Ibrahim Fazalbhoy Joomabhoy Vs International Banking Corporation

O.C.J. Appeal No. 91 of 1924 and Suit No. 2317 of 1922

Court: Bombay High Court

Date of Decision: Dec. 6, 1924

Acts Referred:

Negotiable Instruments Act, 1881 (NI) â€" Section 33

Citation: AIR 1925 Bom 252 : (1925) 27 BOMLR 283 : 87 Ind. Cas. 485

Hon'ble Judges: Norman Macleod, J; Crump, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Norman Macleod, Kt., C.J.

The plaintiffs stated that they were the payees and holders in due course of seven bills of exchange drawn in

London by Alfred Mumford and Co. Ltd. addressed to the defendant firm of Fazalbhoy Joomabhoy & Go personally and without qualification as

on various dates and amounts all payable sixty days after sight. The defendant firm of Fazalhhoy Joomabhoy & Co. accepted all the bills as

payable at the plaintiff bank and signed their acceptances ""for or on behalf of the Eastern Commercial Corporation

2. The plaintiffs claimed that such words did not affect the firm''s personal liability. The bills were all dishonoured by non-payment cm their due

dates.

3. Fazalbhoy Joomabhoy, a partner in the defendant firm, died on July 15, 1922, and the plaint was amended by making defendants Nos. 1, 2 and

3, his heirs and legal representatives, together with defendants Nos. 4 and 5, the remaining partners, the defendant on the record. The plaintiffs

prayed that the defendant firm (this was wrong, as the individual partners were sued after the amendment) should be ordered to pay the sum of Rs.

58,774-13-9, the total of the bills, with interest at eight per cent, on the various amounts from the respective due dates and notarial charges. In the written statement it was pleaded that the plaintiffs were not the holders in due course of the seven bills of exchange and that defendants were not

liable on those bills.

4. Defendants were secretaries and agents of the Eastern Commercial Corporation Limited to joint stock company and as such had power to

draw, accept, endorse, negotiate and sell bills of exchange and hundies.

5. The Corporation had indented from Messrs. Alfred Mumford'' and Co. for several lots of goods by several indents and it was arranged that the

latter firm should draw bills of exchange on the Corporation in respect of the said goods.

6. Some of the bills in respect of goods so indented for by the Corporation were drawn on Fazalbhoy Joomabhoy & Co, After the bills were

received in Bombay, they were sent by the plaintiff bank to the Corporation for acceptance. The Corporation, on September 2, 1920, returned the

seven bills in suit duly accepted by them along with other bills drawn on the Corporation. The defendants said the bills in suit were accepted on

behalf of or on account of the Corporation and the terms of the acceptance excluded the personal liability of the defendants, and amounted to a

distinct disclaimer by the defendants of any personal liability and gave the plaintiff bank sufficient notice thereof. They relied on the law or the

custom of merchants in Bombay for the contention that when a bill was drawn or accepted "" for or on behalf of."" a joint stock company by its

secretaries and agents, that expression was meant to signify that the bill was drawn or accepted on behalf of or on account of the company, and

excluded the personal liability of the secretaries and agents so signing on behalf of the company. After the plaint was amended defendants Nos. 1,

2. 3 and 5 put in a written statement in identical terms.

7. At the trial the following issues were raised:-

(1) Whether plaintiff bank were Jnldorn in due course for value ?

This was admitted by defendants'' counsel.

(2) Whether acceptance of defendants was on account and on behalf of the Eastern Commercial Corporation Ltd. ?

The answer was, the defendants have accepted the bills and are liable as acceptors.

(3) Whether according to custom and usage in Bombay signature of one agent for or on behalf of the joint stock company docs not signify the bill

is due or accepted on behalf of the company ?

(4) Whether the said form of acceptance and signature on the bills in suit is not by laid or usages a distinct disclaimer of defendants'' personal

liability?

8. The answer to these two issues was that evidence of the mercantile usage sought to be proved did not affect the case.

9. Accordingly the defendants were held liable for the amount remaining due on the bills.

10. No oral evidence was led and the only documents exhibited were the drafts, a statement of advances made against the drafts, and a statement

of accounts.

11. The Judge says that it was admitted that the bills were drawn against certain yellow metal sheets consigned to the , Corporation, and that there

were prior consignments, the bills in respect of which were drawn on the Corporation. It is unfortunate that a specimen of one of these bills was

not exhibited. But in the absence of any evidence we may assume that the bills in suit were drawn on the defendants by inadvertence, and that the

defendants accepted them in the way they did under the belief that they were drawn as usual on the Corporation. They could not possibly have

intended to accept the bills themselves.

12. u/s 33 of the Negotiable Instruments Act no person except the drawer of a bill of exchange can bind himself by an acceptance.

13. On the face of the bill we may say at once that there was no acceptance by the defendants'' firm on whom they were drawn; the acceptances

were by the Corporation as strangers to the bills, and the plaintiff bank should have at once noticed the defect and taken such steps as were

possible to get it remedied.

14. The learned Judge remarked that the sole question was whether there was any acceptance by defendants, or did they intimate by the term of

their signature that they were not accepting. An acceptance on the company''s name of a bill drawn on themselves would not be an acceptance at

all.

15. We agree and we also admit the principle to be followed in such cases as this, that we should construe the document if we possibly can ut res

magis valeat and not ut rea magis valeat, But if the proper construction is clear on the face of the document there Is no room for applying the

principle. Were these bills accepted in the company''s name ? Counsel was asked in the course of the argument how a bill drawn on the company

would have been accepted, and he had to admit the bill would have been accepted in exactly the same way as the bills in suit. It is difficult to see,

therefore, how there is any room for ambiguity. If the defendants, when accepting a bill drawn on the company, accepted it in this form, that form

must be taken as excluding their own personal liability, and yet when they accept a bill drawn on themselves in the same form it is argued that they

have not excluded their personal liability. The same words cannot have a different meaning according as the bill is drawn on the company or on the

defendants. Counsel would be forced to admit that the defendants were liable personally on the other bills drawn on the company and accepted by

them.

16. The Judge mainly relied on the eases of Mare v. Charles (1860) 5 El. & B. 978 and Herald v. Connah (1876) 34 L.T.N. S. 885. Neither of

those cases by itself would support his conclusion, but he appears to have considered that their cumulative effect would be sufficient. In the first case a bill was drawn on one W. Charles and accepted by him as follows: ""Accepted for the company. Payable at the Union Bank, William

Charles Purser."" Lord Campl ell C. J. pointed out that if the words of an instrument could reasonably bear an interpretation making it valid, they

must construe them so as to make it valid, and William Charles must be taken to have intended to accept and not to refuse a bill drawn on himself.

Unless he accepted the bill drawn on him personally in the sense that he rendered himself personally liable, he did not accept at all. On any other

construction what he wrote on the bill must have amounted to a refusal to accept it. But it was clear he intended that the bill should not be

dishonoured but accepted and they must construe what he had written ut res mngis valeat. For, no person could, by accepting a bill drawn on

another, alter the contract between the drawer and drawee. There must be a distinct disclaimer of personal liability, e.g., where the defendant

signed per pro, and those words were by mercantile usage equivalent to a signature of the person for whom the "" per procurator "" signed.

17. In Herald v. Connah a bill of exchange was drawn on Heury Connah, General Agent of L" Unione Compagna D"Assimagione and was

accepted thus: "" Accepted, payable at 8 York Street, Manchester, on behalf of the company, H. Connah."" The judgment of Bramwell B. is

instructive as showing that owing to the special circumstances of the case, notably the fact that the company was carrying on business abroad, the

Court was determined if possible to make the defendant liable. He said :-

We must look to the instrument itself, and see what the parties intended, as that intention appears on the face of the document...1 agree with the

remark that has been made, that it may be there is no valid acceptance; but it is to be presumed in favour of a valid acceptance, unless the

acceptor unmistakably notifies that he is not accepting in accordance with the effect of the draft.... Now I hold that the right way for a person who

is accepting for another, to notify that he is so accepting, is for him to use such words as " accepted for " or per proc"....The natural meaning of the

words "on behalf of" is that the defendant accepted as between himself and the company for their account, but that he did accept it.

18. The learned Barcm would, I presume, have held that defendants in this case had excluded their personal liability. But whatever authority those

cases may have had before 1882, the question with regard to the liability of a person signing a bill is set at rest in England by Section 16 of the Bills

of Exchange Act :-

(1) Whore 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.

19. Section 28 of the Negotiable Instruments Act 1881 is much to the same effect, only it enacts when an agent is liable personally.

20. It is doubtful, however, whether these sections really apply when the question is whether the acceptance on the document is the acceptance of

the drawee. Just as Bramwell B. in Herald, v. Connuh took into account that the bill was drawn on a foreign company, so in this case we have to

consider the circumstances in which these bills were accepted so as to ascertain whether the defendants must be taken to have intended to accept

and not to refuse a bill drawn on them, or whether they have unmistakably notified that they were not accepting in accordance with the effect of the

draft It seems unfortunate that the Judge did not allow evidence with regard to the status oÃ¯Â¿Â½ ""Secretaries and Agents"" to a joint stock company

in India. But it may be taken as common knowledge that company management is different in India to what it is in England, and that in the great

majority of companies the entire management rests with the secretaries and agents according to the terms of their agreements with the company

subject to the supervision of the directors When, therefore, the defendants used the form of signature which they used when acting as secretaries

and agents for the Corporation, and especially when accepting the prior bills drawn on the Company, can it be a reasonable interpretation that they

intended to make themselves personally liable for the bills, and is it not perfectly clear that they unmistakably notified that, they were not accepting

in accordance with the effect of the draft''(I may put it in another way. If the plaintiffs had taken the bills to their solicitor after acceptance and

asked him whether the bills had been duly accepted, he must inevitably have ad vised them that the acceptances were not in order. Whether the

signature is a repudiation of personal liability is one for the Court to decide. But the learned Judge concludes by saying that the defendants cannot

avoid the conclusion to be drawn from the statement in their letter(of September 2, 1920, which contains these words '' We are herewith sending

you the above draft duly accepted by us,"" that the acceptance whether by the company or by themselves is a good acceptance. The letter was

annexed to the original written statement of tie defendants but was not exhibited at the hearing nor was it relied on during the argument before us.

Clearly it does not carry the case any further as the letter is signed in the same form as the acceptances. Fully recognising that we should, if we

possibly can, give effect to the principle of construing these acceptances ut-res magis valeat, we are constrained to hold that there was no

acceptance by the defendants of the bills in suit.

21. Appeal allowed and suit dismissed with costs in both Courts.

Crump, J.

22. I agree.