Present: Pereira J. 1918.

CHARLES APPU *v.* FERNANDO.

420—C. R. Colombo, 35,214.

Promissory note—Note signed in blank given to A—Authority to fill up note for Rs. 30—Note filled up in favour of B for higher amount—Holder in due course—Negotiation.

Where a simple signature on a blank stamped paper was delivered by A to B, and the same was converted by B into a promissory note in favour of C, *held* that it was competent to C to enforce the note, as if the paper had been filled up within a reasonable time and strictly in accordance with the authority given. The word "negotiation" when used with reference to a bill of exchange or promissory note includes the original operation of transferring the bill or note to the payee.

In the case put above, if B was shown to have been guilty of fraud, it would be incumbent on C to establish the fact by evidence that he was a holder in due course.

IN this case the plaintiff-respondent, claiming to be payee of a promissory note, sued the defendant-appellant, as the maker thereof, for the recovery of Rs. 150 principal and Rs. 84 interest at 96 per cent. per annum.

The defendant filed the following answer:—

3. This defendant says that he signed the printed form of the note sued upon and handed it to one M. D. Abraham, with whom the defendant dealt. The amount (Rs. 150), the name of the payee (R. P. Charles Appu), the amount (rupees one hundred and fifty), the rate of interest (8 per cent.), and the names of witnesses to the note were not inserted in the said note. This defendant says that neither the said M. D. Abraham nor the plaintiff had any authority to insert the said particulars in the said note, and the insertion thereof is a material alteration of the said note. The defendant authorized Abraham to fill in the note for Rs. 30 only.

4. Further answering, this defendant says that on January 22, 1913, he borrowed a sum of Rs. 30 from the said M. D. Abraham and agreed to pay interest thereon at the rate of 60 per cent. per annum. At the end of February, 1913, this defendant paid the said M. D. Abraham a sum of Rs. 25 in part payment of the said sum of Rs. 30, and there is now due and owing from this defendant to the said M. D. Abraham the balance principal sum of Rs. 5 and the interest, which this defendant has always been ready and willing to pay to the said M. D. Abraham.

5. This defendant denies that he had any dealings whatever with the plaintiff.

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The learned Commissioner of Requests (P. E. Pieris, Esq.) held that the answer did not disclose a defence, and entered judgment for the plaintiff.

The defendant appealed.

A. St. V. Jayewardene, for defendant, appellant.—The plaintiff is the payee on the face of the note. He is not a holder in due course, as the note was not negotiated to him. See Bills of Exchange Act, section 29 (1).

Balasingham (with him *Bartholomeusz*), for the plaintiff, respondent.—If Abraham had filled up the note in his favour and endorsed it to the plaintiff, the plaintiff would be a holder in due course. The fact that Abraham filled up the note in favour of the plaintiff does not take away from plaintiff's rights on the note. Under section 20 of the Bills of Exchange Act, a person to whom a blank note is granted has *prima facie* authority to fill up the note for any sum the stamp would cover and in favour of any person whom he pleases. A blank note is in the nature of a note payable to bearer, and may be negotiated without endorsement. Plaintiff is a holder in due course. Counsel cited *Lloyd's Bank & Co. v. Cooke*,[1] *Pethaperumalpillai v. Sathaku.*[2] [His Lordship stopped counsel.]

A. St. V. Jayewardene, in reply.—The passage cited from *Lloyd's Bank & Co. v. Cooke* [1] was only an *obiter dictum* of Moulton L.J. *(1902) 1 K. B. 361* is an express authority to the contrary. That judgment was not over-ruled by the Judges who decided *Lloyd's Bank & Co. v. Cooke.*[1]

Plaintiff has to prove that he is a holder in due course, if the defendant proves that the negotiation of the note is affected with fraud. [Pereira J.—You cannot prove fraud in this case, as you have not averred fraud or raised an issue on the point.] Although fraud is not expressly pleaded, it is the substance of the averments of the answer. Counsel cited Bills of Exchange Act, section 30 (2).

Cur. adv. vult.

December 21, 1913. PEREIRA J.—

This is an action on a promissory note, and the question in the case is whether the answer discloses a defence. It states that the defendant signed a printed form of a note and handed it to one M. D. Abraham; and that the amount, the payee's name, the rate of interest, and the names of witnesses have been inserted without the authority of the defendant. There is no averment of fraud, or an averment that the plaintiff is not a holder in due course. Section 20 of the Bills of Exchange Act provides that where a simple signature on a blank stamped paper is delivered, and, after completion, it is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it

[1] *(1907) 1 K. B. 794.*

[2] *2 Leader 117.*

as if it had been filled up within a reasonable time and strictly in accordance with the authority given. Counsel for the appellant has argued that it cannot be said that in the present instance the note has been negotiated, and section 29, sub-section (1), has been cited; but the question here involved is set at rest by the decision in the case of *Lloyd's Bank & Co. v. Cooke.*[1] There Moulton L.J. observed : " I can find nothing in the language of section 29, sub-section (1), which throws any doubt on the view that ' holder in due course ' would include a payee who has given value in good faith, unless we are to construe the word ' negotiated ' as being merely equivalent to ' indorsed.' But when the definition of ' negotiation ' given by section 31, sub-section (1), is looked at, it appears clear that the Legislature intended to make it apply also to the original operation of transferring the bill to the payee. It lays down that ' a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.' It carefully abstains from prescribing that the transferor must be a ' holder.' All that is necessary to constitute ' negotiation ' of the bill is that it should have been transferred from one person to another in such a manner as to constitute the transferee the ' holder of the bill, ' that is—if we replace ' holder ' by its definition in the Act—' the payee or indorsee who is in possession of the bill.' A cheque, therefore, payable to a particular person which is handed by the drawer to that person for value would be ' negotiated ' within the meaning of the Act. These considerations lead me to the conclusion that the Act did not intend to impair the position of the payee as contrasted with that of an indorsee, and that a payee who has given value in good faith is intended to come within its provisions as a ' holder in due course ' just as much as an indorsee." The above ruling makes it clear that the present plaintiff is a holder in due course of the promissory note sued upon. The appellant's counsel further argued that if M. D. Abraham was guilty of fraud, it was incumbent on the plaintiff to establish the fact by evidence that he was a holder in due course. That would be so under section 30 (2) of the Bills of Exchange Act, but there is no averment of fraud in the answer, nor do the issues framed raise any question as to fraud. The appellant's counsel has further submitted that the defendant's intention was to charge Don Abraham with fraud. It is just possible that that was so, and in view of this possibility I shall extend to the defendant the indulgence of an opportunity to amend his answer and plead the defences urged in appeal.

I set aside, *pro formâ*, the judgment appealed from, and remit the case to the Court below for further proceedings.

The defendant will pay the plaintiff his costs in this Court and all costs up to date in the Court below.

Sent back.

[1] *(1907) 1 K. B. 794.*