APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Beaman.

1917. *July* 23.

SOLOMAN JACOB (ORIGINAL PLAINTIFF), APPELLANT *v.* THE NATIONAL BANK OF INDIA, LTD., ADEN (ORIGINAL DEFENDANTS), RESPONDENTS.*

Sale of Goods—Contract under C. I. F. terms—Policy of insurance omitted from shipping documents—Payment made under mistake—Bank remitting the money to the drawer—Instructions by drawee to withhold payment after remittance—Liability of the Bank as agent—Indian Contract Act (IX of 1872), section 72—Estoppel—Posting of a demand draft, whether equivalent to payment.

In May 1915, the plaintiff entered into two contracts under C. I. F. terms with one P. Vella for supply to him of certain goods. P. Vella drew a demand draft on the plaintiff and endorsed it over for collection to the Anglo-Egyptian Bank, Ltd., Malta, who in turn endorsed it to the defendant Bank at Aden. On August 10, 1915, the plaintiff was informed by the defendant Bank that the latter held a demand draft upon him and would deliver shipping documents to him on payment of the draft. On August 12, 1915, the plaintiff paid the amount due on the draft and removed from the Bank certain shipping documents among which on inspection at his office the plaintiff failed to discover the policy of insurance. On discovery of this omission, the plaintiff wrote to the defendant Bank on August 13, 1915, stating that the draft had been honoured under a mistake and requested the Bank not to pay the amount of the draft to the drawer of the bill, and in case the remittance had already been made to cable at the plaintiff's expense instructions to withhold payment. The defendants having refused to stop payment of the sum paid by the plaintiff the latter filed a suit claiming refund of the money. The defendant Bank replied that they were acting merely as agents for collection on behalf of the Anglo-Egyptian Bank at Malta through whom the demand draft was received; and that they having given telegraphic intimation of the receipt of money to their principal on the 12th August, that is, before the receipt of the plaintiff's letter of the 13th *idem*, were unable to do anything further in the matter. The plaintiff's suit was dismissed by the Judge at Aden. He appealed to the Resident's Court and pending the appeal a reference being made to the High Court, Bombay, under section 8 of the Aden Act II of 1864, for consideration of questions *inter alia* (1) whether the money was paid by plaintiff to the defendant Bank under a mistake of fact as to the documents delivered in exchange therefor; (2) whether the defendants could and should

* Civil Reference No. 7 of 1916.

have stopped payment of the price as instructed by the plaintiff; (3) whether the defendant Bank acted as principals or agents in collecting the price of goods; (4) whether if defendants acted as agents in collecting the price of the goods they had any better rights than the sellers P. Vella; (5) whether in the circumstances the plaintiff was entitled to repayment of the price from the defendants under section 72 of the Indian Contract Act, 1872.

Held, (1) that the money was paid by the plaintiff to the defendant Bank under a mistake of fact;

(2) that although the posting of the draft was neither payment nor an act so prejudicing the defendant Bank that it would be inequitable to require them to refund yet in view of the telegraphic intimation to the defendant's principals at their express request to the effect that money had been paid by the plaintiff, he (the plaintiff) was estopped having regard to the peculiar relation of the parties and therefore the defendants could not, nor should they have stopped payment of the price as instructed by the plaintiff;

(3) that the defendant Bank were mere agents;

(4) that the defendants had higher rights than P. Vella in consequence of estoppel arising from plaintiff's conduct;

(5) that the plaintiff would not be entitled to repayment under section 72 of the Indian Contract Act, 1872, as that section should be read subject to the law of estoppel and in view of the facts in the present case there was a clear case of estoppel.

Deutsche Bank (London Agency) v. *Beriro & Co.*[1], referred to; *Shugan Chand* v. *The Govt., N.-W. P.*[2], dissented from.

CIVIL Reference made by Major General J. M. Stewart, Political Resident at Aden, in Appeal No. 6 of 1916 of his Court, under section 8 of the Aden Act II of 1864.

The facts were as follows:—

The plaintiff, a merchant at Aden, entered into two contracts under C. I. F. terms with Messrs. P. Vella & Co., of Malta in May 1915 for the supply to him of 208 bags of Malta potatoes and 100 bags of Malta onions. Vella & Co. were instructed by cable on the 27th July 1915, to insure the goods against war risks.

On the 4th August 1915 Messrs. P. Vella & Co. wrote to the plaintiff stating that the goods were shipped per S. S. 'Christoforos' *via* Port-Sudan.

(1) (1895) 73 L. T. 669. (2) (1875) 1 All. 79.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

On the 10th August 1915, the plaintiff was informed by the defendant Bank as follows :—

"By the mail to hand to-day, we have received from Messrs. P. Vella & Co., of Malta a demand bill on you for £204-14-6 with shipping documents attached.....which we shall be glad to deliver to you on payment of Rs. 3,113-7-0."

The bill was in form a demand draft drawn by Vella & Co. upon plaintiff against merchandise in favour of the Anglo-Egyptian Bank, Ltd., at Malta and from that Bank it was received by the defendant Bank at Aden with instructions to collect the amount and credit it to the account of the Anglo-Egyptian Bank with London office of the defendant Bank.

Not having received any reply to their letter of 10th August, the defendant Bank again wrote to the plaintiff on the 11th August 1915 inquiring whether he intended to pay the bill and, if so, when.

To this a reply was sent by the plaintiff on the same date stating that he intended to pay the bill on receipt from the drawers of invoices of the goods relating to the said bill.

On the 12th August 1915, the plaintiff on receipt of the invoices from the Bank paid into it the amount due on the draft and removed from the Bank a number of shipping documents which the plaintiff subsequently discovered did not include the policy of insurance. On discovery of the mistake, the plaintiff wrote to the defendant Bank on the 13th August 1915 as follows :—

"On the 12th instant, I received a letter from you enclosing copies of invoices relative to the bill in question and demanding payment same day.

"I purchased the said goods on the basis of cost, freight and insurance Aden and I sent cable instructions to the said shippers on the 27th July 1915 to insure the said goods against war risks, and being under the belief that the documents attached to the said bill were complete and consisting, as they should have been, of B/L invoices, marine and war risks insurance policies.

I paid the amount of the bill into the Bank and the relative shipping documents were thereupon delivered to me by the Bank.

"On the examination of the documents, however, I find to my surprise that the marine and war risks insurance policies are not attached thereto as they should have been.

"I am not aware whether drawers have insured the shipment or not and as the goods have not yet arrived at Aden, I herewith beg to inform you that you should not pay the amount of the said bill to the drawers or their order and if already remitted that you will please to cable instructions at my expense to withhold payment of the draft pending receipt of the marine and war risks insurance policies or the safe arrival of the goods at Aden."

The 13th August was a public holiday and so the above letter of the plaintiff was delivered on the 14th *idem* to the defendant Bank who on the same date wrote to the plaintiff:

"We regret you have not received all the documents which you expected to receive. We handed over to you all the documents in our possession on receipt of the payment, and as the proceeds of the bill have now been remitted by post we are unable to interfere in the matter. It is against the Bank's rules to stop payments of our own draft.

"We may remind you that we endeavoured on 12th instant to get you to give the matter your personal attention at the Bank, even sending a messenger to bring you to the office. Had you not refused to take the trouble we think you would have discovered the discrepancy before the documents were taken from this office."

The plaintiff, on receipt of the aforesaid letter, filed a suit alleging that the defendant Bank was liable to repay to the plaintiff the amount paid by him under mistake; that the defendant Bank knew of the fact that the shipping documents in respect of the said goods were not complete as they should have been under C. I. F. contract, and that the Bank should have, on receipt of the plaintiff's notice of mistake, cabled instructions at plaintiff's expense to withhold payment of the draft pending receipt of the policy of insurance.

The defendant Bank replied to the effect that the contracts mentioned by the plaintiff were made by him

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

direct with Messrs. P. Vella & Co., Malta, the Bank was not a party to the contracts and was quite ignorant of their conditions; that the Bank acted merely as collecting agents of the Anglo-Egyptian Bank, Ltd., Malta, and their liability ceased at soon as they remitted the payment to that Bank; that the plaintiff's letter asking the refund was received two days after the money was sent.

The Judge at Aden upheld the contentions raised by the defendant Bank and dismissed the plaintiff's suit.

The plaintiff appealed to the Resident at Aden and while the appeal was pending in his Court, he made a reference to the High Court at the plaintiff's instance under section 8 of the Aden Act II of 1864. The questions which the plaintiff submitted for the decision of the High Court were :—

(1) Did not the Court below fail to ascertain the facts material to the case and to decide the points upon which the liability or non-liability of the defendants depend ?

(2) Was not the lower Court bound to administer all the interrogatories submitted by the appellant ?

(3) Whether the money was paid by appellant to respondents under a mistake in fact as to the documents delivered in exchange therefor ?

(4) Whether the respondents could and should have stopped payment of the price as instructed by appellant ?

(5) Whether the respondents acted as principals or agents in collecting the price of the goods ?

(6) Whether if respondents acted as agents in collecting the price of the goods they had any higher rights than the sellers P. Vella & Co. ?

(7) Whether in the circumstances appellant is entitled to repayment of the price from respondents under section 72 of the Indian Contract Act and the decisions in the cases of the *Orient Company, Limited* v. *Brekke and Howlid*[1] and *Shugan Chand* v. *The Govt., N.-W. P.*[2].

[1] [1913] 1 K. B. 531. [2] (1875) 1 All. 79.

Weldon with *Crawford & Co.* for the appellant:—We submit that the shipping documents formed the consideration for our draft: *Biddell Brothers* v. *E. Clemens Horst Company*[1]; *Arnhold Karberg & Co.* v. *Blythe, Green Jourdain & Co.*[2].

The defendant Bank who were endorsees of the bill of exchange which we honoured were principals as they were in possession of the shipping documents and they alone could carry out the terms of the C. I. F. contract with us. The Bank knew that the documents were in respect of C. I. F. contracts and knowing that the policy was wanting they were guilty of a wrongful act in receiving money from us. We paid the money under a mistake believing that the documents included the policy. As soon as the mistake was discovered our client wrote to the defendant Bank to withhold payment. But the defendant Bank did nothing in the matter. We submit under section 72 of the Indian Contract Act, we will be entitled to get back from the defendant Bank money paid by mistake. Even assuming that the defendant Bank were acting as agent of the Anglo-Egyptian Bank we say the objection to pay money received under mistake is unqualified and even attaches to an agent who has received money for a principal although the agent may no longer have the money when the mistake is discovered: *Shugan Chand* v. *The Govt., N.-W. P.*[3]; *Holland* v. *Russell*[4]; *Tugman* v. *Hopkins*[5]; vide The Law of Fraud in British India by Sir Frederick Pollock-Tagore Law Lectures, 1894, p. 128.

Secondly, we submit the defendant company was guilty of conversion. They had knowledge of the want of insurance policy and knew that we paid the money

(1) [1911] 1 K. B. 934.
(2) [1915] 2 K. B. 379.
(3) (1875) 1 All. 79.
(4) (1863) 4 B. & S. 14 at p. 17.
(5) (1842) 4 M. & G. 389.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD.; ADEN.

under mistake, still they made the payment to the Anglo-Egyptian Bank: *Fine Art Society* v. *Union Bank of London*[1].

Lastly, we submit the money was obtained from us under misrepresentation, viz., that the "shipping documents" had arrived. In fact an incomplete set had arrived but not the set of complete documents bargained for. We were, therefore, entitled to claim it back: vide section 18, Indian Contract Act; *Shand* v. *Grant*[2].

Strangman, Advocate General, with *Little & Co.*, for the respondents:—We submit we were only agents for collection. We knew nothing about the want of policy of insurance. We received money due on the draft on the 12th August, but it was not until the 14th we received intimation asking money back and drawing attention to the omission of the insurance policy.

We say section 72 of the Indian Contract Act does not assist the appellant to recover the amount. It only enacts the English law, viz., money paid under mistake is money had and received. In this case money having been paid over to the Anglo-Egyption Bank our position has been prejudiced and it would be inequitable to ask us to refund. By the payment made to the Anglo-Egyptian Bank as advised by them our liability as agent ceases: Bowstead on Agency, 5th ed., p. 421; *Cox* v. *Prentice*[3]; *Kleinwort, Sons, & Co.* v. *Dunlop Rubber Company*[4]; *Norman* v. *Ricketts*[5].

We submit there were three ways in which we have been prejudiced.

(1) After the receipt of the letter on the 14th August even if we had wired to the Anglo-Egyptian Bank and

(1) (1886) 17 Q. B. D. 705.
(2) (1863) 15 C. B. N. S. 324.
(3) (1815) 3 M. & S. 344 at p. 348.
(4) (1907) 97 L. T. 263 at p. 265.
(5) (1886) 3 T. L. R. 182.

stopped payment it would have been redundant. The Bank might have disregarded our letter or might have endorsed the document to a holder for value.

(2) The letter might have gone astray and been forged and endorsed to a *bona fide* holder for value in which case we would have to pay.

(3) On receipt of our telegram the Anglo-Egyptian Bank might have paid the money to Vella.

We had done everything that was possible for us to do, namely, informing the Anglo-Egyptian Bank of the receipt of payment immediately the money was paid by the plaintiff. The demand draft was also posted to Malta on the day the money was received and we submit that the posting of the demand draft was equivalent to payment made to the Anglo-Egyptian Bank and this absolved us from any liability to the plaintiff: *Norman* v. *Ricketts*[1]; *Pennington* v. *Crossley & Son*[2].

Lastly, we submit we were acting as mere agents and as such could not be personally liable under section 230 of the Indian Contract Act. The contract was between the plaintiff and Anglo-Egyptian Bank as principal and the plaintiff could proceed against that Bank. We were agents of Anglo-Egyptian Bank and therefore the money could not be recovered from us.

Weldon, in reply :—Section 230 of the Indian Contract Act has no bearing on the present case. It deals with the agent suing or being sued on a contract. Here the payment was received by the defendant Bank on their own behalf and not as an agent of the Anglo-Egyptian Bank. Even supposing that the defendant Bank acted as agent it constituted itself as principal by having refused to stop payment of the draft. The defendant

(1) (1886) 3 T. L. R. 182.

(2) (1897) 77 L. T. 43.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

Bank was the only person who could be sued as under section 53 of the Negotiable Instruments Act the Bank derived its title as holder for value.

C. A. V.

SCOTT, C. J.:—This is a reference by the Resident at Aden under section 8 of the Aden Act II of 1864 for the decision of this Court upon certain questions raised by the plaintiff.

The case stated by the Resident recites the following facts:—The plaintiff in May 1915, entered into two contracts under C. I. F. terms with Messrs. P. Vella & Co. of Malta for the supply to him of 208 bags of Malta potatoes and 100 bags of Malta onions. The Company was informed by cable on the 27th July 1915, to insure the goods against war risks.

On the 10th August 1915, the plaintiff was informed by the defendant Bank that the latter held a demand draft upon him and would deliver shipping documents to him on receipt of the goods against payment of the Bill, viz., Rs. 3,113-7-0.

On the 12th August 1915, the plaintiff on receipt of the invoices from the Bank paid into it the amount due on the draft and removed from the Bank a number of shipping documents which on being gone through at plaintiff's office was found devoid of the Policy of Insurance. On the discovery of the mistake, the plaintiff wrote to the defendant Bank on the 13th August 1915 about the fact of mistake and called upon it not to pay over the amounts to the drawer of the bill, and in case the remittance had already been made to cable at plaintiff's costs instructions to withhold payment. The case states that it was not disputed that the defendant Bank had received the amount of the bill from plaintiff; that the Policy of Insurance

was absent from the shipping documents delivered to plaintiff; and that there was communication to the defendant Bank of the fact that the Policy of Insurance was not among the shipping documents and of the demand from the defendant Bank to withhold the payment of the amount of the Bill.

The defendants having refused to stop payment of the sum paid by the plaintiff the latter filed a suit claiming refund of the money. The suit was dismissed by the trial Judge and the plaintiff appealed to the Resident.

The case was heard according to the procedure which prevails at Aden without giving the parties the opportunity of professional assistance in Court, and no evidence was recorded except the *viva voce* answers of the defendant Bank's Accountant to some of a set of written interrogatories prepared for the plaintiff by his advisers in Bombay.

The statement of the case by the Resident does not deal with certain facts material for the decision of the points raised but an undisputed statement of some of such facts is to be found in paragraph 10 of the defendants' written reply to the plaintiff's case in appeal as follows :—

"The appellant alleges that he paid the amount of the Bill of Exchange to the respondents under the mistaken belief that the documents handed to him included an insurance policy and that after he discovered this mistake he learnt that he would get neither the goods nor the insurance on the goods whereas the facts of the case are, on the 10th August 1915 the respondents received the draft or Bill of Exchange for £204-14-6 with shipping documents from the Anglo-Egyptian Bank, Ltd., at Malta with

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

instructions to collect the amount and credit it to their account with their London Office under advice to them; the respondents on the same day, i.e., the 10th August 1915 wrote to the appellant informing him of the receipt by them of the demand Bill for £204-14-6 and relative documents and offered to hand him the documents on payment; the appellant was at liberty to call at the Bank and inspect the documents which were to be delivered against payment but the appellant did not do so and the respondents on the next day wrote to him again reminding him of the amount being due and intimating that he would be responsible for all loss or charges the Bank or any party interested might be put to or incur. Not having received any reply the respondents wrote again to the appellant on the 11th August 1915 inquiring whether he intended to pay the Bill and if so when, and sent the letter with a special messenger. In reply to the above letter the appellant wrote to the respondents informing them that he intended to pay the bill on receipt from the drawee of the invoices of the goods. On the 12th August 1915 the respondents sent to the appellant the copies of the invoices and on the same day the appellant paid the amount of the Bill and on the same day the respondents sent a telegram to Malta informing the Anglo-Egyptian Bank, Ltd., Malta, of the said payment and on the same day the respondents remitted to the Anglo-Egyptian Bank, Ltd., Malta, a demand draft on London for the amount paid by the appellant less charges and commission. The 13th August 1915 was a general holiday and the Bank was closed and on the 14th August 1915 the respondents received a letter from the appellant dated the 13th August 1915 asking the Bank to stop payment of the draft pending receipt by him of the Policy of Insurance or the arrival of the goods and the Bank replied immediately that the

money had been remitted and that they were unable to do anything in the matter at the same time pointing out that the Bank had endeavoured on the 12th August 1915 to get the appellant to attend personally at the Bank and had even sent a messenger to bring him and that if the appellant had not neglected to take the trouble he would or could have discovered the discrepancy before the documents were removed from the Bank and before payment."

Another material fact which must be taken to be agreed is that as alleged in the defendants' written statement P. Vella, the drawers of the demand draft on the plaintiff, handed it for collection to the Anglo-Egyptian Bank, Ltd., Malta, who in turn sent it to the defendant Bank for collection.

This is admitted by the plaintiff in his observations upon clause 2 of the defendants' written statement as follows:—"shows the course of business on the side of the Bank. Doubtless defendants received their instructions from the Anglo-Egyptian Bank, Ltd., but the bill shows on the face of it that the Anglo-Egyptian Bank must have received their instructions from P. Vella & Co., and the Bill and the invoice together showed defendants what the contract was."

The bill was in form a demand draft drawn by Vella & Co. upon plaintiff against merchandise in favour of the Anglo-Egyptian Bank.

The questions which the plaintiff submitted for the decision of this Court were:—

1. Did not the Court below fail to ascertain the facts material to the case and to decide the points upon which the liability or non-liability of the defendants depend?

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

2. Was not the lower Court bound to administer all the interrogatories submitted by the appellant?

3. Whether the money was paid by appellant to respondents under a mistake in fact as to the documents delivered in exchange therefor?

4. Whether respondents could and should have stopped payment of the price as instructed by appellant?

5. Whether the respondents acted as principals or agents in collecting the price of the goods?

6. Whether if respondents acted as agents in collecting the price of the goods they had any higher rights than the sellers P. Vella & Co.?

7 Whether in the circumstances appellant is entitled to repayment of the price from respondents under section 72 of the Indian Contract Act and the decisions in the cases of the *Orient Company, Limited* v. *Brekke & Howlid*[1] and *Shugan Chand* v. *The Govt., N.-W. P.*[2]

Having regard to the questions framed for the plaintiff it was not open to their counsel to contend as as he did before us that there was any case of misrepresentation attributable to the defendants.

In view of the statement of facts by the defendants it is not necessary to answer questions 1 and 2.

As to question 3 there can be no doubt that the money was paid by the appellant to the respondents under a mistake of fact as to the documents delivered in exchange therefor.

The shipping documents consisted of two invoices of goods C. I. F. and a document in Italian headed

(1) 1913] 1 K. B. 531. (2) (1875) 1 All. 79.

Polizza di Carico, i.e., Instrument of Carriage. If either the plaintiff or the defendants' Officials looked at this document it is not unlikely that they thought it was a policy *Polizza d'assicurazione*. Moreover, the plaintiff had the assurance of the defendants that the draft which he was called on to pay had shipping documents attached and under a C. I. F. invoice he might reasonably suppose that a policy of insurance was included as it should have been. As soon as the plaintiff found that the insurance policy was not among the documents he claimed back his money the day after the payment. This strongly corroborates his allegation that the payment was made under a mistake of fact.

The next question is the real question in the case, whether the defendants could or should have stopped payment of the price as instructed by the plaintiff.

The defendants as already stated were agents for collection for the Anglo-Egyptian Bank, Malta, and responsible to that Bank, while the Anglo-Egyptian Bank were agents for collection for P. Vella & Co.

The law as to payment by mistake is thus stated in section 72 of the Indian Contract Act—

'A person to whom money has been paid by mistake must repay it.'

The first point made by the plaintiff's counsel on this section was that the obligation is unqualified and attaches to an agent who has received money for a principal although he may no longer have the money when the mistake is discovered.

For this proposition he cited *Shugan Chand* v. *The Govt., N.-W. P.*[1] in which a banker being an

[1] (1875) 1 All. 79.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

agent for collection who had innocently presented to the treasury a forged draft and received payment of money which he had handed over to his principal was held liable to repay the money. The Court purported to follow *Tugman* v. *Hopkins*[1], not a case of payment by mistake but of an unlawful taking by the defendant of money found lying in a room.

I think, for the reasons upon which I base this judgment, that the Allahabad case was wrongly decided. Upon its facts it does not differ in the principle applicable from *Bavins, Junr. & Sims* v. *London and South Western Bank*[2] though in the latter case there had been no payment over by the defendant Bank to its principal. There money had been received by the defendant Bank on presentation to the drawee Bank of a draft which belonged to the plaintiff. The money when received by the defendant was innocently placed to the credit of customer whose husband had handed in the draft for credit of his wife's account not knowing it had been stolen and the endorsement forged.

The judgments of Collins M. R. and Vaughan Williams L. J. show that if the defendant Bank could have shown a payment over to its customer of the money received the plaintiff's claim would have failed.

The second point made by defendants' counsel was that if section 72 was to be read subject to any qualification in favour of mere agents the qualification was limited to that expressed by Lord Ellenborough in *Cox* v. *Prentice*[3] namely—a case of payment or something equivalent to payment to the principal; a case which the facts here do not establish. I can understand an argument that a particular section of the

(1) (1842) 4 M. & G. 389. (2) [1900] 1 Q. B. 270 at p. 278.
(3) (1815) 3 M. & S. 344 at p. 348.

Indian Contract Act can only be given effect to in a Court of law subject to the operation of some general principle of universal application such as the law of estoppel as enunciated in section 115 of the Indian Evidence Act, a doctrine which Lord Campbell in *Cairncross* v. *Lorimer*[1] said was to be found in the laws of all civilized nations, but when a rule of law is crystalised by Statute it cannot be qualified by expressions not to be found in the section.

In England where the right to recover money paid by mistake is not given by Statute, the qualifications in favour of agents receiving such money have been in the course of a century recognised in more and more extended terms from *Cox* v. *Prentice*[2] where Lord Ellenborough said, "I take it to be clear, that an agent who receives money for his principal is liable as a principal so long as he stands in his original situation; and until there has been a change of circumstances by his having paid over the money to his principal, or done something equivalent to it" to *Kleinwort, Sons, and Co.* v. *Dunlop Rubber Company*[3] where Lord Loreburn said, "It is indisputable that, if money is paid under a mistake of fact and is redemanded from the person who received it before his position has been altered to his disadvantage, the money must be repaid in whatever character it was received," and Lord Atkinson said, "many authorities were cited, the decisions in which are little more than applications of the broad principle laid down by Lord Mansfield C. J. in *Buller* v. *Harrison*[4]. They seem to establish that whatever may in fact be the true position of the defendant in an action brought to recover money paid to him under a mistake of fact, he will be liable to

(1) (1860) 3 Macq. 827.
(2) (1815) 3 M. & S. 344 at p. 348.
(3) (1907) 97 L. T. 263 at pp. 264, 265.
(4) (1777) 2 Cowp. 565.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

refund it if it be established that he dealt as a principal with the person who paid it to him. Whether he would be liable if he dealt as agent with such a person will depend upon this, whether, before the mistake was discovered, he had paid...or settled such an account with the principal as amounts to payment, or did something which so prejudiced his position that it would be inequitable to require him to refund."

In these later pronouncements the simple application of the law of estoppel is reached. It is no longer necessary to resort to the theory of the agent who is a mere conduit pipe stated by Collins M. R. in *Continental Caoutchouc and Gutta Percha Company* v. *Kleinwort, Sons, and Co.*[1]

The Indian law of estoppel "gives no countenance to the doctrine that in order to create estoppel the person whose acts or declarations induced another to act in a particular way must have been under no mistake himself, or must have acted with an intention to mislead or deceive. What the law and the Indian Statute mainly regard is the position of the person who was induced to act; and the principle on which the law and the Statute rest is, that it would be most inequitable and unjust to him that if another, by a representation made, or by conduct amounting to a representation, has induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it": see *Sarat Chunder Dey* v. *Gopal Chunder Laha*[2]. For these reasons I think section 72 of the Indian Contract Act should be read subject to the law of estoppel.

(1) (1904) 90 L. T. 474 at p. 475. (2) (1892) L. R. 19 I. A. 203 at p. 215.

Where a man receives money paid by mistake for his own benefit there can be no estoppel, for he has received an accidental windfall which he has no right to keep. In the present case it has not been argued that the defendant Bank by remitting money to credit of their principal's account with the National Bank in London received the benefit of the money, for that could be the result only if the Anglo-Egyptian Bank were indebted to the National Bank in the sum of £204 and the account was closed immediately after the remittance. There is no suggestion of any such position.

It must therefore be taken that the defendant Bank were mere agents.

Have they, then, acting on the natural inference to be drawn from the plaintiff's payment, paid the money to their principals, or done something which so prejudiced their position that it would be inequitable to require them to refund?

It has been argued that the posting of a demand draft on London to the Anglo-Egyptian Bank at Malta was payment.

Norman v. *Ricketts*[1] was cited as authority for the contention that the posting of the demand draft was payment. There, however, the drawer of the cheque had been expressly asked to pay by cheque. Where there is no express request for payment by post the posting is not equivalent to payment: see *Pennington* v. *Crossley and Son*[2].

In the present case not only was there no request but the defendants in posting a demand draft to Malta were not acting in accordance with their instructions which were to place the proceeds of the draft on

(1) (1886) 3 T. L. R. 182.

(2) (1897) 77 L. T. 43.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

plaintiff when recovered to credit of the account of the Anglo-Egyptian Bank with the head office of the National Bank in London. It might be argued that the posting of the draft was a delivery to the Post Office as agent of the Anglo-Egyptian Bank but the bill would become the property of the addressee on posting only if the posting had been authorised which was not the case here : see *Ex parte Cote.*(1)

As there had been no acceptance of the draft the defendants could easily, if they had been so minded, have telegraphed warning the Anglo-Egyptian Bank at the plaintiff's cost that the payment made by the plaintiff was demanded back by him on the ground of mistake and could at the same time have warned their London office also at plaintiff's expense not to pay the draft of the 12th August in favour of the Anglo-Egyptian Bank. After receipt of such a telegram the Anglo-Egyptian Bank would negotiate the draft of the 12th August when received in the course of the post at their peril.

I am, therefore, of opinion that the posting of the draft was neither payment nor an act so prejudicing the defendant Bank that it would be inequitable to require them to refund.

How then does the case stand with regard to the telegraphic intimation to defendants' principals that the money had been paid ?

This intimation was sent at the express request of the principals. From this I infer that it was of importance that the advice of payment should be given as early as possible and that its value would justify the cost of a cablegram. The only conclusion I can draw

(1) (1873) L. R. 9 Ch. 27 at p. 32.

from this is that the Anglo-Egyptian Bank had not paid Vella before the 12th August (till then they were only agents for collection) but that on receipt of advice that the bill had been paid they were to pay the amount of the bill to Vella relying upon the credit to be made to them in London by the National Bank. In this view of the facts, which is the only conclusion which occurs to me as possible, there is a clear case of estoppel against the plaintiff almost exactly the same as that occurring in *Deutsche Bank (London Agency)* v. *Beriro and Co.*[1]. There Beriro was agent in England for collection of a draft drawn by Benatar in Morocco upon a firm in Antwerp for the price of canary seed. The Deutsche Bank undertook to collect the amount in Antwerp. Owing to a mistake of their clerk they advised Beriro that the draft had been paid and paid him the amount due : Beriro advised Benatar : Benatar then paid the seller of the canary seed. It was held that in the circumstances the Deutsche Bank were estopped as against Beriro the agent of Benatar from recovering the money paid by mistake.

The estoppel arises, as I think, not from the mere advising of the principal, for in *Cox* v. *Prentice*[2] the agent had advised his foreign principal and credited him in account but it was held he must repay the money paid by mistake : the estoppel arises from the effect of the advice having regard to the peculiar relations of the parties. Having regard to those relations my answer to question 4 is—the defendants could not nor should they have stopped payment of the price as instructed by the plaintiff.

The answer to question 5 is that the respondents acted as agents in collecting the price of the goods ;

[1] (1895) 73 L. T. 669.

[2] (1815) 3 M. & S. 344.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

to question 6—they had higher rights than P. Vella & Co. in consequence of the estoppel arising from the plaintiff's conduct;

to question 7—the appellant is not entitled to repayment by the respondents.

Costs costs in the case.

BEAMAN, J.:—It is unnecessary to repeat the facts which have been now fully stated. It only remains to apply the law governing the resultant rights of the parties, to them.

The action is for the recovery of money paid by mistake. Between principal and principal, there could be no defence. The money was paid to the defendant by mistake, and it makes no difference that the plaintiff by the exercise of a little more care might have found it out before paying the money. It is only to cases between principal and principal that the language of section 72 of the Indian Contract Act can be applied *literatim*. Before it can be extended to another class of connected cases, its sweeping general language would have to be qualified.

An examination of the English case-law on the subject makes this clear at once, that the mere act of payment by mistake to a principal, although such payment might be accompanied by an actual representation of the existence of facts which were afterwards found not to have existed, would raise no estoppel. The doctrine of estoppel has no play at all in such cases. And the person to whom the money was paid by mistake may have spent it, or given it away to a dozen other persons, without diminishing in the smallest degree his liability to refund it. It is only where cases arise in which the payment had been made (with or without knowledge of the relation) to an agent that

any difficulty can arise in apportioning the liability of the *de facto* recipient of the money, and his principal, to refund to the person who has paid by mistake. In the decision of all cases of this kind, the Courts have certainly introduced the doctrine of estoppel, and often made it the sole ground of their decisions. A strict analysis shows however that the introduction of this principle, in a rather loose and general way, has confused, or at any rate, tended to confuse, the law upon the topic as a whole. For, where a plaintiff has been held to be estopped from recovering money paid by mistake to an agent, on the ground that the agent has altered his position for the worse after payment and before notice of mistake, it is plain that the only estoppel there can be against the plaintiff is his own act or declaration at the time he paid the money. And that would be precisely the same, and as good an estoppel had he paid it to a principal instead of an agent, and had the principal between payment and notice of mistake altered his position for the worse. But it cannot be contended that a principal would be protected on this ground. It becomes, therefore, when in search of a valid theoretical ground upon which to base the law, more than difficult to understand how estoppel can be given full effect to in one, and no effect at all in the other, class of cases.

Where an agent has received money for his principal, and has afterwards been informed by the payer that he has paid by mistake, the law governing the liability of the agent to refund to the person who has paid them by mistake is quite clear and well settled. If the agent has had no other interest in the payment than as agent for a principal beneficially interested, he cannot be made to refund if before notice of the mistake (*a*) he has actually paid the money to his principal, (*b*) has done any act which would prejudice

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

his relation to his principal. This double rule, which covers the whole field, seems to be grounded on two different principles. Where there has been an actual payment, we do not find the Courts using the terminology of Estoppel. They simply treat the agent as a conduit pipe, through which the money has passed. He has not got the benefit of the "windfall" to use the term employed very happily I think by Collins M. R. in the case of *Continental Caoutchouc and Gutta Percha Company* v. *Kleinwort, Sons, and Co.*[1]. He has simply done his duty as an agent. He has collected the money he was asked to collect and handed it over to the person at that time seemingly entitled to it. If it was paid to him by mistake that ceases to be any concern of his, or to fix him with any liability to refund, as soon as he has in fact paid it away to the man who employed him to collect it. It is against the latter that the person who has paid by mistake must now proceed, and such I take to be the meaning of the word "person" in section 72 of the Indian Contract Act. But the ground upon which the agent is here discharged is not estoppel. If it can be exhibited clearly, it might be suggested that it really was no more than that the agent was *functus officio* before the mistake was discovered. As agent he had a limited duty to perform. He had to get money from A, and pay it to B. He gets the money from A, and pays it to B. Ten minutes after he has done so A who may not even know of the existence of B, much less of his right to the money in question, informs B's agent that he has paid him the money by mistake, and requires him to refund. It is as clear as anything in the law ever can be, that the agent would have a complete answer, and that A must now follow his money in the hands of B. But not because he has estopped himself by the mere

[1] (1904) 90 L. T. 474 at p. 475.

fact of payment to the agent; rather I think, because the agent as soon as he paid, having acted honestly throughout and in the proper discharge of his duty to his principal, whether disclosed or not makes no difference, is quit of the whole transaction.

It is only in the next class of cases that any real difficulty ever has been felt, or in theory, once the law was settled for the (A) class of cases, any theoretical difficulty ever could arise. Here it is assumed that payment in fact has not been made to the principal entitled to receive the money from the agent, although before the agent has learnt of any mistake he may have done all that in the normal course of business he would be called upon to do as an agent, in the way of paying his principal. In the present case, for example, the defendant Bank immediately on receipt of the money from the plaintiff did two things. It cabled to its principal that the money was paid. It posted its draft in favour of the principal, upon its own head-quarter branch in London. It could not recover its draft, though it might of course have stopped payment by cable and informed its principal that the draft would not be paid. But if things followed their ordinary course, the draft would have reached the defendant Bank's principal the Anglo-Egyption Bank, without the need of any further act on the part of the defendant Bank. In other words the defendant Bank might very well plead here that as agent for the Anglo-Egyptian Bank, it was *functus officio* as soon as it had cabled payment, and posted its own draft in favour of the Anglo-Egyptian Bank. I am not suggesting here that posting is equivalent to payment. There can be little doubt but that the case of *Norman* v. *Ricketts*[1] was wrongly decided even upon its own special facts, and

[1] (1886) 3 T. L. R. 182.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

the principle could never be extended to all cases of posting cheques and drafts. But in a sense the agent had parted with the money in favour of his principal and so might claim to have been quit of the transaction, as soon as the cable was despatched and the draft posted. For instance, if instead of posting a draft, the defendant bank had received the money in bank notes, and actually posted them to the Anglo-Egyptian Bank, could any one have denied that for all purposes of this branch of the law, the defendant Bank had paid, sufficiently at any rate, to absolve itself from all liability to the plaintiff, and pass that liability whatever it might be on to the Anglo-Egyptian Bank? This is not the strongest ground upon which the defendant Bank is entitled to our judgment, but it deserves much consideration both as I have put it, and in another light too. For, let us now assume that the defendant was not *functus officio* as agent, and had not in fact paid its principal, we have to treat the case under the general law in which a good deal of the doctrine of estoppel has been interwoven.

He who pays by mistake to an agent appears to have a limited right to recover from the agent, and that limited right is easily seen, on analysis, to resemble the right to stoppage *in transitu*. If while the money is in the hands of the agent or under his control, though on the way to his principal, the person who has paid by mistake may in certain cases get his money back from the agent before it has reached the hands of the principal, always provided (and it is here that we first come clearly in view of estoppel) the agent has done nothing before notice of mistake detrimental to himself in his relations with his principal. No one will deny that that is the law, but in each case it will of course be a question of fact whether the defendant agent has altered his position for the worse, on the

faith of the payment, before he knew of the mistake. I do not think that this means that in every case it lies on the defendant to prove that an act recognized as at any rate always potentially detrimental according to mercantile usage has in the particular case proved to be so in fact if, for example, it were established as a settled principle of the law merchant, that putting a negotiable instrument into circulation was detrimental to the maker I should say that in determining cases of the liability of an agent to one who has paid him for the benefit of his principal by mistake, it would be a complete answer that before notice of the mistake the agent had made and despatched a negotiable instrument to his principal. And that is the other light in which I say we have to regard the despatch of the draft by post, and in which it may have a very important bearing on our conclusion. I do not know that it ever has been settled as a principle of the law merchant that merely making and putting into circulation by post a negotiable instrument, which could be stopped before delivery, would be an act detrimental to the maker. But if it were, then I do not think it would be necessary for the maker to prove further, that in fact he had been damnified. For the principle here is that as soon as he has altered his position for the worse *qua* his principal, he is absolved from all further responsibility to the man who paid him by mistake. It is easy to put a case in which one who has made a negotiable instrument and posted it, and has stopped it before delivery, might yet find himself compelled to pay it.

But what completely frees the defendant Bank from all responsibility to the plaintiff in my judgment is the despatch of the cable to the Anglo-Egyptian Bank. Supposing the Anglo-Egyptian Bank had acted on it within an hour of receiving it (we have no evidence of what actually was done or whether anything was done

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

by the Anglo-Egyptian Bank beyond the fact that it acknowledged receipt of the cable before the defendant Bank was informed of the mistake) nothing could be clearer on the authorities, than that the defendant Bank could not have recovered its money (if it had repaid it to the plaintiff) from the Anglo-Egyptian Bank. With such a possibility open, can it be seriously argued that the despatch of that cable did not alter and alter very materially for the worse, the position of the defendant Bank in relation to its principal?

Here the facts of the *Deutsche Bank (London Agency)* v. *Beriro and Co.*[1] are for all practical purposes identical. If we eliminate Benatar at one end and the plaintiff's Deutsche agent at the other, and confine the decision to its true ground the acts and dealings between the plaintiff and defendant, the case comes to this. The defendant was agent for collection of a bill drawn by Benatar on some one in Holland. The defendant indorsed the bill for collection to the plaintiff Bank which in turn sent it on to its agent in Holland for collection. There was a misunderstanding between the plaintiff and the agent in Holland. The plaintiff *bona fide* believed that the bill had been paid there, informed the defendant accordingly and duly paid him the amount. The defendant immediately cabled to his principal that the bill was paid and a credit opened. Then the mistake was discovered and the plaintiff Bank claimed a refund of the money from the defendant. A very strong Court held, confirming Matthew J., that the plaintiff could not recover. He had represented to the defendant that the bill was paid and had paid the money, and on the faith of that the defendant had cabled to his principal that the bill had been paid and

[1] (1895) 73 L. T. 669.

the money was available. This was a complete estoppel. In other words the act or declaration of the plaintiff Bank had caused the defendant to do an act which was to his detriment in his relations with his principal. To use the language of our Evidence Act the plaintiff had intentionally caused the defendant to believe a thing to be true and to act upon that belief. It is noteworthy that in the Indian Statute there are no words such as "act to his detriment" or change his position for the worse. In the case I am noticing it is true that Matthew J. pointed out that in fact the defendant would not have been able to recover a penny from Benatar, by reason of his cable. He, in turn, would have been estopped by his cable, which was *pro tanto* always potentially an act very much to his detriment, just as the plaintiff was estopped from recovering by reason of having caused the defendant to act on the belief that all was right with the bill, by cabling to his principal. Those facts cannot, in my opinion, be distinguished in any point from the facts before us. Here the plaintiff just as in that case the plaintiff did, paid to the defendant who was acting for a principal under a *bona fide* mistake. The mistake in the English case was that the bill had been paid in Holland while in fact it had not. The mistake here was that the shipping documents were in order while in fact they were not. There, as here, on receipt of the payment and before any notice of mistake had been given, the defendant had cabled to his principal that the money was paid. And it was held that on those facts (bating all reference to what the defendant's principal may or may not have done on receipt of the cable) that the plaintiff was estopped and could not recover.

I think that a close scrutiny of all the leading English cases on this head will show that they establish

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

the principle upon which in my opinion the defendant Bank is entitled to our judgment.

Bavin's case[1], on which the plaintiff chiefly relies, is a very different case. In the first place it is not an action brought by a plaintiff to recover money paid by mistake. However it may have been decided then, and in spite of the decision, professing to rest on the dictum of Erle C. J. in *Holland* v. *Russell*[1], it can hardly be an authority upon the principle which underlies all cases proper of the very limited kind we are dealing with. But what happened in that case was that the defendant Bank having in perfect good faith got an order drawn really in plaintiff's favour on another Bank endorsed in favour of one of its own customers, duly credited him and presented the cheque for payment. The cheque or I should rather say order, was duly paid, and the plaintiff then discovered that the endorsement had been forged and that the defendant Bank had got his money and had credited it in account with one of its own customers. The Bank here was certainly an agent for collection *qua* its own customer. But it never did more than make a book entry enlarging the customer's credit before the mistake was discovered. (I think that in fact this was done before presentation of the order to the Bank on which it had been drawn.) There was here of course no representation by the plaintiff at all, and by no refinement of reasoning could he have been held estopped.

In *Continental Caoutchouc and Gutta Percha Company* v. *Kleinwort, Sons, and Co.*[2], the ground of the decision was substantially that the defendant was a principal. Where that is so, he must in every case, and no matter how he has dealt with the money, repay it to him who has paid it by mistake.

[1] (1861) 1 B. & S. 424, *in error*; (1863) 4 B. & S. 14. [2] (1904) 90 L. T. 474.

Imperial Bank of Canada v. *Bank of Hamilton*,[1] in so far as it is in point at all, appears to me to support the conclusions I have tried to found upon a general principle. For there although the decision was against the Bank which had paid a forged cheque and in turn been paid by mistake by the plaintiff Bank on whom the cheque was drawn, the judgments seem to indicate, that had the defendant Bank really altered its position for the worse between the time of receiving payment of the forged cheque and notice of mistake, the decision would have been in its favour.

There what happened was this: A man called Baure who had a small account with the plaintiff Bank drew a cheque on it for five dollars. He then got the Bank to certify it, which, of course, added the security of the Bank to his own. He then forged it, by converting it into 500 dollars and presented it as a cheque certified for that amount to the defendant Bank. The defendant Bank allowed him to open an account against it and draw upon it by cheque before clearing day. The cheque was presented at the clearing house, and paid as a matter of course. No forgery was suspected. But on checking it by the customer Baure's account, it was at once found to have been forged. That was the next day and the plaintiff Bank at once informed the defendant Bank of the mistake, and claimed back 495 dollars.

In the meantime the defendant Bank had done nothing whatever. All that it had done it had done before clearing day and not on any representation or act of the plaintiff Bank. It was held answerable.

Holland v. *Russell*[2] merely lays down the general law that where money has been paid by mistake to an agent, it can only be recovered from him if he has it

(1) [1903] A. C. 49.

(2) (1863) 4 B. & S. 14.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

still in his possession, or not having paid it away to his principal has yet altered his position for the worse on the faith of the payment, and in *bona fide* ignorance that there was any mistake at all. An agent with notice of mistake cannot absolve himself from liability to refund by hurrying to pay the money to his principal.

The case of *Shugan Chand* v. *The Govt., N.-W. P.*[1] was, upon the facts found and the reasons given in the brief judgment of the Court, in my opinion, wrongly decided. The decision purports to be founded on *Tugman* v. *Hopkins*.[2] The facts found were that the defendant was an agent, and that before notice and in good faith he had paid away the money to his principal, retaining no benefit whatever for himself beyond his small agent's commission. Upon the well established principles of law governing cases of claims for the recovery of money paid by mistake, the judgment of the Court should have been for the defendant. *Tugman* v. *Hopkins*,[2] as a moment's study of the case shows, is no exception. There the defendant was held liable, although he pleaded agency and payment to his principal, upon the ground that he had acquired the money by a wrongful act. It was never paid to him at all, and it was not a case for the recovery of money paid by mistake, but a case in trover.

Similarly *Newall* v. *Tomlinson*[3] is, when examined in various implications throughout the judgment, a very strong authority in favour of the defendant. The decision against the defendant there rested on the Court's finding in fact, that as between plaintiff and defendant the latter was not an agent at all, but a

(1) (1875) 1 All. 79.
(2) (1842) 4 M. & G. 389.
(3) (1871) L. R. 6 C. P. 405.

principal, had all along been believed to be so by the plaintiff, and for the purpose of the transaction in question was so. The great insistence laid on these points shows how different the decision might have been had the defendant confessedly been, as the defendant here has been, an agent and no more to the knowledge of the plaintiff throughout. He had had the benefit of the transaction: he had never paid the money to his principal of whose existence the plaintiff was not aware, and the fact that he may have used this money in adjusting his total account with his own principal, who appears to have been heavily indebted to him, made no difference. The Court held that the plaintiff could not have recovered from the defendant's principal in any event, on the facts proved. The latter part of the Court's reasoning may be thought to throw some doubt upon dicta to be found in the judgment of Collins M. R. in the case of *Continental Caoutchouc and Gutta Percha Company* v. *Kleinwort, Sons, and Co.*[1], where he says that an agent who collects the money for his principal, and then pays a debt which his principal owed him, has not had the benefit of the windfall, while the principal has. But I do not think that the Court in *Newall* v. *Tomlinson*[2] meant to dispute the general truth of that proposition, or that it ever could be disputed. The judgment in *Newall* v. *Tomlinson*[2] went on the facts found there: and they were very special. It has never been pretended in this case that the defendant was not acting as an agent pure and simple, and that the plaintiff was not fully aware that this was so. There is not the slightest reason to suppose that the defendant Bank paid itself the money it collected from the plaintiff, or had any benefit whatever therefrom, nor has that ever been alleged.

(1) (1904) 90 L. T. 474.

(2) (1871) L. R. 6 C. P. 405.

1917.

SOLOMON JACOB v. THE NATIONAL BANK OF INDIA, LTD., ADEN.

The whole point in every case of the kind turns, as I hope I have shown, upon whether before notice of mistake, the agent has in fact paid to his principal, or if he has not, has yet done some act to his own detriment *qua* his principal.

In this case I think that the defendant Bank did two distinct acts one of which might have been, in certain contingencies, and one of which upon the established principles of law governing this class of cases, actually was, detrimental to its position *qua* its principal.

Here the plaintiff knew perfectly well that the defendant Bank was a mere agent for collection. It is not anybody's case that the defendant Bank is more than a conduit pipe through which moneys were to pass from the plaintiff to the Anglo-Egyptian Bank. If there was any windfall at all, it was certainly the Anglo-Egyptian and not the defendant Bank that was to get the benefit of it.

Doubtless the defendant Bank could have stopped its draft: doubtless it could have taken the risk of re-paying the money and later finding itself estopped by its cable from recovering from its principal. But was it bound to do so? What was to prevent the plaintiff cabling all this information himself? If a Bank, which is endorsee for collection only, is to be exposed to all these harassments and uncertainties after the bill has been paid, up to any moment before its payment has been actually received by its principal in Europe or elsewhere, I apprehend this line of business might be much confounded and thrown into perpetual uncertainty. It was very unfortunate for the plaintiff that he happened to pay on a mail day, and in a less degree that the next day was a Bank holiday. But he has his remedy still against the Anglo-Egyptian Bank. If the defendant Bank has done no more than its duty, following the

ordinary course of business, and is protected by what it has done from any direct liability to the plaintiff, no considerations of the hardship which the plaintiff has suffered and may yet suffer, or how he might have been bettered had the Bank chosen to meet his wishes, need enter into the judgment. In my opinion the defendant Bank is under no liability to repay the plaintiff.

Answers accordingly.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Shah.

VISHWANATH GANESH PARANJPE (ORIGINAL PLAINTIFF), APPELLANT *v.* KONDAJI VALAD SAKHRAM AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1917 *July* 27.

Bombay Land Revenue Code (Bombay Act V of 1879), section 85†— Jurisdiction—Civil Court—Suit by superior holders against inferior holders to recover arrears of assessment.

* Second Appeal No. 177 of 1916.

† The section runs as follows :—

85. It shall be incumbent on every superior holder of an alienated village, and on every superior holder of an alienated share of a village in which there exists an hereditary Patel and village-accountant, to receive his dues on account of rent or land-revenue from the inferior holders through the said village-officers.

Any such superior holder demanding or receiving payment from any inferior holder of any rent or land-revenue otherwise than through the said village-officers shall, on conviction in a summary inquiry before the Collector, forfeit to Government three times the amount of the sum so demanded or received.

Every such hereditary Patel or accountant shall be bound to receive and account to the said superior holder for all sums paid to or recovered by him, on account of the said superior holder, and, on his or their failure to do the same, the superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.