

1957

*Present: Basnayake, C.J., and Pulle, J.*

BANK OF CEYLON, Appellant, and KULATILLEKE,  
Respondent

*S. C. 90—D. C. Colombo, 16903/M*

*Cheques—Crossed cheque—Fraudulent alteration—Liability of collecting banker—  
Civil Law Ordinance, s. 3—Bills of Exchange Ordinance, s. 82.*

The drawer of a crossed "Not Negotiable" cheque the amount of which is subsequently altered fraudulently by a third party is entitled to recover from the collecting banker the amount by which the cheque is so fraudulently raised. In such a case the collecting banker cannot claim the benefit of section 82 of the Bills of Exchange Ordinance.

**A**PPPEAL from a judgment of the District Court, Colombo:

*S. Nadesan, Q.C.*, with *C. Renganathan*, and *Sirimevan Amerasinghe*,  
for Defendant-Appellant.

*N. K. Choksy, Q.C.*, with *G. T. Samerawickrame* and *Miss Maureen Seneviratne*,  
for Substituted-Plaintiff Respondent.

*Cur. adv. vult.*

November 14, 1957. BASNAYAKE, C.J.—

The question that arises for decision on this appeal is whether the plaintiff, the drawer of two cheques crossed "Not Negotiable," and the

amounts of which had been fraudulently raised by his clerk, is entitled to recover from the defendant the collecting banker the amount by which the cheques had been so fraudulently raised.

The material facts are not in dispute and need not be recapitulated. It would appear from the English cases<sup>1</sup> and the work on "Banking"<sup>2</sup> cited by learned counsel for the respondent that if this question had arisen for decision in England it would on the facts of this case be decided against the collecting banker. As our law on the subject of a banker's liability is the same as in England (Section 3 of the Civil Law Ordinance), except where special provision has been made in our law, the defendant would be liable to pay to the plaintiff the amount that has been paid to the defendant by his bank without his authority.

In the instant case the defendant claims the benefit of section 82 of our Bills of Exchange Ordinance. The learned District Judge has held that the defendant is not entitled to the benefit of that section on the ground that a cheque the amount of which is fraudulently raised is not a "cheque" within the meaning of the expression in that section<sup>3</sup>. It speaks of a cheque to which the customer "has no title or a defective title". Those words presuppose that the cheque is a good and valid cheque and that the only question is one of title to it. The section applies to cheques which do not have the taint of forgery or fraudulent alteration, a cheque which is the drawer's cheque in all respects and which carries the authority of the drawer. A cheque which has been altered fraudulently as in this case by raising the amount is invalid. I agree with the learned trial Judge that in the instant case the defendant is not entitled to the benefit of section 82.

The appeal is dismissed with costs.

PULLE, J.—I agree.

*Appeal dismissed.*

<sup>1</sup> *Slingsby & others v. Westminster Bank Ltd.*, (1931) L. R., K. B. D. 583.

*Ogden v. Benas*, (1873-74) L. R., C. P., Vol. IX, p. 513.

*Fine Arts Society v. Union Bank of London*, (1886) L. R., X VII, Q. B. D. 705.

*McCombie v. Davies*, (1805) 6 East 538 at 540.

*Lloyds Bank v. The Chartered Bank of India, Australia, & China*, (1929) 1 K. B. 40 at 55.

*Hollins v. Fowler*, (1874) L. R. 7, H. L. 757 at 795.

*Morrison v. London County & Westminster Bank Ltd.*, (1914) 3 K. B. 364.

<sup>2</sup> *Paget on Banking* (5th Edn.).

<sup>3</sup> *Slingsby & others v. Westminster Bank Ltd.*, (1931) L. R., K. B. D. 583 at 586.

*Slingsby v. District Bank Ltd.*, (1932) 1 K. B. 544 at 559.

*Morrison v. London County & Westminster Bank Ltd.*, (1914) 3 K. B. 364 at 382.

*Imperial Bank of Canada v. Bank of Hamilton* (1903) A. C. 49 (P. C.).