(1867) 12 CAL CK 0002

Calcutta High Court

Case No: None

Choonilal Seal		APPELLANT
	Vs	
Spence''s Hotel Company Limited		RESPONDENT

Date of Decision: Dec. 9, 1867

Judgement

Norman, J.

This is a suit brought under Act V of 1866 by the plaintiff as endorsee of a promissory note made, on the 8th of December 1866, by Charles Marten and William Anderson, payable to the defendants, or their order, sixty days after date, and endorsed by the defendants to the plaintiff. It was proved that, on the 6th or 7th of October 1866, Baboo Haralal Mitter, one of the directors of Spence''s Hotel Company, brought to Baboo Hiralal Seal a promissory note, sealed with the seal of Spence''s Hotel Company, and signed by three of the directors. Hiralal Seal got the plaintiff to discount it. This note was returned, and the note now sued on given in exchange for it on the 8th of December 1866. The note was originally endorsed" for Spence''s Hotel Company, Limited--W. Linton." This was done by the order of Captain Smith, one of the directors of Spence''s Hotel Company. Baboo Hiralal Seal objected to this form of endorsement, on which the note was taken away, and the seal of the Company was affixed to it by Mr. Linton, the Secretary, under the orders of another director, Baboo Haralal Mitter.

2. The first point I propose to consider is, whether Spence''s Hotel Company are bound by the endorsement of the note. It was, no doubt, very properly contended by Mr. "Woodroffe that the power of a corporation or the directors of a Limited Company to issue bills of exchange and promissory notes, must depend on whether such power is given to them either expressly or upon a due construction of the Memorandum and Articles of Association. To that I entirely assent. There is really no difficulty on that point. The Articles of Association state that the objects for which the Company is established are for the purchase of the business of an hotel-keeper, confectioner, and provisioner; the future working and carrying on of the said

business, and the doing of all such other things as are incidental or conducive to the attainment of the above objects.

3. So far as they are confectioners and provisioners, they are ordinary tradesmen or shop-keepers. According to the course of business and custom of trade, dealings in negotiable instruments are necessary for the transaction of the business which the Company was formed to carry on in the usual and ordinary way; and, therefore, I think that the directors who have power to manage the business must be taken in this case to have power to bind the Company by the issue of negotiable securities in the ordinary course of the business of the Company. In Permian Railways Company v. The Thames and Mersey Marine Insurance Company (L.R., 2 Chan. App., 617), a power to issue bills and notes was held to exist by implication, and that case appears to go much further than it is necessary to do in the present case.

4. Then comes the question, was the negotiation of this particular note a matter within the ordinary scope of the business of the Company? It has long been recognized in Courts of Justice that the exigencies of commerce render it absolutely essential that the members of a trading partnership should have power to borrow money on the credit of the firm, and by mortgaging it. They can bind the firm by endorsing bills and notes to bankers or money-lenders for the purpose of raising funds for carrying on the business. Here Spence''s Hotel Company having taken the first promissory note as a security from their debtors, Marten and Anderson, raised money by endorsing it, and borrowing from Hiralal Seal. I see no reason why they should not repeat that operation when they found that the first note was not taken up by the. makers.

5. It was contended that, assuming a power to issue negotiable securities to exist, it was not well exercised, because the seal was affixed in an irregular manner. I need not go into that point, because the promissory note is endorsed in the name of the Company by the Secretary of the Company, and I think that there is abundant evidence to show that in so endorsing it, the Secretary was acting under the authority of the Company. There is evidence which satisfies me that the directors authorized his act in endorsing the note, and if I had any doubt on that point, I should have none that they subsequently ratified, and that they certainly never disowned his act, except through the mouth of their legal advisers after the suit commenced. By Section 47, Act XIX of 1857, the Company are bound by promissory notes so endorsed.

6. Then comes the question as to notice of dishonour. The proof on that point is that Hiralal Seal''s sircar went to the office of the Company on the day when the note became due, and demanded the money. The only doubt is whether the Company had notice that the note had been presented to Messrs. Marten and Anderson, and dishonoured. Now, when the note was due, it was in the hands of the Delhi Bank, who may very probably have given due notice of the dishonour both to Choonilal Seal and the Hotel Company. If such notice reached Spence''s Hotel Company, they

had notice of the presentment and dishonour, whether Choonilal Seal gave it them or not. After the dishonour of a bill or note, an acknowledgment of liability, or a promise to pay by an endorser, is evidence that he has received notice of dishonour. Not only have we such acknowledgment in the present case, but it has been proved that, on the 22nd of February, a meeting was held, at which the directors resolved to write to Mr. Marten, and informed him "that the Company will give him time until Monday next, at 3 P.M., to arrange for payment of the promissory note for Rs. 5,000, due on the 9th of the month, failing which the matter will, without further notice, be placed in the hands of the Company''s solicitor to proceed under the decree." Why should any such resolution have been passed if the Company had become free from liability to Choonilal Seal on the note, by any laches on his part in omitting to give a due notice of dishonour? Whether Mr. Marten paid Choonilal Seal or not, would have been a matter of indifference to the Company.

7. I have no doubt that, as a matter of fact, the Company had due notice of the dishonour. There will be a decree for plaintiff, for Rs. 5,000, with interest at 6 percent. from the 9th February, 1867, and costs on Scale 2.