

1957

Present: Basnayake, C.J., and Pulle, J.

KULATILLEKE, Appellant, and MERCANTILE
BANK OF INDIA, Respondent

S. C. 91—D. C. Colombo, 1690A/M

Cheque—Fraudulent alteration—Payment by drawee—Liability of drawee to drawer.

Two cheques drawn by the plaintiff for Rs. 93·50 and Rs. 43·85 were subsequently fraudulently altered by the plaintiff's clerk to Rs. 9,000·50 and Rs. 4,000·85 respectively. The cheques were presented to the drawee bank by the collecting bank with whom the clerk had just opened an account. In the present action instituted by the plaintiff against the drawee bank, it was found that the defendant in good faith and without negligence paid to the collecting bank the amounts which appeared on the face of the cheques at the time of presentation for payment. It was also established that the plaintiff was in breach of the duty he owed the bank to exercise due care in the manner in which the cheques were drawn.

Held, that the defendant, the drawee bank, was absolved from liability for accepting the forged cheques for payment.

APPPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *G. T. Sumerawickrame* and *N. R. M. Daluwatte*, for the plaintiff-appellant.

S. Nadesan, Q.C., with *C. Ranganathan* and *Sirimevan Amerasinghe*, for the defendant-respondent.

Cur. adv. vult.

November 14, 1957. PULLE, J.—

This is an appeal by the legal representative of a customer of the Mercantile Bank of India, Limited. The action was originally filed by the customer against the Bank for a declaration that his account was improperly debited with two sums of Rs. 9000·50 and Rs. 4000·85. It is not disputed that a cheque drawn by the customer, dated the 19th January, 1944, for Rs. 93·50 had been fraudulently altered to Rs. 9000·50 by a clerk employed under the customer and a second cheque dated 2nd May, 1944, for Rs. 43·85 had been similarly altered to Rs. 4000·85 by the same clerk. The substantial defence to the claim was that the customer acted negligently in drawing or issuing the cheques and the loss sustained by him was due to such negligence and not to any negligence on the part of the bank.

The customer was not able to write out in English the amounts and other particulars on the cheques. All he was able to do was to sign them. On the first cheque the amount in words was written as "nine three and fifty cents only" and on the second the amount in words was written as "four three and cents eighty five only". It is obvious that

the clerk who wrote out the body of each cheque did so deliberately in order to carry out with ease the fraudulent alterations which he made subsequently. The cheques were presented to the defendant by the collecting bank with whom the clerk had just opened an account. The learned trial Judge has found on the evidence, which was the identical evidence led in an action filed by the customer against the collecting bank, that the defendant in good faith and without negligence paid the amounts which appeared on the face of the cheques at the time they were presented for payment. The trial Judge had evidence before him on which he was entitled to hold, as he did, that a person's suspicions would not be aroused after examining the cheques with ordinary prudence and care. The bank officials in particular support him and I cannot say that the finding is unreasonable, even though I might not have taken the same view had I tried the case myself. This finding was not sufficient by itself to absolve the defendant from liability for accepting the forged cheques for payment. It had further to be established that the customer was in breach of the duty he owed the bank to exercise due care in drawing the cheques. On this part of the case I am in agreement with the finding of the trial Judge. The reasons for the finding are set out fully in the judgment under appeal and I need not repeat them all here. The strikingly unusual feature in the drawing of the cheques is that the customer signed the first cheque containing the words "nine three" to mean "ninety three" and the words "four three" in the second to mean "forty three". Had the words "ninety three" and "forty three" been written instead, the forgeries raising the amounts by Rs. 8,907 and Rs. 3,957 respectively would not in all probability have escaped detection at the time the cheques were presented at the bank for payment. The spacing of the words and the figures also rendered the forgeries easy.

In my opinion the appeal fails and should be dismissed with costs.

BASNAYAKE, C.J.—I agree.

Appeal dismissed.
