Present: De Sampayo J. and Schneider A.J. 1921.

KATHIRESA CHETTY *v.* DORESAMY *et al.*

445—D. C. Colombo, 1,437.

Cheque signed by proprietor and accountant of a business carried on under a firm name—Firm name appearing in rubber stamp on the cheque—Letters "Acct." under accountant's signature.—Is accountant personally liable?—Bill of Exchange Act, s. 26.

The first defendant was the proprietor of a business carried on under the name of "Indo-Ceylon Trading Co." The second defendant was the accountant. Over the signature of the first defendant were in rubber stamp the words "Indo-Ceylon Trading Co.," and below the signature of the second defendant were the letters "Acct." (meaning accountant). The second defendant contended that he was not personally liable, as he signed only in his representative capacity as accountant.

Held, that he was personally liable.

THE facts appear from the judgment of the District Judge (W. Wadsworth, Esq.):—

This is an action by the payee of a cheque against the drawers, the two defendants. The cheque was duly presented at the Bank, but was dishonoured. The first defendant did not appear and judgment was entered against him. The second defendant, while admitting that he signed the cheque, states that he is not personally liable, as he signed only as an officer of the firm whose sole proprietor was the first defendant.

The question raised is a very important one. The first defendant was carrying on business under the name of "The Indo-Ceylon Trading Company." The second defendant was the accountant of the company. He was not a partner, and had no personal interest in the company. The company had an account in the bank. For the purpose of operating on the bank account, the signatures of the first defendant and of the second defendant were placed on the cheque as follows:—

THE INDO-CEYLON TRADING CO.,

N. Ponnudurai, R. Doreswamy,
————, Acct. ————

The bank would honour the cheques only if they were signed as above. The cheque sued upon was signed as above, but was dishonoured when presented. There is no question that plaintiff paid consideration for the cheque, although defendant says he himself did not receive the consideration.

The question is: Is second defendant personally liable on the cheque? At first one is inclined to the view that he is not. He is only a paid servant of the first defendant, or rather of the Indo-Ceylon Company. He has signed as accountant, and has shown on the face of the cheque the capacity in which he signed. Can he be made personally liable? This is probably the layman's view. The law, however, is different,

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and there appears to be good reason based on sound principle. Mostly of the leading cases on the subject were those decided before the Bills of Exchange Act of 1882, 45 and 46 Vict., c. 61.

In *Bottomley v. Fisher*,[1] a promissory note was signed by the Directors of a benefit building society in favour of Bottomley as follows :—

"W. R. Heath, S. B. Smith } Directors.

W. D. Fisher, Secretary."

It was held by the Court of Exchequer that Fisher was personally liable on the note. The fact that Fisher added the word "Secretary" was held not to exempt him from personal liability. Bramwell B. said that it was possible that Fisher did not mean to make himself personally responsible ; on the other hand, it was probable that he had no objection to sign his name as an additional security, but, however that might be, he had made himself personally liable by the mode in which he had signed the note. Pollock C.B. said that there was nothing on the face of it to exempt from personal liability any of the parties who had signed it.

Byles, in commenting on the earlier decisions on the question, states that if persons who fill official situations as church wardens, overseers, commissioners, managers of joint stock banks, agents and secretaries to companies, and the like, give bills or notes on which they describe themselves in their official capacity, they are, nevertheless, personally liable. *Byles on Bills, p. 56.*

This personal liability is now dependent on the provisions of section 26 (1) of the Bills of Exchange Act of 1882. The section runs as follows: "Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon ; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability."

This section embodies the principle of law laid down in the earlier cases, which is, that the terms agent, manager, secretary, &c., attached to the signature are regarded as mere *designatio personæ*. "Is it not a universal rule," says Lord Ellenborough, "that a man who puts his name to a bill of exchange thereby makes himself personally liable, unless he subscribes for another or by procuration of another, which are words of exclusion ?" *Leadbitter v. Farrow.*[2]

It was contended that the principle applied to makers of promissory notes, but not to drawers of cheques. A cheque is a bill of exchange drawn on a banker payable on demand. The position of a maker of a promissory note corresponds to that of an acceptor of a bill. Section 89 of the Bills of Exchange Act enacts that subject to the provisions in this part and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications to promissory notes, and in applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill. Section 26 above quoted does not make any difference between the personal liabilities of a person who signs a bill as drawer and of one who signs as acceptor.

In the case of *Landes v. Marcus*[3] (decided after the Act) following *Dutton v. Marsh*,[4] it was held that where two directors of a limited company drew a cheque on behalf of the company, adding to their

[1] *(1862) 1 H. & C. 211.*
[2] *(1816) 5 M. & S. 349.*
[3] *(1909) 25 T. L. R. 478.*
[4] *(1871) L. R. Q. B. 361.*

respective signatures the word "director," they were yet personally liable, the fact that the cheque was stamped near the top with the name of the company not being sufficient to show that the defendant in fact signed in a representative character within the meaning of section 26 of the Act.

Applying these principles of law, it is clear that the second defendant made himself personally liable on the cheque sued upon. He had not added any words to his signature indicating that he signed for or on behalf of a principal or in a representative capacity to exempt himself from personal liability. The mere addition of the word "Acct." (meaning accountant) does not in law free him from personal liability. The fact that the cheque was stamped with the name of the company is not sufficient in law to show that second defendant signed it in a representative character within the meaning of section 26 of the Act. It is possible that the words "The Indo-Ceylon Co." stamped on the cheque above the signatures showed the account on which the cheque was drawn. On the other hand, the fact that second defendant signed the cheque along with the first defendant, the sole proprietor of the company, indicates that he did not sign it merely as an agent or representative of the first defendant whose signature appeared thereon, but that he had no objection to sign his name as an additional security.

I find second defendant is personally liable on the cheque sued upon. Enter judgment in favour of plaintiff as prayed, with costs, against second defendant also.

Garvin, for second defendant, appellant.

E. W. Jayawardene (with him *Keuneman*), for respondent.

September 9, 1921. DE SAMPAYO J.—

The plaintiff as payee of a cheque drawn by the two defendants sued in this action for the recovery of the amount. The first defendant has not filed answer, and judgment has gone against him by default. But the second defendant contested the case on the ground that he was not personally liable on the cheque. It appears that the first defendant was the proprietor of a business carried on in Ceylon under the name of "Indo-Ceylon Trading Company." The cheque is signed by the first defendant, and above his signature are the words "Indo-Ceylon Trading Company" impressed with a rubber stamp. The second defendant has also signed after the first defendant with the letters "Acct." underneath his signature. These letters, no doubt, are an abbreviation of the word "accountant." The contention of the second defendant in the District Court and in this Court is that he, on the face of the cheque, signed the cheque in his representative capacity as "accountant," and is not personally liable on the cheque. On this point we have to consider the effect of section 26 of the Bills of Exchange Act which enacts as follows: "Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of the principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character,

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does not exempt him from personal liability." The question in this case is whether, in view of the form in which the signature of the second defendant appears, he could be said to have indicated that he was signing for and on behalf of the Indo-Ceylon Trading Company, or whether he did not merely give a description of the position he held in the company. It appears to be clear that although he described himself as accountant, he did not thereby sufficiently indicate that he was signing for and on behalf of the company. Mr. Garvin, for the second defendant-appellant, strenuously contended that the fact that the name of the company was stamped above both the signatures sufficiently indicated that the second defendant signed in his representative capacity as accountant for and on behalf of the company. This point was dealt with by the learned District Judge, and he came to the conclusion that the stamping of the name of the company did not make any difference. Two cases were cited by him, and they appear to be good authority for his decision, viz., *Landes v. Marcus*[1] and *Dutton v. Marsh*.[2] In the first of these cases two directors of a limited company drew a cheque, adding to their respective signatures the word "Director." In that case, as in this case, the cheque was stamped with the name of the company, and yet it was held that they were personally liable on the cheque. I think the decision of the District Judge is right, and I would dismiss this appeal, with costs.

SCHNEIDER A.J.—I agree.

Appeal dismissed.