Present: Lascelles C.J. and Wood Renton J.

1912.

KRISHNAPPA CHETTY *v.* CARPEN CHETTY.

93—D. C. Kandy, 21,155.

Post-dated cheque—Not invalid—Stamp Ordinance, No. 22 of 1909, s. 64.

A cheque is not invalid by reason of its being post-dated.

An endorsee of a cheque, who knew at the time of the endorsement that the cheque was post-dated, may nevertheless maintain an action on the note.

APPEAL from a judgment of the District Judge of Kandy (F. R. Dias, Esq.). The facts are set out in the judgment.

H. A. Jayewardene (with him *Balasingham*), for the defendant-appellant.—A cheque is a bill of exchange (see section 73 of the Bills of Exchange Act). The law imposes a penalty on any one who issues a post-dated cheque (see section 64 of "The Stamp Ordinance, 1909"). Where the law imposes a penalty the act is illegal. See *Peris v. Fernando*, [1] *Melliss v. The Shirley Local Board*, [2] *Wells v. Higgins*,[3] *Annamalai v. Perera*,[4] and *Gye v. Fallon*.[5] The cheque in this case is post-dated and therefore illegal. It cannot be sued upon. The plaintiff knew when he took the cheque that it was a post-dated cheque.

Under the Stamp Ordinance of 1861 it was held that the holder of a post-dated cheque who took it with knowledge that it was post-dated could not sue on the cheque. *Chartered Mercantile Bank v. Silva & Co.*[6] As the term "cheque" is included in the term "bill of exchange," that judgment is applicable to section 64 of the present Ordinance.

A post-dated cheque is not, really speaking, a cheque, but a bill of exchange, as it is not payable on demand; a cheque must be payable on demand. A post-dated cheque, being a bill of exchange payable on a certain day, should be stamped as a bill of exchange.

[1] *(1905) 1 Bal. 199.*
[2] *(1885) 16 Q. B. D. 451.*
[3] *(1911) 14 N. L. R. 131.*
[4] *(1902) 6 N. L. R. 108, at page 111.*
[5] *(1813) 4 Taunt. 881.*
[6] *Ram. (1863-68) 199.*

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The intention to defraud the revenue, which is necessary to establish the offence under section 64, is inferred from the fact that the cheque is post-dated. The defrauding of the revenue is the direct and inevitable consequence of the act of issuing a post-dated cheque, and the person who issues a post-dated cheque must be presumed to have intended to defraud the revenue.

Samarawickreme (with him *Cooray*), for respondent.—Section 64 of the Stamp Ordinance does not refer to cheques. The word "cheque" has been purposely omitted. The term " bill of exchange " is used in two senses in the Ordinance: the wider including notes and cheques, and the narrower mercantile usage. In section 64 it is used in the narrower sense.

A cheque has not to be stamped as a bill of exchange because it happens to be postponed; a document has to be stamped according to its character on the face of the instrument (*Bull v. O'Sullivan*[1]). Even if section 64 applied to cheques, the party may be liable to the penalty prescribed, but the cheque would not be invalid. The mere fact that an act is penalized does not necessarily invalidate a contract.

The *Chartered Mercantile Bank v. Silva & Co.* [2] is no authority now, as the section which was interpreted in that case is not identical with the present section.

H. A. Jayewardene, in reply.—As the cheque was not payable on demand when it was drawn, it was not, strictly speaking, a cheque. The case in *Ramanathan's Reports* is applicable, if the cheque is to be treated as a bill of exchange.

[Lascelles C.J.—Is not the English law applicable to this case? Under the Bills of Exchange Act a cheque is not invalid by reason of its being post-dated.] The Bills of Exchange Act, though applicable to Ceylon, cannot over-ride our Stamp Ordinance. [Lascelles C.J.—There is nothing in our Stamp Ordinance inconsistent with the Bills of Exchange Act. The Ordinance does not say that a post-dated cheque or bill is invalid.]

Cur. adv. vult.

June 11, 1912. LASCELLES C.J.—

This appeal raises a question of law which is of some public importance, namely, whether, since the enactment of the Stamp Ordinance of 1909 an action can be maintained to recover money on a post-dated cheque. The defendant on July 15, 1911, issued to V. S. S. P. Suppramanian Chetty a cheque for Rs. 4,000. The cheque was dated August 4, 1911, and was to be presented for payment on that date. Suppramainian Chetty endorsed the cheque to the plaintiff, who duly presented the cheque at the Kandy branch of the National Bank of India. The cheque having been returned

[1] *(1871) L. R. 6 Q. B. 209.* [2] *Ram. (1863-68) 199.*

from the bank, on the ground that the endorsee's name was illegible and the maker's name was not initialled, by the bank shroff, the plaintiff now sues to recover from the defendant the amount for which the cheque was given. The defendant, among other grounds of defence, pleaded that the cheque being post-dated to the knowledge of the plaintiff was void and of no avail in law. The learned District Judge has given judgment for the plaintiff. On appeal, the only ground urged before us was that the learned District Judge was wrong in his ruling that an action on a post-dated cheque was maintainable. The law of Ceylon prior to the enactment of " The Stamp Ordinance, 1909, " may be stated as follows:—By section 2 of Ordinance No. 5 of 1852 the law to be administered in Ceylon in respect of all contracts and questions arising within the Island upon or relating to bills of exchange, promissory notes, and cheques was the same as would be administered in England in the like case at the corresponding period, unless other provision was, or should be, made by any Ordinance then in force in the Colony or thereafter to be enacted. Prior to the Stamp Act of 1870 the post-dating of cheques payable on demand was prohibited by English law, but this prohibition was removed by the Stamp Act of 1870, and cheques by the law of England are not now invalid by reason only that they are ante-dated [Bills of Exchange Act, 1882, section 13 (2)]. Turning to the statute law of Ceylon we find that section 18 of the Stamp Ordinance (No. 11) of 1861 imposed penalties on all who issued post-dated cheques payable on demand not duly stamped as bills of exchange, and on all who knowingly received them, and on bankers who cashed them. The application of this section was discussed in *Chartered Mercantile Bank v. Silva & Co.*,[1] where it was decided that the holder of a post-dated cheque, who took it with knowledge that it was post-dated, could not sue on the cheque. The Stamp Ordinance of 1890 by section 20 (5) re-enacted and amplified the substance of section 18 of the Ordinance of 1861. It is thus clear that under the Stamp Ordinances which preceded the enactment of " The Stamp Ordinance, 1909 ", an action was not maintainable on a post-dated cheque payable on demand, if the holder took the cheque with knowledge that it was post-dated.

The question raised by this appeal is whether " The Stamp Ordinance, 1909, has assimilated the law of Ceylon as regards the validity of post-dated cheques on demand to the law of England, or whether it has perpetuated the provisions of the earlier Stamp Ordinances under which such cheques are invalid. The material section in " The Stamp Ordinance, 1909, " is section 64 (*a*):—

> " Any person who with intent to defraud the Government of duty, draws, makes, or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made . . . "

[1] *Ram.* (*1863-68*) *199.*

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On this section four questions were discussed, which may be formulated as follows, namely, (1) whether the affirmative proof of intent to defraud the Government must be proved; (2) whether, for the purpose of determining whether a cheque is sufficiently stamped, it is permissible to have regard to collateral evidence as well as to the form and terms of the document itself; (3) whether, assuming that proof of an intention to defraud is unnecessary, it follows from the fact that the making of the instruments named in section 64 is subjected to a penalty that the instruments themselves are invalid; and (4) whether the section has any application to cheques which are not specially referred to in the section.

With regard to the first question, in the Indian case of *Ramen Chetty v. Mahomed Ghouse*[1] a similar question came before the High Court, and it was there held, under section 67 of the Indian Stamp Act (corresponding to, and identical with, section 64 of the Ceylon Ordinance), that the section became applicable only when fraudulent intent was proved. This ruling, which is in accordance with the natural construction of the section, would dispose of the present appeal, for there is no proof, and no reason to suspect, that the cheque now sued on was post-dated in order to defraud the Government. This post-dated cheque, like most other post-dated cheques, was given because the drawer was not in funds at the time.

This case is also an authority on the second of the questions which I have formulated. Following the English authorities of *Bull v. O'Sullivan*[2] and *Gatty v. Fry*,[3] the High Court held that in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence you must look at the document itself as it stands, and not at any collateral circumstances which may be proved in evidence. In other words, the test of admissibility is whether the instrument appears, when tendered in evidence, to be sufficiently stamped. This principle is also fatal to the appeal, for the cheque under consideration is in form and terms a cheque on demand, and bears the 5-cent stamp prescribed for such instruments.

The third question is academic, for my ruling on the two former questions are decisive of the appeal. But as the question involved is one which repeatedly crops up in this Court, it may be well to state the conclusion at which I have arrived. The general question involved is whether, when the Legislature imposes a penalty on persons who do a particular act, such act is necessary to be regarded as unlawful and of no legal effect. There are many English authorities on the subject, but the rule of interpretation laid down by Lord Esher, Master of the Rolls, in *Melliss v. The Shirley Local Board*,[4]

[1] *(1889) I. L. R. 16 Cal. 433.*
[2] *(1871) L. R. 6 Q. B. 209.*
[3] *(1877) L. R. 2 Ex. D. 265.*
[4] *(1885) 16 Q. B. D. 446.*

has, I believe, been generally accepted as a correct statement of the result of the cases on the point. " I think, " said Lord Esher, " that this rule of interpretation has been laid down that, although a statute contains no express words making void a contract which it prohibits, yet when it inflicts a penalty for the breach of the prohibition you must consider the whole Act as well as the particular enactment in question, and come to a decision, either from the context or the subject-matter, whether the penalty is imposed with intent merely to deter persons from entering into the contract, or for the purposes of revenue, or whether it is intended that the contract shall not be entered into so as to be valid at law ". Applying this test, there can be but one answer to the question under consideration. We find in " The Stamp Ordinance, 1909," several instances where penalties are imposed with the object of deterring persons from doing the prohibited act, but obviously without the intention of branding the prohibited act as illegal. By section 67, for example, a notary who, in preparing an instrument, omits to set out the consideration is liable to a penalty. But it could not be contended that the effect of this section was to invalidate the instrument. The same intention is obvious in sections 60, 61, and 62, and in most of the sections in chapter VI. I think it is quite clear on the principle of construction laid down in *Melliss v. The Shirley Local Board*,[1] that section 64 does not necessarily invalidate post-dated cheques.

The last question is whether section 64 applies at all to cheques. The learned District Judge states that it has been held that cheques are not within the scope of the corresponding section 68 of the Indian Stamp Act. Possibly this statement is based on a note to section 67 in *Donogh's Indian Stamp Law*. The authorities there cited do not seem to me to bear out the proposition; but be this as it may, I think no exception can be taken to the soundness of the statement. Section 64 of the Ceylon Act and section 68 of the Indian Act refer only to bills of exchange and promissory notes. It is true that the definition of " bill of exchange " in the English Bills of Exchange Act, which definition is incorporated in the Ceylon Ordinance, would include a cheque. But an examination of the Ordinance as a whole removes all doubt on the question. Some sections—section 49 for example—are intended to apply to all the three classes of instruments which fall within the definition of " bills of exchange, " namely, bills of exchange, promissory notes, and cheques. In such cases all three instruments are specified. Other sections, such as 51 (1), apply only to bills of exchange and cheques. These instruments are specified, and the case of promissory notes is dealt with in the following sub-section. As a question of construction, I am clearly of opinion that section 64 applies only to the instruments specified in the section, and that cheques are not

[1] *(1885) 16 Q. B. D. 446.*

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within the scope of the section. The language of the Ordinance in this respect is quite consistent. The term " bills of exchange " is in some cases used in its generic sense, but where cheques and promissory notes, or either of these instruments, are particularized, the intention is clear that the term " bill of exchange " is not used in its generic sense, but is intended to denote a bill of exchange in the ordinary acceptation of the term.

The result is that the appeal fails on all of the four grounds raised in the argument. I think there can be no doubt but that the effect of " The Stamp Ordinance, 1909 ", has been to assimilate the law of Ceylon as regards post-dated cheques to the law of England. The appeal fails, and is dismissed with costs.

WOOD RENTON J.—

The plaintiff-respondent sued the defendant-appellant in this action for the recovery of a sum of Rs. 4,000 on a cheque for that amount by the defendant-appellant in favour of one Suppramanian Chetty, who endorsed it in his favour. The appellant denied the endorsement, alleged want of consideration, and further pleaded that the action was not maintainable, inasmuch as the cheque in question was post-dated. The learned District Judge decided all these issues in favour of the respondent. The only one that has been pressed upon us in appeal is that the action canot be maintained because the cheque sued on was post-dated. The facts that it was so post-dated, and that the respondent at the time of its endorsement knew it to be so, are not denied by the respondent.

In arguing the point of law just stated on the appellant's behalf, Mr. H. A. Jayewardene relied on section 64 of the Stamp Ordinance of 1909 (No. 22 of 1909), which provides that any person who—

> " (*a*) With intent to defraud the Government of duty, draws, makes, or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or
>
> " (*b*) Knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of such bill or note, or in any manner negotiates the same . . . shall be punishable with a fine which may extend to one thousand rupees ".

Mr. H. A. Jayewardene contended that the effect of this provision was not merely to penalize, but to prohibit post-dating of cheques, and consequently that a cheque so post-dated was illegal, and

could not be sued upon in a court of law. To this argument it seems to me that there are several answers. In the first place, I do not think that section 64 of Ordinance No. 22 of 1909 applies to cheques at all. Cheques are not referred to in the section, and a very cursory examination of the provisions of the Ordinance is sufficient to show that, while a cheque is itself a form of "bill of exchange" frequently included in the latter term, there are provisions which are restricted to bills of exchange, properly so called, and distinguished both from cheques and from promissory notes. Section 63, for example, which deals with bills of exchange "drawn in sets according to the custom of merchants", is clearly an enactment of that character. Mr. H. A. Jayewardene argued in connection with this branch of his argument that a post-dated cheque is really a bill of exchange, and requires to be stamped as such. The authorities, however, do not in my opinion support that contention. See *Bull v. O'Sullivan*,[1] *Gatty v. Fry*,[2] *Ramen Chetty v. Mahomed Ghouse*.[3]

But even if section 64 of Ordinance No. 22 of 1909 included cheques, the offence which it creates can only be established by affirmative proof that the cheque was post-dated "with intent to defraud". In the present case any such intent is negatived by the evidence and by the findings of the District Judge, and I do not think that it would be legitimate for a Court to infer fraudulent intention from the mere fact that the person who post-dates a cheque may be assumed to know that by so doing he is depriving the Government of revenue.

The last answer to Mr. H. A. Jayewardene's argument which suggests itself to me is that, even if section 64 applied to cheques, and proof of express intent to defraud were not necessary, the section merely penalizes, and does not render illegal, the post-dating of cheques. The law applicable to this question was laid down by the Court of Appeal in England in the case of *Melliss v. The Shirley Local Board*[4] as follows:—

> Although a statute contains no express words making void a contract which it prohibits, yet when it inflicts a penalty for the breach of the prohibition you must consider the whole Act as well as the particular enactment in question, and come to a decision, either from the context or the subject-matter, whether the penalty is imposed with intent merely to deter persons from entering into the contract, or for the purposes of revenue, or whether it is intended that the contract shall not be entered into so as to be valid in law.

It is clear from this passage that the question with which we are here concerned is to be answered according to the circumstances of each particular case, and that, even where a contract is expressly

[1] (1871) *L. R. 6 Q. B. 209.*
[2] (1877) *2 Ex. D. 265.*
[3] (1889) *I. L. R. 16 Cal. 432.*
[4] (1885) *16 Q. B. D. 451.*

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prohibited, the imposition of a penalty does not necessarily involve the consequence that the contact is struck with such illegality that it cannot form a good foundation for an action.

A fortiori, the imposition of a penalty will not necessarily stamp a contract with illegality, where as here, the Legislature has not prohibited the act which it has penalized. It must be remembered that the English statute law as to bills of exchange is in force in Ceylon, and that under that law a cheque is not invalid by reason only of the fact that it has been post-dated. In view of these circumstances, I am unable to hold that the effect of section 64 of Ordinance No. 22 of 1909 is to prevent a good action from being brought on a post-dated cheque.

The decision of Creasy C.J. and Stewart J. in *Chartered Mercantile Bank v. Silva & Co.*,[1] " that a man who receives a post-dated cheque with knowledge that it is post-dated shall not be allowed to sue on it," turned, I think, on the fact that that was then the law in England. Section 18 of " The Stamp Ordinance, 1861 " (No. 11 of 1861), was, it is true, substantially identical with section 64 of Ordinance No. 22 of 1909. But Creasy C.J. and Stewart J. would, in my opinion, have construed the former section differently if the present English law as to post-dated cheques had been in force at the time of their decision.

I would dismiss the appeal with costs.

Appeal dismissed.

[1] (*1886*) *Ram.* (*1863-68*) *199.*