

1963 *Present : L. B. de Silva, J., and Abeyesundere, J.*

NAGOOR PITCHAI, Appellant, *and* M. KANAPATHY PILLAI
and another, Respondents

S. C. 434/1961—D. C. Colombo, 23621/S

*Cheque—Crossing with words “not negotiable”—Consideration not paid by payee—
Right of payee’s indorsee to sue drawer—Bills of Exchange Ordinance, s. 81.*

Section 81 of the Bills of Exchange Ordinance reads as follows :—

“ Where a person takes a crossed cheque which bears on it the words ‘not negotiable’, he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.”

A cheque which was crossed and marked “not negotiable” was drawn by A in favour of B, who paid no consideration for it. B indorsed the cheque to C.

Held, that, by virtue of the provisions of section 81 of the Bills of Exchange Ordinance, C was not entitled to any better rights upon the cheque than B who indorsed it to him. Accordingly, inasmuch as an action by B upon the cheque would have failed for failure of consideration, C was not entitled to sue A on the cheque.

APPEAL from a judgment of the District Court, Colombo.

Austin Jayasuriya, with *C. E. de Silva*, for defendant-appellant.

S. Sharvananda, for plaintiff-respondent.

October 9, 1963. L. B. DE SILVA, J.—

The 1st defendant-appellant was a dealer in produce. The 2nd defendant had been supplying him with produce from time to time. On 30. 4. 1960 the 2nd defendant promised to supply certain produce as per samples tendered and obtained from the 1st defendant a cheque for Rs. 500 as an advance payment for the produce to be so supplied. The 2nd defendant failed to supply the goods on that day, or at any time thereafter, and the 1st defendant stopped payment on that cheque. This cheque was crossed and marked 'not negotiable'. The 2nd defendant had endorsed this cheque to the plaintiff who presented it for payment and the cheque was dishonoured as payment had been stopped. Thereafter, the plaintiff sued the 1st and 2nd defendants in this action. The defence of the 1st defendant was that he was not liable to pay on this cheque as the 2nd defendant had failed to supply the goods which he had agreed to do. Under Section 81 of the Bills of Exchange Act, a person who takes a crossed cheque bearing the words 'not negotiable' shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. In view of this provision the plaintiff was not entitled to any better title to the cheque than the 2nd defendant. The question that has arisen in this case is: "What is meant by a better title to the cheque?". In our opinion, it means that the plaintiff is not entitled to any better rights upon this cheque than the 2nd defendant who endorsed it to him. Byles on Bills of Exchange, Twenty-first Edition, at page 37, dealing with this Section states:

"A cheque marked 'not negotiable' is freely transferable, but the holder of such an instrument is in an exceptional position, since, though he is otherwise a holder in due course, he gets no new and independent title and no presumption as to the liability of antecedent parties is drawn in his favour."

He has cited a number of authorities in support of this proposition. The plaintiff in this case will not be in any better position than the 2nd defendant if he was suing on this cheque, and as the 2nd defendant had not supplied the goods on account of which he had obtained this cheque, an action by him on this cheque would have definitely failed for failure of consideration. That defence is open to the 1st defendant as against the plaintiff. The plaintiff's action must, therefore, fail.

We set aside the judgment entered in favour of the plaintiff in this case, and dismiss his action against the 1st defendant with costs in both Courts.

ABEYESUNDERE, J.—I agree.

Appeal allowed.