1937 *Present :* **Soertsz J. and Fernando A.J.**

MERCANTILE BANK OF INDIA, LTD. *v.* RAMANATHAN CHETTIAR.

51—D. C. Colombo, 336.

Promissory note—Payable to order of bank—Authority of shroff to demand payment—Presentment for payment—Presumption from absence of assets.

A shroff who has received authority orally from the manager of a bank is entitled to demand payment on behalf of a bank of a promissory note payable to the order of the bank at its office.

Where a bank is the payee of a note of which the maker does not have any assets in the bank for the payment of amount due on the due date, there is a presumption of a demand or presentment and a refusal from the absence of assets.

APPEAL from a judgment of the District Judge of Colombo.

C. Nagalingam, for third defendant, appellant.

H. V. Perera, K.C. (with him *N. M. de Silva.*) for plaintiff, respondent.

Cur. adv. vult.

June 17, 1937. FERNANDO A.J.—

The plaintiff-respondent sued the defendants to recover from them a sum of Rs. 40,000 due on the promissory note sued upon, dated August 4, 1931, by which the defendants jointly and severally promised to pay that sum to the order of the plaintiff bank at its office in Colombo. The third defendant alone filed answer and pleaded *inter alia* that the first and second defendants had paid to the plaintiff Rs. 7,500 and that the 3rd defendant had paid Rs. 21,000, whereas the plaintiff admitted the payment by the first and second defendants of Rs. 7,500 as pleaded by the

appellant, and also admitted that the appellant had paid Rs. 10,000 on July 6, 1932. The third defendant also pleaded that the plaint did not disclose a cause of action.

On February 4, 1936, Counsel for the third defendant suggested issues 8 and 9, which appear to have been duly framed. These issues were—(8) Was the note duly presented for payment? (9) If not, can the plaintiff maintain this action? The learned District Judge entered judgment for the plaintiff against the appellant as prayed for with costs, and the main contention put forward by Counsel for the appellant was that there was no presentment of the note as required by law, and that even if the shroff of the bank did demand payment of the note from the third defendant's attorney as held by the learned District Judge, the shroff had no authority to make the demand.

As I have already stated, by the note sued upon, the three defendants jointly and severally promised to pay to the order of the plaintiff bank within their office in Colombo the sum of Rs. 40,000.

Counsel's argument was that this was a note payable on demand at the bank, and that as it did not fall due on any particular date, presentment had to be made within a reasonable time in terms of section 45 of the Bill of Exchange Ordinance in order to make the third defendant liable; he also argued that if in fact demand was made by the shroff, the shroff as such had no authority from the bank to make such a demand, and that even if the shroff had authority, it was clear from the evidence that the shroff did not have the note in his possession at the time, and that he could not exhibit the bill to the third defendant as required by section 52 (4), and that therefore, the presentment if any, was irregular.

The evidence of the shroff was to the effect that he was requested by the manager of the plaintiff-bank to demand payment, and that he accordingly did demand payment from the third defendant's attorney. I see no reason to interfere with the finding of fact by the learned District Judge, and I would, therefore, hold that the shroff did demand payment. I would also hold that the evidence given by the shroff to the effect that he had been authorised to demand payment is sufficient in law to prove his authority. It is not suggested that an authority from the manager to the shroff had to be in writing. Assuming, therefore, that the manager could authorise the shroff orally to demand payment, the evidence of the shroff that such a request was made is ample, if believed, to prove that the manager did so request the shroff.

I would, therefore, hold that a demand for payment of the money due on the note was made by the shroff from the attorney of the third defendant, and it is not suggested that the demand was not within a reasonable time in terms of section 45 (2).

With regard to the other points as to the presentment, it will be noted that under the English law which is the same as ours, it is sufficient that a demand be made at the place appointed by the maker as the place of payment. In *Saunderson v. Judge*[1], A had made a promissory note payable to B or order with a memorandum that it would be paid at the house of C who was A's banker. In the course of business, the note was endorsed to C, so that the banker in the course of business became the

[1] *2 H. Bl. 510.*

endorsee of the note made by A, and payable at C's bank. It was held that "it was not necessary that a demand should be personal. It is sufficient if it be made at the place where the maker appoints it to be made. As they at whose house it was to be paid were themselves the holders of it, it was a sufficient demand for them to turn to their books and see the maker's account with them, and a sufficient refusal, to find that he had no effects in their hands". This decision was mentioned to Pollock C.B. in the argument of *Bailey v. Porter*[1] and that learned Judge said, "we think the case cited an express authority on this point, and we are not disposed to question it". That was a case of a bill of exchange drawn by J. C. payable at the plaintiff's bank, and the bill was subsequently endorsed by W. C. to the plaintiffs. On the date when it became due, there were no assets of J. C. in the bank, and in an action by the plaintiffs as endorsees against the endorser, it was held that it was not necessary to show a presentment of the bill to the acceptor, and on the authority of *Saunderson v. Judge* (*supra*) a presentment or demand at the bank was presumed and a refusal also presumed from the absence of assets in the bank. For these reasons I would hold that a compliance with section 52 of the Ordinance was not necessary in this case because the maker of the promissory note did not have any assets in the bank for the payment of the amount due.

I see no reason, therefore, to disagree with the findings of the learned District Judge, and I would dismiss the appeal with costs.

SOERTSZ J.—I agree.

Appeal dismissed.