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ORIGINAL CIVIL.

Before Mr. Justice West.

THE AGRA BANK, LIMITED, PLAINTIFFS, *v.* ABDUL RAHIMAN
ISAC, DEFENDANT.*

1881
August 2.

Bill of exchange—Suit on bill by indorsee for value against acceptor—Sale by indorsee of goods against which bill drawn—Acceptor entitled to credit for amount of proceeds of sale.

J consigned goods to defendant, and, for the price, drew on the defendant two bills of exchange, each for the sum of Rs. 1,406-4-0, payable thirty days after sight, which were duly accepted by defendant. J indorsed the bills for value to the plaintiffs, who, in default of payment by defendant, sold the goods, and credited him with the amount realized. After giving him credit for this amount, there remained due by the defendant to the plaintiffs, in respect of the said bills, a sum of Rs. 1,017. The plaintiffs abandoned Rs. 17 of this amount, and sued the defendant for Rs. 1,000 in the Small Cause Court at Bombay. In that suit the defendant pleaded that the goods, in respect of which the bills were drawn, were damaged, and that he had, therefore, refused to accept them, as he was entitled to do. The Judge thereupon dismissed the suit on the authority of *Shortt v. Abdul Rahman*(1), holding that the plaintiffs could not, under the circumstances, give the defendant credit for the goods, and that the claim was not, therefore, within the jurisdiction of the Small Cause Court. The plaintiffs then brought the present suit in the High Court upon the bills of exchange, alleging that they held the proceeds of the goods for the consignor. The defendant contended that in no case could the plaintiffs recover from him more than the amount of the bills less the proceeds of the goods.

Held that the defendant was entitled to credit for the net proceeds of the sale of the goods. The plaintiffs had by the sale already realized part of the amount

* Suit No. 364 of 1881.

(1) 6 Bom. H. C. Rep. 53, O. C. J.

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due to them; and to allow them now to recover from the defendant the whole amount due on the bills, would be to permit them to realize this part of their claim a second time: in that case they would be bound to hand over the amount, so realized, to the drawers. But the drawers when they negotiated the bills with the plaintiffs got all they were entitled to, and would have to account, in equity, to the defendant for anything further obtained by them.

Held, therefore, that the defendant was exonerated to the amount of the proceeds of the goods, but was liable for the remainder of the sum claimed by the plaintiffs.

THE plaintiffs, as indorsees and holders for value, sued to recover Rs. 2,812-8-0 due on two bills of exchange, for Rs. 1,406-4-0 each, drawn by J. D. Jackson & Co., of Liverpool, on the defendant. The first was dated the 21st October, 1880, and was accepted by the defendant on the 9th November, 1880. The second was dated the 18th November, 1880, and was accepted on the 8th December, 1880. Both bills were made payable thirty days after sight, and they became due on the 12th December, 1880, and 10th January, 1881, respectively.

In his written statement the defendant admitted his acceptance of the first bill, but stated that he had no recollection of having accepted the other; and he further pleaded that, "if the plaintiffs were at all entitled to recover, they were only entitled to recover from him such amount as might, upon taking accounts, be truly and justly found due to them after deducting the proceeds of sale of the goods which they held in their hands as collateral security for the moneys advanced by them to the drawers, J. D. Jackson & Co." He also contended "that the plaintiffs were bound to retain the said specific goods in their possession, and that the sale thereof was an improper one, and prejudicial to the interests of the defendant."

On behalf of the plaintiffs it was stated that they had sold the goods against which bills had been drawn, and that, after giving the defendant credit for the amount realized, there remained due to them only a sum of Rs. 1,017, viz., Rs. 546 on the first bill and Rs. 471 on the second. Abandoning Rs. 17 of this amount they had sued the defendant for Rs. 1,000 in the Small Cause Court at Bombay. In that suit, however, the defendant pleaded that he had not accepted the goods in respect of which the bills were drawn, and that the said goods were damaged, and he was entitled to reject them.

The Court, on the authority of *Shortt v. Abdul Rahiman*⁽¹⁾, dismissed the suit, holding that, under these circumstances, the plaintiffs could not give the defendant credit for the goods, and that the claim was not, therefore, within its jurisdiction.

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The plaintiffs thereupon brought this suit upon the bills of exchange, alleging that they held the proceeds of the goods for the consignor.

Inverarity for the plaintiffs.—The question is,—whether, under the circumstances, there has been a payment *pro tanto* for the defendant for which he now can claim credit. Payment by the drawer of a bill does not exonerate the acceptor as between him and the indorsee: *Thornton v. Maynard*⁽²⁾; Chitty on Bills of Exchange (11th ed.), 274. Counsel referred also to *Warwick v. Nairn*⁽³⁾.

B. Tyabji for the defendant.—When the defendant accepted the bills he did so on the faith of receiving goods equal to sample. But the goods were damaged. This fact is clear from the account sales. The consideration, therefore, for the bills failed, and the drawers could not sue. The bills were really accommodation bills. In such case payment by the drawer exonerates the acceptor: Bullen and Leake's Pleadings (3rd ed.), 537; *Cook v. Lister*⁽⁴⁾. Notice of the bill being an accommodation bill makes payment by drawer good in exoneration of acceptor: *Thornton v. Maynard*⁽⁵⁾. Here the bill was taken with full knowledge of all the facts. The plaintiff denies that he was bound to take delivery of the goods. He did so in the Small Cause Court; and, as there was then no admitted set-off, the plaintiff's suit failed. The goods have been sold, not by defendant's authority, but by that of the drawer, and the plaintiffs have been paid to the amount of the proceeds of sale. They can, in any case, recover only the amount of the bills, less the proceeds of sale.

WEST, J.—The defendant in his written statement admits his acceptance of one of the bills, but denies his acceptance of the second. This point, however, he has now abandoned.

(1) 6 Bom. H. C. Rep. 53, O. C. J.

(2) 10 Ex. 762.

(3) L. R., 10 C. P. 695.

(4) 13 C. B. N. S. 543.

(5) L. R., 10 C. P. 695, 699.

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A defence has been advanced, in argument, of non-acceptance of the goods on account of their damaged condition : this, however, was not suggested in the written statement, and it is consistent with the defendant's conduct.

The defendant is liable for the amount sought, except in so far as he may be entitled to credit for the net sums realized by the sale of the goods. As to this, the cases cited show that the bank recovering the whole amount of the bills would be a trustee for the drawers to the extent of the sum realized by the sale. On the other hand; the drawers of the bills, who were also consignors of the goods, could not, if the whole amount were thus recovered from the defendant by the bank, retain any further sum handed over to them as *cestuis que trustent*. They realized forthwith when they negotiated their bills, and would have to account to the defendant for anything additional recovered from him and handed over to them by the bank. The bank does not pretend to have any right, on its own account, to a double realization ; and, in so far as it has already once realized by the sale of the goods, must hold the defendant exonerated, unless it would be bound to hand over the proceeds to the consignors. This, however, it could not have to do : the consignors getting cash for their bills got all they were entitled to, and would have to account, in equity, to the defendant for anything further obtained by their action against him.

The amount to be awarded is the sum of Rs. 1,017-5-11, which is the total amount of the two bills less the sum realized by the sale of the goods. On this amount I allow interest at $7\frac{1}{2}$ per cent. from 20th June, 1881, to judgment ; also costs of the suit and 6 per cent. on the aggregate till satisfaction.

Judgment for the plaintiffs.

Attorneys for the plaintiffs.—Messrs. *Smith and Frere*.

Attorneys for the defendant.—Messrs. *Balkrishna and Bhugwandas*.