Present : Jayewardene A.J.

1930

VELANTHAPILLAI *v.* HARMANIS APPU

38—C. R. Colombo, 53,798.

Agent—Sale of goods—Payment of bearer cheques—Implied authority to pledge principal's credit.

An agency must be antecedently given or subsequently adopted in order to bind the principal by the act of the agent. An authority may also be implied from circumstances.

Where the defendant was in the habit of purchasing goods from the plaintiff's firm through an agent to whom he gave cheques, payable to bearer, to pay for the value of the goods—

Held, that no authority to the agent to pledge the principal's credit may be implied from the circumstances.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

Nadarajah, for appellant.

Rajapakse, for respondent.

July 2, 1930. JAYEWARDENE A.J.—

The plaintiff sued the defendant to recover the value of some sugar alleged to have been sold by the plaintiff to the defendant. It appeared that one Carolis was in the habit of purchasing goods from the plaintiff's firm for the defendant who was trading at Galle, and the question was whether Carolis had the defendant's authority to pledge defendant's credit. It would appear that Carolis was given money in the shape of cheques payable to bearer whenever he was sent to Colombo to purchase goods.

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The ledgers of both plaintiff and defendant showed that there were special pages for dealings on credit, but no transactions between plaintiff and defendant have been so entered in the books of either.

The learned Judge has found that the defendant did not expressly or impliedly authorize the plaintiff to give goods on credit to Carolis or hold him out to the world as his agent entitled to pledge his credit. There was no evidence of any subsequent ratification. The nature of the business did not necessitate as a custom of the trade that goods should be purchased on credit. On the contrary, it would seem that Carolis was sufficiently funded for his purchases at this time, but disappeared soon after embezzling some money of the defendant. An agency must be antecedently given or subsequently adopted to subject the principal to the act of the agent. An authority may also be implied from circumstances.

In *Rusby v. Scarlett* [1] the plaintiff who was a corn-chandler sought to recover the price of a quantity of hay and straw, sold by the plaintiff, for the use of the defendant's horses. The defence was that the defendant had given money to his coachman to pay the bills, which he embezzled. Lord Ellenborough held that if the servant was always in cash beforehand, to pay for the goods, the master was not liable, as he never authorized him to pledge his credit; but if the servant was not in cash, he gave him a right to take up the goods on credit.

In *Daun v. Simmons* [2] it was held that, where an agent had no expressed authority to pledge his master's credit, an authority may yet be implied from circumstances. But in order that such an implication may arise, there must be circumstances from which the public may infer that an authority exists, which in fact does not. In that case the manager of a public house was authorized in fact to pledge his master's credit or " tied " to particular dealers, and it was held that he had no implied authority to order from dealers other than those to whom he was " tied. " In *Watteau v. Fenwick*,[3] however, credit was given to the licensee and the owners were held liable on the principle that goods of the description bought are usually supplied to licensees and that the principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations, as between the principal and the agent, put upon that authority. The same principle was adopted in *Kinahan v. Parry*,[4] but the Court of Appeal reversed this judgment on the ground that there was no proof of agency in point of fact.[5]

[1] *(1803) 5 Espinasse 76.*
[2] *(1879) 41 L. T. 783.*
[3] *(1893) 1 Q. B. 346.*
[4] *(1910) 2 K. B. 389.*
[5] *(1911) 1 K. B. 459.*

The case that comes nearest to the present one is *Rutherford v. Ounan*,[1] where an unsuccessful attempt was made to hold a person liable on a bill given by her son on the purchase of sheep by him at a mart, when the jury found that he was in the habit of buying and selling for her, but that he had not on any previous occasion purchased on credit as her agent.

In my opinion the learned Judge has arrived at a right conclusion on the facts and on the law.

I dismiss the appeal with costs.

Appeal dismissed.