

1963                    *Present : Herat, J., and Sri Skanda Rajah, J.*

W. W. KULASURIYA, Appellant, *and* G. LISSIE NONA PERERA  
and another, Respondents

*S. C. 121/62—D. C. Panadura, 7605*

*Cheque—Notice of dishonour—Parties resident in same place—Time limit for giving notice—Bills of Exchange Ordinance (Cap. 82), ss. 48, 49 (12).*

In the absence of special circumstances notice of dishonour of a cheque is not deemed to be given within a reasonable time in terms of section 49 (12) of the Bills of Exchange Ordinance if the person giving and the person receiving the notice reside in the same place but the notice is not given or sent off in time to reach the latter on the day after the dishonour of the cheque.

<sup>1</sup> (1937) 39 N. L. R. 321.

**A**PPEAL from a judgment of the District Court, Panadura.

*C. Ranganathan*, with *R. Tillekaratne*, for the 1st Defendant-Appellant.

*Cecil de S. Wijeratne*, for the Plaintiff-Respondent.

*Siva Rajaratnam*, for the 2nd Defendant-Respondent.

December 10, 1963. SRI SKANDA RAJAH, J.—

This is an action brought by the plaintiff in respect of a cheque which was endorsed by the first defendant to her.

It would appear that it was a cheque issued on the Bank of Ceylon at Panadura drawn on the 7th September, 1960, and on the back of it is an entry "To be presented on 7.10.60". The drawer, the second defendant, the endorser, the first defendant, and the plaintiff are all from Wadduwa, the town adjoining Panadura. The cheque was presented for payment on 6th December, 1960, by D. J. Perera, to whom the plaintiff had endorsed the cheque, and it was dishonoured with the endorsement "Refer to drawer". On 6th December itself D. J. Perera brought to the notice of the plaintiff that the cheque had been dishonoured. The plaintiff's evidence is that she was told about it on the night of the 6th December. Even the endorser has to be given notice of dishonour—vide Section 48 of the Bills of Exchange Ordinance. Even if one accepts the evidence of the plaintiff that the notice of dishonour was given to the first defendant on the 11th January, 1961, the question is whether it was due notice of dishonour.

Section 49 sub-section (12) of the Bills of Exchange Ordinance, Chapter 82, reads as follows:—

"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."

As I have already pointed out the drawer, the plaintiff and the first defendant were residing at the same place, but the notice of dishonour was given only over one month afterwards. An attempt was made to persuade us to hold that there were special circumstances for the delay in giving notice of dishonour. The 'special circumstances referred to are an alleged pilgrimage on which the plaintiff went to India. It was also alleged that she returned on the 10th January, 1961, and on the 11th January she gave notice of dishonour. There is no evidence as to when she left on this pilgrimage. We cannot hold that there were

special circumstances in this case. Notice of dishonour should have been given or sent off in time to reach the 1st defendant on 7th December. We would, therefore, hold that due notice of dishonour was not given.

We, therefore, set aside the judgment of the learned District Judge and enter judgment dismissing the plaintiff's action with costs both here and in the Court below. Costs are payable by the plaintiff-respondent to the first defendant-appellant.

HERAT, J.—I agree.

*Appeal allowed.*

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