

In such cases the extent of the assessee's grievance must be the measure of the relief which he has a right to claim in the action which is proceeded with under Section 40 against the Crown. It is for this reason that at a certain stage the Crown, represented by the Attorney-General, steps in and the Commissioner of Estate Duty drops out as a party to the litigation. The appeal proceeds as an "action" so that, in the interests of finality, a decree capable of execution may be entered either in favour of the Crown or against it as the case may be. In the present case I would enter a decree in favour of the executrix against the Crown for the payment of a sum of Rs. 285,308.42 overpaid by her as estate duty, together with legal interest at 5 per cent. in terms of Section 192 of the Civil Procedure Code from the date of action until the date of this decree, and thereafter on the aggregate amount of the decree until payment in full. The executrix is entitled to her costs of this appeal and in the Court below.

WIJEWARDENE C.J.—I agree.

*Appeal dismissed.
Cross-appeal allowed.*

1949

Present: Wijewardene C.J. and Palle J.

**KUHAFU *et al.*, Appellants, and VAIRAVAN CHETTIAR,
Respondent**

S. C. 273—D. C. Galle, 8,540

Action on cheque—Several defendants—Joint and several liability—Judgment obtained against some defendants—No bar to action against the other defendants—Bills of Exchange Ordinance (Cap. 68), sections 55, 57.

Where parties are jointly and severally liable a creditor recovering judgment against one of them is not precluded thereby from subsequently recovering judgment against the others.

APPPEAL from a judgment of the District Judge, Galle.

In an action on a cheque instituted under Chapter 53 of the Civil Procedure Code the plaintiff sued the drawer, the payee and two endorsees. Judgment was at first entered against the 1st and 2nd defendants for failure to obtain leave to appear and defend within seven days of the service of summons. Subsequently, after trial, judgment was entered against the 3rd and 4th defendants also. The 3rd and 4th defendants thereupon appealed on the ground that plaintiff was not entitled to ask for judgment against them, as judgment had already been entered against the 1st and 2nd defendants.

M. H. A. Aziz, for 3rd and 4th defendants appellants.

H. W. Jayewardene, with L. C. Gunaratne, for plaintiff respondent.

Cur. adv. vult.

October 31, 1949. WIJEYWARDENE C.J.—

This is an action on a cheque instituted under Chapter 53 of the Code.

The cheque was drawn by the first defendant in favour of the second defendant. The third and fourth defendants were successive endorsees of the cheque. The fourth defendant endorsed the cheque for valuable consideration to the plaintiff. Summons was served on the first and second defendants on May 18, and judgment was entered against them on June 24, as they failed to obtain leave to appear and defend the action within seven days of the service as required by Court. Summons appears to have been served on the third and fourth defendants in July and they obtained leave to appear and defend the action. After trial, the District Judge entered judgment against them also.

The only point argued before us in appeal was that the plaintiff was not entitled to ask for judgment against the third and fourth defendants, as judgment had already been entered against the first and second defendants. The appellants' Counsel relied on some decisions of this Court where it was held that judgment against one debtor on a joint debt was a bar to any further proceedings against the remaining debtors. As Mr. H. W. Jayewardene pointed out, these decisions are not relevant in the present case. The defendants in this case are liable jointly and severally to pay the amount of the cheque (*vide* Halsbury's Laws of England, volume 2, paragraph 887). Where the parties are jointly and severally liable, a creditor recovering judgment against one is not precluded thereby from recovering judgment against the others (*Blyth v. Fladgate*¹). This principle which is recognised in section 89 of our Civil Procedure Code is stated as follows in *Lechmere v. Fletcher*² :—

“ There are many cases in the books as to joint and several bonds, from which it appears, that, though you have entered judgment on a joint and several bond against one obligor, you are still at liberty to sue the other ; unless indeed the judgment has been satisfied ; but so long as any part of the demand remains due, you are at liberty to sue the other notwithstanding you have obtained judgment against one. This, I think, establishes the principle, that where there is a joint obligation, and a separate one also, you do not, by recovering judgment against one, preclude yourself from suing the other ”.

I would dismiss the appeal with costs.

PULLE J.—

I agree. Under section 55 of the Bills of Exchange Ordinance (Cap. 68) the drawer of a bill and the endorsees thereof incur distinct obligations towards the holder who is entitled under section 57 to recover from any party liable on the bill. The entering of judgment against one party would result in the merger of only the cause of action against that party and the holder of the bill would still be entitled on the distinct causes of action against the remaining parties to proceed to judgment against them.

Appeal dismissed.

¹ (1891) 1 Chancery 337 at 353.

² (1833) 149 English Reports 549 at 554.

¹—J. N. A. 94570 (1/50)