(1871) 06 CAL CK 0017

Calcutta High Court

Case No: None

Thakur Das		APPELLANT
	Vs	
Futteh Mull		RESPONDENT

Date of Decision: June 5, 1871

Judgement

Phear, J.
The plaintiff in this action seeks to recover from the defendant a certain hundi or its value. The history of this hundi may be given as follows:--It was drawn at Bhawani by Chaturbhuj Murlidhar upon the firm of Kunjo Lal Byjnath at Calcutta. It recited that Rs. 2,300 had been deposited with the drawer by Duberam Amir Chand as consideration for the hundi on the 1st Maghbadi (January 17th); and it directed the drawer to pay that sum in current rupees to the shajoog sixty-one days after that date. This hundi was purchased from Duberam Amir Chand by the plaintiff, and an endorsement (so to speak) having been written on the face of it in these words:--Hundi sold by Duberam Amir Chand to Bhai Muta-ulla Mull Thakur Das, sent by Muta-ulla Mull Thakur Das to Bhai Ram Lal Badri Das for realization. It was in this condition posted by the plaintiff at Delhi on 8th Maghbadi (January 24th) under an address to Ram Lal Badri Das at Calcutta.

2. The hundi never reached Ram Lal Badri Das, and was probably stolen on its way to this firm, although there is no evidence in the case to show by whom it was, or how it came to be, stolen.

3. On the 12th Maghbadi (January 28th), however, it was presented by some person to Kunjo Lal Byjnath for acceptance.

4. At that time, it appears, the endorsement which I have spoken of, was not in its original form, but had been altered by the erasure of the name Ram Lal Badri Das," and the substitution of "Urjun Das Hazarimull" in its place. Under this endorsement, so altered, there is now the name "Urjun Das Hazarimull" written in the manner of a signature. I cannot clearly make out from the evidence and the judgment of the lower Court whether or not this signature was there at the time when the hundi was presented to Kunjo Lal

Byjnath, I imagine that it must have been so, although in the view of the case which I have taken, the fact is not of any great importance.

5. Upon the hundi being presented to Kunjo Lal Byjnath in the Way I have mentioned, they wrote their acceptance on the back of it in the following words:--

Accepted by Kunjo Lal Byjnath to Urjun Das Hazarimull.

6. On the evening of the day on which the hundi was accepted, and after it had been accepted, namely, at 10 p.m. of the 12th Maghbadi (January 28th), the hundi was brought to the defendant by one Jankiprasad, a jemadar, to be discounted. The words of the defendant''s gomasta Kaisri Chand himself on this point are:--

The hundi was accepted when it was brought to me. I made Jankiprasad sit down there, and sent Harogovindo jemadar to Kunjo Lal Byjnath to enquire whether they had accepted the hundi or not. I gave Harogovindo jemadar the hundi. He went with the hundi, and came back with a satisfactory reply. After I was satisfied with the answer, I paid the money to Jankiprasad. The discount was 7 1/2 per cent. That was the discount of that time. I gave him the full amount after deducting at the rate of 7 1/2 per cent.

7. Afterwards Kaisri Chand said:--

A letter had come to me about the hundi, and Janki brought the hundi to me at night. Ramkrishna was the Lala. I knew him five or six months previously. I had transactions through him before that.

8. It does not appear from the deposition of defendant''s gomasta, Kaisri Chand, which is on the record, that he said the hundi when brought to him bore the name of Urjun Das Hazarimull written as an endorsement beneath the acceptance, but it is there now, and it seems to have been assumed throughout the trial that the defendant took the hundi under that endorsement. The judgment of the lower Court turns entirely upon the finding of fact come to by the learned Judge, to the effect that this is a genuine signature of the firm of Urjun Das Hazarimull put on the hundi after it had been accepted for the purpose of passing it to the defendant. I will therefore assume that the endorsement which follows the acceptance was on the hundi when the defendant discounted it. I cannot, however, go so far as to agree with the learned Judge in thinking that it is the genuine signature of Urjun Das Hazarimull. The lower Court found (and in this it appears to have been indisputably right) that the substitution of Urjun Das Hazarimull for Ram Lal Badri Das'' was not made by or under the authority of Muta-ulla Mull Thakur Das, and was an unquestionable forgery. This fact of itself seems to me to render it peculiarly unsafe to pass to'' the conclusion that the subsequent endorsement ''Urjun Das Hazarimull'' is genuine, except upon very clear evidence; and certainly the evidence bearing upon this point is, to say the least of it, exceedingly meagre and frail. Under the circumstances of the case, the genuineness of this endorsement involves something more than the mere writing of the name; for the firm must have treated the previous forged endorsement to

themselves as a real endorsement, have procured the acceptance in their favor, and then endorsed the hundi to the defendant. Again, all this must have been done by Urjun Das Hazarimull, either with full knowledge of the forgery, or as the consequence of an imposition practised upon themselves. But the latter alternative is out of the question, because the defendant in his written statement says that his gomasta, upon hearing a report to the effect that the hundi in dispute was a stolen hundi, sent to Mangal Chand, the head gomasta and manager of Urjun Das Hazarimull''s firm in Calcutta, to ask about the hundi, and Mangal Chand in answer said that he knew nothing about it. If therefore, notwithstanding this denial, Mangal Chand or any other person having authority to bind the firm had, in fact, written the endorsement on behalf of the firm, it is manifest that this act must have been done in fraud. Now, it appears to me that the only evidence in the whole case which tends in any degree to bring the endorsement home to the firm of Urjun Das Hazarimull, is the statement of Kaisri Chand, the defendant''s gomasta, to the effect that he knew Jankiprasad, who brought him the hundi, to be a jemadar or other servant of Urjun Das Hazarimull, coupled with the testimony of Bassant Lal, Nagri munshi of the Bank of Bengal, a witness called by the plaintiff, who, on looking at the endorsement, said, I say it is the endorsement of Urjun Das Hazarimull,'' But both Kaisri Chand and Bassant Lal afterwards qualified their first statements very much. Kaisri Chand gave a very lame explanation as to how it happened that he knew Janki to be the servant of Urjun Das Hazarimull, and Bassant admitted that his duty at the bank was merely to pass signatures by reference to the entries in a signature book; he could say nothing as to the authenticity of the signature in that book, and had no opportunity of learning how often, if at all, he had committed error in passing signatures by the book. Independently of this book, he had no knowledge whatever of the signature of the firm of Urjun Das Hazarimull. Obviously, then, this witness''s identification of the endorsement with Urjun Das Hazarimull''s signature, was nothing more than a mental comparison with the writing in a book which was not at the time under his eyes. It was not of any higher order of value as evidence than the book itself; but the defendant''s counsel successfully objected to the production of the book, on the ground that that was not legal evidence. I must say that evidence of this sort, even if there were nothing in the case to countervail it, would fall short of satisfying me that the firm of Urjun Das Hazarimull in Calcutta committed the gross fraud of which, in effect, the learned Judge has found them guilty in the person of their manager, Mangal Chand. It is true that the learned Judge appears to think that certain changes which took place in the firm of Urjun Das Hazarimull shortly after the time when this hundi was discounted, reasonably give ground for imputing some unknown dishonesty of conduct to Mangal Chand; and that then, inasmuch as he went to Bikaneer, after having been subpoenaed as a witness in this case, and has not appeared in Court, the proper inference is that his dishonesty was connected with the subject-matter of this suit. It appears to me that this course of argument, so far as I apprehend it, is dangerously speculative, and ought not to be considered as furnishing the slightest additional force to the evidence of which I have already spoken. On the other hand, the non-production of either the broker or of Jankiprasad, the entire absence of any evidence to connect these persons with the firm of Urjun Das Hazarimull, the admission of the

defendant''s own servants reluctantly made, that they had never before the night in question seen Jankiprasad, and the now undisputed fact that the endorsement to Urjun Das Hazarimull was a forgery, altogether seem to me to weigh very heavily against the hypothesis that the endorsement of the name of Urjun Das Hazarimull was the real act of that firm. In short, with the greatest deference for the opinion of the learned Judge who tried the case in the Court below, I feel bound to hold that the endorsement which follows the acceptance is just as unreal as the endorsement to Urjun Das Hazarimull, which immediately precedes it, and almost necessarily I come to the same conclusion with regard to the signature Urjun Das Hazarimull, which is appended to this last-mentioned endorsement.

9. In this state of the facts I think the plaintiff''s right to recover against the defendant is clear. The hundi was his property, and he never voluntarily parted with it. His right of property in it, and to the benefit of the contract embodied in it, must be upheld, unless the mode and manner in which the defendant became possessed of it sufficed in law to give him (the defendant) a title to it, even as against the real owner. Now the strongest way in which the defendant''s case as to this point can be stated, is that he purchased the hundi for valuable consideration without notice of the vendor''s want of title, and no doubt, according to English mercantile law, the property in a negotiable instrument payable to bearer passes to a bona fide purchaser for value without notice, even though the vendor had no title; just as is the case with the sale of goods in market overt under similar circumstances. But I need hardly say that this law of the market overt, which gives the power of sale to a non-owner out of regard for the circumstances of the innocent purchaser, is founded upon very special principles of expediency, and among Hindus it appears to take a very peculiar shape. See Menu, Chapter VIII, 201, 202; Colebrooke''s Digest, Book 2, Chapter II, section 2; and Strange''s Hindu Law, Chapter XII, page 304. How far there may be a law of this nature operative between Hindus in regard to such a subject as an unendorsed hundi payable to the shajoog I will not now stay to enquire; for the hundi which is before us was specially endorsed by the plaintiff when it left his hands, and it was afterwards also specially accepted by Kunjo Lal Byjnath. The question which claims our attention is, whether or not the defendant, by reason of having purchased the hundi for valuable consideration without notice, obtained a good title to it, notwithstanding the forged special endorsement before acceptance, and the forged endorsement to himself after the special acceptance. If the analogy of English law applied here, of course the answer would be in the negative. It is said, however, that the Hindu law in this matter is widely different from the English, and that a hundi purporting to be payable to the shajoog," whatever may be the form of the endorsement it bears, passes by delivery to a purchaser for value who has no notice of the vendor''s want of title. At the outset, I must say that this appears to be a remarkable proposition. "Joog", we are told, is nothing more than our word "payee," the person who has the right to be paid; and ■sha■ means respectable or honest. Then who answers to the term "shajoog," unless it be the person designated by real (not fictitious) endorsements? The authority put forward in support of this contention is a decision of an appeal bench in the case of Goursimull v. Dhansuk Das

Ante, p. 289. According to that report, the Court certainly does seem to have stated, as its opinion, that before acceptance at any rate, a hundi payable to shajoog" would pass by delivery merely, without regard to the authenticity or otherwise of any special endorsement which might be upon it. It is not clear how this expression of opinion was pertinent to the case before the Court, because, as far as I can learn, the facts of that case did not exhibit any bond fide taker of the hundi before acceptance, and I suppose the Court never meant to lay down that, under Hindu law, every one who took the hundi, even though he obtained it by fraud, would be treated as a shajoog" The facts of that case, upon which the decision of the Court was really grounded, seem to have been simply these:--One Debiprasad, having dishonestly obtained possession of a hundi before acceptance, forged a special endorsement to himself, got it accepted in favor of himself, and then endorsed it to the defendant. The substance of the Court"s decision was that it would not look behind the acceptance;. and treating the acceptance as the foundation of the defendant"s right, his title from that point was unimpeachable. In the view of the facts of the present case at which I have arrived, this decision, so understood as I have just explained it, does not apply, for Kunjo Lal Byjnath accepted the hundi in favor of Urjun Das Hazarimull, and Urjun Das Hazarimull did not endorse it to the defendant. I will not therefore further discuss the merits of the case of Goursimull v. Dhansuk Das Ante, p. 289. Returning then to the case before us, it seems to me that, in considering the right to a hundi, we are as much bound to put a reasonable construction upon the words of an endorsement or an acceptance as upon any other part of the document; and when a Hindu maker or rightful owner of a hundi payable in terms to the shajoog, endorses it as sold or sent to A., he obviously means to pass the right of dealing with the hundi to A. alone. It may well be that, according to Hindu customary law, A. can transfer his right to a third person B. by word of mouth or mere delivery, notwithstanding that the special endorsement to himself is in writing; but there is no evidence before us to suggest that, after the special endorsement to A., the hundi can be validly transferred to B. otherwise than by A. or by A."s authority. It seems to be only common sense that the term shajoog" should be subordinate to the directions of the successive owners, and should mean the right men to be paid," according to the tenor of the document, which must include both the endorsement and acceptance. I certainly am not aware of any rule of Hindu law, customary or otherwise, which would have the effect of making the word "shajoog" mean payable to bearer, quite independently of the endorsements. If there were such a rule in practice, endorsements would be useless, and would, I suppose, very soon be dropped altogether. Also, I know of no principle of mercantile expediency, having the force of law or, otherwise, which would be served by our disregarding the direction of the endorser, and treating a specially-endorsed and specially-accepted hundi as if it were an English negotiable instrument made payable to bearer, and as such, part of the currency of the country. On the contrary, as it appears to me, expediency is all the other way. I thus come to the opinion that the defendant has failed to rebut the prima facie title of the plaintiff by making out any title in himself; he gets none on the document itself from the undertaking of the acceptor, for the reason that I have before mentioned; and he gets none traceable to the special endorsement of the plaintiff, because the line of title is

broken by two forgeries. He probably has a right as against Kunjo Lal Byjnath to be paid the amount of the hundi, on the ground of the estoppel; but this cannot affect the plaintiff''s claim.

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Before Sir Barnes Peacock, Kt., Chief Justice and Mr. Justice Norman.

The 25th May 1865.

Goursimull and Another (Defendants) v. Dhansuk Das and Another (Plaintiffs).

Hundi --Suit to recover Hundi--Forged Endorsement.

The plaintiffs, being holders of a hundi, seat the same to their koti in Calcutta without endorsement. The hundi was lost or stolen on the way, and came into the defendants'' hands as endorsees, the endorsement of the plaintiffs having been forged. The defendants, without notice of the forgery, paid full consideration for the hundi. Held on appeal, reversing the decision of the Court below, that the plaintiffs were not entitled to recover the hundi from the defendants.

Per Peacock, C.J.--It appeared from the evidence that the hundi in this case would pass, at any rate prior to acceptance, by delivery.

This was an appeal from a decision of Mr. Justice Morgan, dated March 24th, 1865. The suit was brought to recover possession from the defendants of a certain hundi, dated the 15th day of the light side of the moon in Aswin in Sambat year 1921 (October 15th, 1864), for sicca Rs. 2,500, drawn by Gabind Das Raghunath Das, of Bombay, on Lachmichand Radhakrishna, of Calcutta, payable 51 days after date, in favor of Sewdas Damoni, from whom the same duly came by endorsements to the plaintiffs, which said hundi the plaintiffs alleged the defendants had wrongfully converted to their own use, and wrongfully deprived the plaintiffs of the use and possession thereof to the damage of the plaintiffs to the extent of Rs. 2,666-10-8 and interest. The plaintiffs resided in the North-West Provinces, and carried on business as bankers at Jeypore, under the style of Dhansuk Das Sewbux, and in Calcutta under the style of Dhansuk Das Madan Gopal. The defendants were described as both of Ramghor in the North-West Provinces, but carrying on business as bankers in Calcutta, under the style of Tarachand Ghansam Das. From the written statement of the plaintiffs, it appeared that their firm at Jeypore purchased the hundi in suit from the koti of Narayan Ganesh Das of Jeypore; that the hundi had been obtained by Sewdas Damoni through his Bombay firm of Lachman Das; and Sewdas sold it to Ganesh Das Thakur Das of Bombay, who sent it to Narayan Das Ganesh Das, their corresponding koti at Jeypore; that Ladhuram, the sole gomasta of the

plaintiffs" Jeypore firm, sent the hundi without any endorsement, enclosed in a letter written by him to Dhansuk Das Madan Gopal, the plaintiffs" Calcutta koti; that the letter was sent by post, but did not reach its destination, having been lost or stolen on the way; that Golap Chand, the gomasta of the plaintiffs" Calcutta koti, on receiving intimation that the hundi had been sent, and finding it had not reached him, made enquiries, and found it was in the possession of the defendants" Calcutta koti; that the Jeypore koti of the plaintiffs received information by letter that the hundi in question bore their endorsement to one Surajvan Chandravan of Patna, who had endorsed it to Debiprasad Kalkaprasad of Calcutta, by whom it was endorsed to Tarachand Ghansam Das, the defendants" Calcutta koti, and that it had been presented to Lachmichand Radhakrishna for payment, but was dishonored; that the plain-tiffs" koti at Jeypore wrote in reply, Baying that their endorsement on the hundi had been forged; and claiming delivery of the hundi. The defendants in their written statement stated that, on 28th November 1864, a person on behalf of the koti of Debiprasad Kalkaprasad applied to the defendants to discount the hundi in question among other hundis which he brought; that in order that there might be no doubt about the acceptance being genuine, the defendants, before discounting it, sent it to the office of the drawees to enquire if it were all right, and were told that it was so, the acceptance in favor of Debiprasad being genuine; that they thereupon discounted the hundi at the rate of 8 per cent., and took it over with the endorsement of Debiprasad Kalkaprasad in part-payment of a purchase of sovereigns then made by the firm of Debiprasad Kalkaprasad from the defendants; that the price of the sovereigns so sold was Rs. 12,050-4, which was paid for by the defendants receiving in cash and notes Rs. 5,034-3, and four hundis, of which the one in suit was one, for Rs. 7,039-15-6, which, with discount at 8 per cent., left a balance of Rs. 7,022-1, and thus the actual value given by the defendants in good faith to Debiprasad Kalkaprasad for the hundi was Rs. 2,661-10-6; that when the defendants presented the hundi for payment to the acceptors, they refused to honor it, as they had received notice from the plaintiffs not to pay it, as their endorsement had been forged. The defendants submitted that, even if this were so, they being indorsees for value, and having taken the hundi in good faith, were entitled to the said hundi so as to obtain payment thereof.

Morgan, J.--I am fully satisfied, from the evidence in the case, that the defendants are not bond fide holders for value. I regret not having framed issues, and the result has been that the evidence has been allowed to run wild, and the case has gone on for three days, entirely taken up to prove a usage never hinted at in the pleadings. The evidence as to the usage is of the most discrepant kind. I have not been called upon to decide upon such a usage; but on a scrutiny of the evidence, it appears to me to be a highly inconvenient usage for a koti; these hundis are in form highly inconvenient to the rest of the world. The hundi claimed in this suit was drawn by a firm at Bombay on a firm at Calcutta. The plaintiff) acquired this hundi by purchase, and it is clearly established to my mind that they are still the owners. The defendants" answer to the plaintiffs" suit to recover the hundi is that they have, by having become endorsees for value, acquired property in it. I will say at once as the result of the evidence, that the defendants by their agent discounted the

hundi under circumstances which fell short of showing that they did so fairly for a full consideration. The person is not called who made this transaction. The cashier is contradicted in several portions of his evidence. I place very little reliance on his evidence. The evidence of the broker in gold and silver is not trust-worthy. I draw the conclusion from the evidence that, though the defendants have paid valuable consideration for the note, they did not do so in such a way as to be bond fide holders. What I have to decide here is between the plaintiffs, the undoubted owners of the hundi, and the defendants, who claim under a forged endorsement. The case seems to me that, at the time when the hundi reached the defendants, the instrument did not pass by delivery from hand to hand as bank notes, &c., but by endorsement; no one could make a title to it if they were forgeries. The defendants, though they were holders, and had paid money, failed to acquire any property in the hundi. They gave their sovereigns, and are therefore holders for value, but were not bona fide holders. The plaintiffs are entitled to recover possession, without reference to anything as to the custom of merchants, &c. I give a verdict for nominal damages on the note being given up.

From this decision the defendants appealed on the following grounds:--That the evidence for the plaintiffs did not show that the endorsement on the hundi of Dhansuk Das Sewbux was not the true endorsement of such firm; that, according to the evidence, it appeared that the hundi was one payable to such person as presented the same to the drawee for acceptance, and that from the time of such acceptance, and not previously thereto, the said hundi became transferable by endorsement, and that in fact the endorsement, previous to such acceptance by the depositor of the money, or any taking through him, was a matter of no importance so far as the negotiability of the said hundi was concerned; and that the evidence showed that the defendants were holders of the said hundi bond fide and for valuable consideration, and that the finding that they were not so was contrary to the evidence.

Mr. Bell and Mr. Woodroffe for the appellants.

Mr. Eglinton and Mr. Lowe for the respondents.

Peacock, C.J.--It appears from the evidence that such a bill as this would, at any rate prior to acceptance, pass by delivery, and that the acceptor or drawee would not look to the genuineness of a note brought to him by a man of known respectability. Then it appears to have been the custom in such a note as this to make it payable to some particular person. In this case a large and respectable banking house accepts this note payable to Debiprasad. That note would have been very easily and very readily negotiated in the market for full value, therefore there was no necessity for Debiprasad, if he had stolen this note, to have gone to any secret place, and sold it for a small consideration. He takes it to the defendants; there does not appear to be any proof that they dealt with the note otherwise than in the ordinary way of their business. The consideration which they gave for this and other notes was 1,200 sovereigns; they made a written entry of this transaction in their books, as was proved by their gomasta. The

learned Judge does not doubt that the defendants gave the 1,200 sovereigns for the note; and if they did, I am at a loss to see what could prevent them from being considered bona fide holders. If the learned Judge had said that they had given very small value, that would have been a reason for his thinking that they were not bona fide holders, or that they had given too small a consideration. The first part of his judgment seems to imply, but I do not see in the evidence anything to show, that they had given less than the full value, because the entry shows that they had got 8 per cent. discount and 9 pie, about Rs. 67 or 70 profit. In another part of his judgment the learned Judge says:--"The case seems to me that, at the time when the hundi reached the defendants, the instrument did not pass by delivery from hand to hand as bank notes, &c., but by endorsement, and no one could make a title to it if they were forgeries. The defendants, though they were holders, and had paid money, failed to acquire any property in the hundi." The learned Judge seems to have thought that they were the holders of the note, and had paid the value of the note, but that they were not bond fide holders. It appears to me that, when they paid their sovereigns, they were holders for value, and there is nothing in the evidence to induce me to think that they are not holders for value; and therefore holders for valuable consideration. Consequently they are the owners of the note, and the plaintiffs cannot recover it from them, although they might have done so, if they had been holders without full value, or after notice of forgery.

I think, therefore, that it is clear that the acceptors of this note who had accepted in favor of Debiprasad were respectable bankers, and that there was no necessity therefore for Debiprasad''s going and dealing with this note for less than the fair value. Under these circumstances I think the plaintiffs are not entitled to recover the value.

The decree of the lower Court will be reversed, and a decree given for the defendants, with costs to be taxed on scale No. 2. Costs of the appeal to be taxed on the same scale.

Norman, J.--I am entirely of the same opinion. It seems to me that, when the defendants took this note, they had not notice that it was a stolen one. At least we can come to no other conclusion upon the evidence. In the first place I do not see by what means they could have got information. There was not a particle of evidence that the plaintiffs sent information to the acceptors that the hundi had been stolen, and therefore the natural inference is that the defendants gave, as they say they did, full value for it.

Attorney for the appellants: Mr. Hart.

Attorney for the respondents: Baboo D.C. Dutt.