

(1880) 02 AHC CK 0019

Allahabad High Court

Case No: None

Baldeo Prasad and
Another

APPELLANT

Vs

Grish Chandar Bhose

RESPONDENT

Date of Decision: Feb. 24, 1880

Citation: (1880) ILR (All) 754

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

The case of the plaintiffs is that a cheque, No. 3821 of 18th October 1877, drawn by Captain C. Ellis, Emigration Agent, on the Bank of Bengal, for Rs. 300, was endorsed over to their agent, Parsotam Das, by the defendant, for valuable consideration. Parsotam Das sent the cheque to the plaintiffs' firm at Ghazipur, and they forwarded it by post to their firm at Arrah, but it was lost in transit. The defendant refused to give a duplicate of the cheque; and the plaintiffs now sue to compel him to give a duplicate or to refund the money, and to pay damages, Rs. 48, equivalent to interest on the amount of the bill lost by plaintiffs owing to defendant's refusal, and future interest from date of institution of the suit. The defendant replies that he did not indorse the cheque over to plaintiffs; that it was drawn payable to Babu Hari Mohan Banarji, who indorsed it. The Judge has rejected the plaint on the ground that it does not disclose a cause of action. This is, however, erroneous.

2. u/s 61, Code of Civil Procedure, a suit may be maintained on a lost negotiable instrument, and, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff to the satisfaction of the Court against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed

with the plaint; and in By les on Bills of Exchange, 12th ed., chapter XXVIII, p. 378, we find that the relief administered by Courts of Equity will be afforded, " not only on bills, but on notes; not only against the drawer, but against the indorser, or the acceptor; not only may a new bill be required, but payment; but the Court will not call on a party to renew or pay a lost bill without providing him with a satisfactory indemnity."

3. The defendant Babu Grish Chandar Bose, assuming him to be the endorser of the cheque, cannot give the new cheque asked for without the co-operation of the alleged drawer, Captain Ellis; and the plaintiff should amend his plaint by joining Captain Ellis as a defendant in the suit, and praying that the relief sought may be given against both defendants.

4. The Judge will return the plaint to the plaintiff to be amended accordingly, and his order rejecting it is set aside, and the costs of this appeal will be costs in the cause.