

1967 Present : H. N. G. Fernando, C.J., and Sirimane, J.

D. P. WIJESUNDERA, Appellant, and T. P. KUNJIMOOSA  
& CO. and another, Respondents

*S. C. 481/64—D. C. Kandy, 7101/S*

*Cheque—Notice of dishonour—Circumstances when it can and cannot be dispensed with  
—Bills of Exchange Ordinance (Cap. 82), ss. 49 (12), 50 (2) (c) (v).*

Where a cheque when presented for payment is dishonoured because “ effects were not cleared ”, an indorser of the cheque must be given due notice of dishonour before he can be sued. In such a case section 50 (2) (c) (v) does not dispense with notice of dishonour.

**A P P E A L** from a judgment of the District Court, Kandy.

*A. C. Gooneratne, Q. C.*, with *R. Gooneratne*, for the 1st defendant-appellant.

*C. Ranganathan, Q. C.*, with *V. E. Selvarajah*, for the plaintiff-respondent.

*Cur. adv. vult.*

June 9, 1967. SIRIMANE, J.—

This was an action filed by the plaintiff company against the two defendants for the recovery of a sum of Rs. 2,000 which they alleged was due to them on two cheques marked “ A ” and “ B ”.

Cheque “ A ” was for a sum of Rs. 1,000 drawn by the 1st defendant in favour of the 2nd defendant. Cheque “ B ” was also for a similar sum drawn by an unknown person but endorsed by the 1st defendant to the 2nd defendant. The 2nd defendant had obtained cash on both these cheques from the plaintiff company. When presented for payment both cheques were dishonoured.

The learned District Judge has entered judgment against the two defendants and the 1st defendant has appealed.

The only point urged in appeal was that there was no notice of dishonour given to the 1st defendant within a reasonable time as required by the Bills of Exchange Ordinance (Cap. 82).

Section 49 (12) of that ordinance provides that :

“The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

- (a) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill ;
- (b) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.”

The cheque “ A ” was dishonoured on 3.4.62 and cheque “ B ” on 11.5.62. Notice of dishonour is a condition precedent to a right of action against an indorser or a drawer.

Such a notice was sent to the 1st defendant in respect of both cheques nearly a month later, viz., on 11.6.62 by letter P3. There was no notice, therefore, as required by the section quoted above nor were there any special circumstances to excuse such a notice.

In respect of cheque “ A ”, however, payment was stopped by the drawer (1st defendant).

Under Section 50 (2) (c) (v) of the Bills of Exchange Ordinance, notice of dishonour is dispensed with when the drawer countermands payment.

The argument in regard to lack of due notice of dishonour, therefore, does not apply to cheque “ A ”, but it is entitled to succeed in regard to cheque “ B ”. That cheque was not drawn by the 1st defendant and was dishonoured because “ effects were not cleared ”, to quote the endorsement made on it by the bank.

The learned District Judge in answering the issue relating to due notice of dishonour had overlooked this fact, and wrongly decided that the 1st defendant was not entitled to notice in respect of *both* cheques on the ground that he had countermanded payment.

The 2nd defendant has not appealed against the judgment. In fact, at the trial he had given evidence which favoured the plaintiff's case and stated in the course of that evidence : “ When the two cheques were dishonoured, the plaintiffs came and saw me and they asked me to give them the money due on the cheques. ”

The judgment against him must therefore stand.

We vary the judgment and decree in respect of the 1st defendant only by entering judgment against him for a sum of Rs. 1,000 with legal interest thereon from date of action, and costs in the lower court.

As both parties have partially succeeded here, there will be no costs of appeal.

H. N. G. FERNANDO, C.J.—I agree.

*Appeal partly allowed.*