to the presumption in regard to delivery created by Section 21 (3) of the Bills of Exchange Ordinance the only reasonable inference is that Grindlays Bank indorsed the Bill in blank and delivered it to the plaintiff company.

The question that immediately arises for consideration is whether the indorsement and delivery by Grindlays Bank to the plaintiff company confers on the latter any title on the Bill to enable them to sue upon it. Obviously it does not. The National Bank of Hungary by its indorsement authorised Grindlays Bank only to receive payment on their behalf. It is a restrictive indorsement and Section 35 (2) declares that such an indorsement gives the indorsee no power to transfer his rights.

Issues 6, 7 and 8 framed at the Trial dealt with this aspect of the matter and are as follows :—

*Issue 6.*—Did the plaintiffs by Bill of Exchange marked A request the defendants at 30 days after sight to pay to the order of the National Bank of Hungary, Board of Exchange, a sum of £12 2s. 0d.

*Issue 7.*—Was the said Bill of Exchange endorsed and delivered by the National Bank of Hungary to Grindlays Bank Limited, Colombo, for collection.

*Issue 8.*—If issues 6 and 7 are answered in the affirmative, has the plaintiff any legal right or title to maintain an action on the said bill of exchange.

The learned District Judge answered issue 6 in the negative. Why he did so it is not possible to understand. The submissions on behalf of both plaintiff and defendant and the terms of the Bill itself required this issue to be answered in the affirmative. Issue 7 he answered in the affirmative but proceeded to answer issue 8 also in the affirmative. Presumably the learned Judge answered this issue in this way because of the view he took and expressed in regard to the common law rights of a Principal, who has employed an Agent, to sue in his own name. Obviously the learned Judge has misdirected himself on this question. We are here not concerned with common law rights but with the special rights and obligations created by the Bills of Exchange Ordinance in regard to parties who are signatories to a Bill of Exchange. The action is upon the Bill and no alternative cause of action based on any other contract is either pleaded or covered by the issues.

Learned Counsel for the appellants contended that the true Owner of the Bill was the maker and that the National Bank of Hungary and Grindlays Bank were merely his Agents for collection. He relied on the averments in para 2 of the plaint which defendants have admitted in the answer. The relevant portion of para 2 of the plaint, however, is unintelligible and meaningless. It avers that plaintiff as the maker *indorsed and delivered* the Bill for collection to the National Bank of Hungary. In point of fact no such indorsement appears on the Bill and in law it is not necessary that the maker of a Bill should endorse it in order to give

effectual delivery. Despite the admission in the answer the issues framed on behalf of the defendants show that they contested these averments in the plaint.

No issue was framed at the Trial on behalf of the plaintiff which in any way suggested that the National Bank of Hungary was also a mere Agent for collection: on the other hand the effect of issues 6, 7 and 8 is to suggest that the said banker was a holder for value and that only Grindlays Bank was an Agent for Collection. Even on the basis that it is possible for "immediate" parties to a Bill to lead evidence which has the effect of varying or contradicting the terms of the document itself in order to establish the true nature of the relationship between them, the burden of establishing any such relationship is on the plaintiff company. In this case, apart from certain admissions, no evidence of any kind was led and in the absence of such evidence the presumption created by Section 31 (1) of the Ordinance would operate. In consequence the National Bank of Hungary must be deemed to have become a party to the Bill for value and not as a mere Agent for collection.

Issues 6 and 7 should in my view have been answered in the affirmative and issue 8 in the negative. I would accordingly set aside the judgment of the learned District Judge and dismiss plaintiff's action with costs both here and in the Court below.

GUNASEKARA, J.—I agree.

*Appeal allowed.*

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