

SEGAPPA CHETTY v. MURUGAN KANGANY.

1897.

May 21 & 25.

C. R., Gampola, 2,365.

Promissory note—Special endorsement—Rights of endorser who retires note—Right of endorser to whom a note comes back to sue maker thereon.

A promissory note made by defendant passed by a succession of endorsements to P, who specially endorsed it to the Mercantile Bank. The note on maturity was dishonoured, and P paid the bank its amount, and the bank acknowledged receipt of such payment, thus: "Paid by the last endorser. Received payment for the Mercantile Bank of India, Limited—J. B. Bishop, Agent," and delivered the note to P. In this state it came back to plaintiff, a prior endorser—*Held*, that the plaintiff had right to sue.

Held, further, that the signature on the note of the bank by its agent acknowledging payment is a sufficient endorsement by the bank, and that, coupled with delivery, gave to P all the rights and powers enjoyed by a holder in due course.

THE facts of the case appear in the judgment of WITHERS, J.

Bawa, for appellant.

25th May, 1897. LAWRIE, A.C.J.—

In my opinion the question whether the Bill of Exchange Act of 1882 deprived a mere bearer of the right to sue on a promissory note on which there are blank endorsements, but on which the the last endorsement is in full to a person or firm other than the plaintiff bearer, does not arise here.

In the present case the plaintiff is not a mere bearer, he is one of the endorsers whose name appears in the note; and I have not found in the Act any provision which deprives an endorser of the right to sue the maker and the prior endorsers.

Anamala Chetty, to whom the plaintiff transferred the note by blank endorsement, endorsed it in blank to Periannen Chetty, who discounted it with the Mercantile Bank, which put on the note the stamp "Pay to the Mercantile Bank of India, or order."

The note on maturity was dishonoured by the maker, and Periannen Chetty, the last endorser, retired it.

The bank on receiving payment endorsed it in these words:—"Paid by the last endorser; received payment for the Mercantile Bank of India, Limited—J. B. Bishop, Agent, Kandy."

The plaintiff avers, and for the purposes of this argument it must be taken as true, that he paid the amount to Periannen Chetty and retired the note, and he now sues on it.

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It was urged that he could not sue because the bank to whom it had been endorsed had not endorsed it either in blank or specially to the plaintiff. But it seems to me that that argument is founded on a mistake in fact.

The bank, by writing the words "Received payment from the last endorser, received payment for the Mercantile Bank," and by the signature of the agent did endorse the note.

If that was an endorsement in full to Periannen Chetty, what is here wanting is not the endorsement of the bank, which is on the note, but the endorsement of Periannen Chetty; but I read the bank's endorsement as a blank endorsement, so that when the plaintiff (one of the prior endorsers) retired the note he had right to sue the maker and the endorsers prior to himself. I am unable to agree with the judgment of the District Judge of Colombo in *D. C., Colombo, 9,302*, which was relied on by the appellant; the decisions of this Court reported in *2 Gren. 125*, *6 S. C. C. 87*, and *3 C. L. R. 33*, are binding on us.

WITHERS, J.—

This is an action on a promissory note which is brought by an endorser against the maker. The history of the note seems to be this. The note was made on 4th April, 1893, and was payable four months after date, and the place of payment named in the note was the office of the Mercantile Bank, Limited, Kandy. The payee endorsed it in blank, and it passed by a succession of endorsements in blank to one Vena Periannen Chetty. This person seems to have discounted the note with the bank, and he signs his name in blank on the back of the note. The bank converted this blank endorsement into a special one by printing above his name "Pay the Mercantile Bank, Limited, or order." It was noted for non-payment, and Vena Periannen Chetty, the last endorser, paid the note, and the bank acknowledged the receipt on the note in these words: "Paid by the last endorser; received payment for the Mercantile Bank of India, Limited—J. B. Bishop, Agent, Kandy." It was then delivered to Vena Periannen Chetty.

In this state it came back to the present holder and prior endorser

Now, the holder of a note is defined by the Act to mean the payee or indorsee in possession of it, or the bearer thereof.

The plaintiff answers to that description. It is not denied that plaintiff is a holder in due course as defined by section 29 of the Act. Why then is he not entitled to sue on the note?

It is said that as the note was specially endorsed to the Mercantile Bank it can only be negotiated by the endorsement of the bank, and the section of the Act relied on was No. 31, sub-section (3) : " a bill payable to order is negotiated by the endorsement of the holder completed by delivery," and delivery without endorsement confers nothing more than the transferrer's title to the bill.

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This is no doubt true of negotiations forward before the bill matures. But what if it has been met by an endorser and is negotiated back to prior endorsers ? Section 59, sub-section 2 (b), of the Bills of Exchange Act enacts that where " a bill is paid by an endorser the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements and again negotiate the bill."

If he can do this, what is the necessity of a formal endorsement by the special endorser whom he has paid, as an antecedent party is liable on the bill ? To revert again to the rights and powers of the holder of a bill. By section 38 (1) he may sue on the bill in his own name. By section 47 (2), subject to the provisions of this Act, where a bill is dishonoured by non-payment an immediate right of recourse against the drawer and endorsers accrues to the holder.

I cannot think that the provisions of the Act in section 31, sub-sections 3 and 4, relied on by Mr. Bawa, apply to this case. Anyhow, the signature on the note of the bank by its agent acknowledging payment is in my opinion a sufficient endorsement, and that, coupled with delivery, gave to the last endorser all the rights and powers enjoyed by a holder in due course.

Since writing this judgment I have had the advantage of reading Mr. Justice Browne's decision as District Judge of the Court of Colombo.

With every respect to the learned Judge, I do not think the Act has altered the law in the case of a negotiation backwards up the line of endorsers by the one who has paid the matured bill under section 37. This is not a case of a bill being re-issued and further negotiated by one to whom it has been negotiated backwards.

Assuming that the bank's signature was not an endorsement, no doubt a party whose name is not on the bill could not by mere delivery have sued as bearer. But plaintiff is not an ordinary bearer. He is a prior endorsee. I am for affirming the judgment appealed from.