**THE GREAT WESTERN RAILWAY COMPANY**

**v.**

**THE LONDON AND COUNTY BANKING COMPANY, LIMITED**

HOUSE OF LORDS.

July 22 1901

**LEX (1901) – 1 A.C. 414**

OTHER CITATION

2PLR/1902/3 (HL-E)

[1901] 1 A.C. 414

**BEFORE THEIR LORDSHIPS**

EARL OF HALSBURY L.C.

LORD SHAND

LORD DAVEY

LORD BRAMPTON, and

LORD LINDLEY.

**REPRESENTATION**

H. D. GREENE, K.C. (ASQUITH, K.C., and PARK GOFF with him) - for the Appellants

A. T. LAWRENCE, K.C., AND GUY LUSHINGTON - for Respondents

Solicitors: R. R. NELSON; HARRIES, WILKINSON & RAIKES.

**ORIGINATING COURT**

THE COURT OF APPEAL

HIGH COURT *(Bigham J., Presiding)*

**ISSUES FROM THE CAUSE(S) OF ACTION**

BANKING AND FINANCE LAW: Banker - Cheque - Defective Title - Receiving Payment for a Customer - "Customer" - Liability of Banker - Bills of Exchange Act, 1882 (c. 61), ss. 81, 82.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

To make a person a "customer" of a bank within the meaning of s. 82 of the Bills of Exchange Act, 1882, there must be some sort of account, either a current or a deposit account, or some similar relation.

H. having by false pretences obtained from the appellants a cheque crossed "& Co." and marked "not negotiable," took it to the respondent bank. The bank at his request paid part of the amount of the cheque into the account of one of their customers and handed the balance to H. After the respondents had received payment of the cheque from the bank on which it was drawn H.'s fraud was discovered, and the appellants sued the respondents for the amount. It was found as a fact that the respondents received the payment in good faith and without negligence. They had for years been in the habit of cashing cheques for H. in a similar manner. He had no account or pass-book with them:-

HUGGINS, a rate-collector at Newbury, by falsely pretending to the appellants that a rate had been made on them, obtained from them in November, 1898, a cheque drawn by them on the London Joint Stock Bank for 142*l.* 10*s.*, payable to Huggins or order, crossed "& Co." and marked "not negotiable." This cheque Huggins took to the respondents' branch bank at Wantage, indorsed it and handed it to the bank clerk. At Huggins' request 25*l.* was placed to the credit of the Wantage Rural District Council's account with the bank, and the balance, 117*l.* 10*s.*, was paid to Huggins in cash which he appropriated to his own use. The respondents crossed the cheque to themselves and sent it up to their head office in London, where it was passed through the clearing house and paid. After it was paid Huggins' fraud was discovered, and the appellants sued the respondents for the 142*l.* 10*s.* At the trial before Bigham J. without a jury, Huggins, who had meanwhile been convicted of the misdemeanour, was called as a witness and stated that for twenty years the respondents' branch bank had cashed cheques, some crossed, some not crossed, for him across the counter in a similar manner. None of them were marked "not negotiable." He had never had any account with the bank, nor any pass-book.

By the Bills of Exchange Act, 1882 (c. 61), s. 81: "Where a person takes a crossed cheque which bears on it the words 'not negotiable,' he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had."

Sect. 82: "Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment."

DECISION APPEALED AGAINST

Bigham J. found as a fact that the defendants received the payment in good faith and without negligence. He also found that they received it for Huggins and not for themselves, and that Huggins was "a customer" within s. 82 of the Bills of Exchange Act, 1882, and entered judgment for the defendants. (1) This decision was affirmed by the Court of Appeal (A. L. Smith M.R., and Vaughan Williams and Romer L.JJ.). (2)

ISSUE FOR DETERMINATION

Whether respondents must shew that they received payment of the cheque "for a customer." to bring themselves within the protection of s. 82 of the Bills of Exchange Act, 1882.

Whether a person is not a customer unless he has an ordinary current account; a deposit account would not make him a customer.

Whether the fact that Bank had cashed cheques in the past for a person who did own a current account with them him did not make him a customer.

Whether in the circumstances, the respondents would be said to have received the cheque for themselves alone – as a purchase.

Whether Huggins had obtained the cheque by fraud and therefore the respondents could have no better title to it than he had.

DECISION OF HOUSE OF LORDS

*Held,* that H. was not a "customer" of the respondents, and that they did not receive payment of the cheque for him, within the meaning of s. 82 of the Bills of Exchange Act, 1882, and were not protected by that section; that H. having no title to the cheque the respondents took no title to it or to the money, and were liable to the appellants for the amount of the cheque.

*The decisions of Bigham J.,* [1899] 2 Q. B. 172, and the *Court of Appeal* ,[1900] 2 Q. B. 464, reversed.

**MAIN JUDGMENT**

July 22.

EARL OF HALSBURY L.C.

My Lords, the importance of this case depends upon the true construction of the 81st and 82nd sections of the Bills of Exchange Act, 1882. I think there are more reasons than one for the opinion that I entertain. But the sections to which I refer are of such wide and general importance that I prefer to rest my judgment upon the true construction of those two sections.

(1) (1862) 13 C. B. (N.S.) 125.

(2) (1875) L. R. 7 H. L. 757, 763.

(3) (1871) L. R. 6 Q. B. 623, 629, 630.

(4) [1897] 1 Q. B. 552.

(5) (1878) 3 App. Cas. 459.

I think it is very important that every one should know that people who take a cheque which is upon its face "not negotiable" and treat it as a negotiable security must recognise the fact that if they do so they take the risk of the person for whom they negotiate it having no title to it. In this case it cannot be pretended that Huggins had any title to it at all. I do not understand what additional security is supposed to be given to a cheque by putting the words "not negotiable" upon it, if the fact of its being negotiated can give a title to any one. The supposed distinction between the title to the cheque itself and the title to the money obtained or represented by it seems to me to be absolutely illusory. The language of the statute seems to me to be clear enough. It would be absolutely defeated by holding that a fraudulent holder of the cheque could give a title either to the cheque or to the money. The 82nd section, which contemplates the receipt of such a cheque received in the ordinary course of business for a customer of the bank, seems to me to contemplate a totally different class of transaction from what is disclosed in this case. The bank thought proper to take this cheque as representing its face value, and if Huggins had no title, as he certainly had not, there is nothing in the 82nd section which will entitle them to treat it as receiving payment for a customer.

It is not true to say that the banker is here sought to be made liable by reason of his having received payment for a customer. I do not think that Huggins was a customer of the bank at all within the meaning of the section. But what the bank are really insisting upon here is the valid negotiability of a cheque which was fraudulently obtained, and which it is enacted by the statute shall give no better title than that which the person from whom it was taken himself possessed. The bank insists nevertheless that he had sufficient title to give them to enable them to sue.

As I have said, I do not think Huggins was a customer at all; I do not think the transaction was a banking transaction; and although I think there is another and a distinct ground which would defeat the bank's claim, I am content to rest my judgment upon the true construction of the statute.

I therefore move your Lordships that the judgment of the Court of Appeal be reversed and that judgment be entered for the appellants with costs.

LORD SHAND.(1)

My Lords, I have found the decision of this case to be attended with much difficulty, but have come to be of opinion with your Lordships that the judgments of Bigham J. and the Court of Appeal should be reversed. Having had an opportunity of considering the judgment about to be delivered by my noble and learned friend Lord Lindley, I concur in that judgment and in his Lordship's views of the provisions of the Bills of Exchange Act and in the reasons which his Lordship has given for the reversal of the decision of the Court of Appeal.

LORD DAVEY.

My Lords, the first point raised by the learned counsel for the respondents was that Huggins in the circumstances which are stated in the case had a property in the cheque which was indeed voidable by the appellants who had been defrauded, but that the money having been received by the respondents in good faith and without notice of the fraud before the appellants had disaffirmed the transaction, it could not be recovered back from the respondents. *Horwood v. Smith* (2) and the Sale of Goods Act, 1893, s. 24, were cited in support of this proposition. My Lords, I am of opinion that Huggins never had any property in the cheque, which was handed to him only as the collector and agent of the overseers in payment of a debt alleged to be due to them. The appellants never intended to vest any property in him for his own benefit, but the property in the cheque was intended to be passed to his employers, the overseers, notwithstanding that it was made payable to Huggins' order. Huggins therefore had no real title to the cheque, and it being marked "not negotiable" the respondents never acquired title to it as against the appellants. I think that this is shewn by the cases of *Higgons v. Burton* (1) and *Cundy v. Lindsay* .(2) In the former case one Dix, pretending to be agent for one Fitzgibbon, obtained goods from the plaintiff and pledged them to the defendant. It was held that the plaintiff could recover the goods from the defendant before any notice of the fraud or disaffirmance of the transaction. And in *Cundy v. Lindsay* (2) the same principle was affirmed in this House.

(1) Read by Lord Davey in Lord Shand's absence.

(2) 2 T. R. 750.

Bigham J. and the Court of Appeal, however, decided in favour of the respondents on the ground that Huggins was a customer of the respondents, who received the cheque for collection on his behalf within the meaning of s. 82 of the Bills of Exchange Act. The facts upon which they came to that conclusion are that Huggins had for about twenty years been in the habit of cashing cheques received by him as collector of rates at the respondents' bank. His employers, the overseers, kept their account at another bank in Newbury, and it was primÃ¢ facie his duty to pay cheques received by him for rates into their banking account. It does not appear whether Huggins cashed cheques at the respondents' bank in any cases except those in which he had to make payments out of the rate collected as poor-rate to the credit of the waywardens or rural district council, who kept their accounts with the respondents. In all the instances which were put in evidence from the books of the respondents the transaction was similar to the one in question, namely, a payment to the credit of a customer of the respondents by means of a large cheque out of which Huggins received the change. He was asked the question in cross-examination whether he ever cashed cheques with the respondents except when he had to make a payment out of the rate to the credit of one of their customers. Unfortunately a discussion arose and the question was never answered. It is not shewn that he did so, and I doubt whether he ever did. But be this as it may, I do not think that the relation of customer and banker was ever established between him and the respondents. It is true that there is no definition of customer in the Act, but it is a well-known expression, and I think that there must be some sort of account, either a deposit or a current account or some similar relation, to make a man a customer of a banker. On the facts proved in this case I do not think the respondents undertook any duty towards Huggins. They took the cheque he offered in payment of a sum to be placed to the credit of their customers and gave him the change, or in some cases (though it is not proved) they may have bought his cheque possibly for their own convenience in remitting to the head office. But this will not, in my opinion, prove that Huggins was a customer, or that they undertook to collect the cheques on his behalf so as to bring them within the protection of s. 82.

(1) (1857) 26 L. J. (Ex.) 342.

(2) 3 App. Cas. 459.

I therefore agree that the appeal should be allowed.

LORD BRAMPTON.

My Lords, although I am of opinion that the evidence in this case would have justified the conviction of Huggins for larceny under s. 88 of 24 & 25 Vict. c. 96, still, as the jury by their verdict in fact found him guilty of obtaining the cheque by false pretences, that is, of a misdemeanour and not of a felony, and as throughout the trial of this action the case was so treated, both by the appellants and the respondents, I have thought it right so to treat it in considering the question of the respondents' liability now before your Lordships.

I do not, however, look upon this distinction as at all material, for the question before this House is not whether the respondents, when they received the cheque from Huggins, became the holders in due course in the sense that they were bonÃ¢ fide holders for value without notice of the fraud, nor whether they continued to be so until after the cheque was honoured by the appellants' bankers upon whom it was drawn - for nobody impeaches the absolute integrity of the respondents, their officers and clerks - but whether, in taking this cheque with the words "not negotiable," added to the general crossing "… & Co." written upon the face of it by the secretary of the appellants before it was sent to Huggins, the respondents' right to receive payment of it was affected by s. 81 of the Bills of Exchange Act, 1882, and was not within the protection of s. 82. The object of s. 81 is obvious. It is to afford to the drawer or the holder (s. 77) of a cheque who is desirous of transmitting it to another person as much protection as can reasonably be afforded to it against dishonesty or accidental miscarriage in the course of its transit, if he will only take the precaution to cross it, with the addition of the words "not negotiable," so as to make it difficult to get such cheque so crossed cashed until it reaches its destination.

To apply that section to the present case, there can be no doubt that a person who obtains from another, by a fraudulently false pretence, a cheque so crossed with the intent to appropriate the proceeds to his own use, as Huggins did, could not make any real title to such cheque; practically it would be the same as if he had stolen it. Having no title himself, he had none to give to anybody else, and if this had been the case of an obliging tradesman cashing the cheque for a friend it would have been unarguable.

But it is said the respondents, being bankers, are protected by s. 82 from liability to pay over to the appellants the moneys they have received by the honouring of the cheque. That the respondents in good faith received payment for the cheque is beyond question. I am not, however, quite so sure that it was altogether without negligence, for I must assume the manager at Wantage knew the meaning and legal effect of the crossing with the words "not negotiable." This point, however, does not appear to have been raised, and certainly there was no finding upon it at the trial. I will reject it, therefore, for present purposes.

The only remaining question is whether the money received by the respondents' bank, when the cheque was honoured, was so received for any customer of the bank. I cannot come to the conclusion that it was, nor do I think the evidence would justify such a finding.

Huggins had no banking account at all anywhere. It is not necessary to say that the keeping of an ordinary banking account is essential to constitute a person a customer of a bank, for if it were shewn that the cheques were habitually lodged with a bank for presentation on behalf of the person lodging them, and that when honoured the amount was credited and paid out to such person, whether with or without any profit to the bank for so presenting them, I would not say that such transactions might not constitute such person a customer within the meaning of the 82nd section; indeed, I think they would. But as between Huggins and the Wantage branch of the respondents' bank the transactions amounted to nothing of the sort.

It is true that for many years the branch bank manager had been in the habit of accommodating Huggins by cashing cheques made payable to him, some crossed and some not crossed, but none marked "not negotiable." All the cheques were cashed across the counter before presentation. Sometimes a portion of the amount was paid by Huggins' direction in to the credit of the account kept with the bank by the Wantage Rural District Council, but there was never a cheque so changed without Huggins getting some cash out of it, and upon no occasion was a cheque paid in to the credit of the Wantage account above mentioned for presentation on their account; and I can well understand why it was so, because once paid in it could not have been got out without a cheque of the Wantage Rural District Council. I should further observe that the language of the 82nd section is where a banker "receives payment for a customer." In the case before your Lordships, on every occasion of cheques so cashed the money had already been given to Huggins in exchange for the cheque, the money paid to the respondents has been received on their own account to reimburse them, and not on account of Huggins at all.

For these reasons I think the transaction between Huggins and the respondents is not within the protection of the 82nd section, and that as Huggins could give the respondents no better title than he had himself, the appellants are entitled to your Lordships' judgment, and that this appeal should be allowed with costs.

LORD LINDLEY.

My Lords, in the view I take of this case it is unnecessary to determine whether Huggins was guilty of larceny in stealing the cheque, or whether he only obtained it by false pretences, which is the crime of which he was convicted. Whether the cheque was void or only voidable, as contended by Mr. Lawrence, appears to me really immaterial.

Be it void or be it voidable, it was not negotiable, and by s. 81 of the Bills of Exchange Act, 1882, Huggins was not capable of giving a better title to the cheque than he had himself. But it is said that, although the bank had a defective title to the cheque, they have a good title to the money paid to them as holders of it. My Lords, so to construe the section would destroy more than half its utility; a cheque marked "not negotiable" would be no safer than any other cheque if once cashed, i.e., unless payment of it was stopped before it was presented.

I cannot think this is an admissible construction; it has never yet been judicially adopted, and I advise your Lordships to reject it. Every one who takes a cheque marked "not negotiable" takes it at his own risk, and his title to the money got by its means is as defective as his title to the cheque itself. *Fisher v. Roberts* (1) is an authority to this effect, and s. 82 seems to me framed on the assumption that this view is correct. That section would not otherwise be wanted.

Upon the other point, it is plain to me that the bank obtained payment of the cheque for themselves and not for Huggins. Whether the bank is to be regarded as having purchased the cheque or as having advanced him its amount on the security of it seems to me immaterial. The bank wanted the money for themselves and not for him. They were entitled to hold the money as against him, and were under no obligation to remit it to him. In no ordinary sense of the expression can the bank be regarded as collecting the money for him, although, no doubt, if the bank could keep the money all liability on his part would be at an end, and in that way he would be benefited by their receipt of the money. Sect. 82 of the Act is a mere reproduction of the previous Act of 1876, and the construction put upon that Act in the case of *Matthiessen v. London and County Bank* (2) was, in my opinion, correct. In *Clarke v. London and County Banking Co.* (1) the cheque was paid in for collection, and this was the ratio decidendi.

(1) (1890) 6 Times L. R. 354.

(2) (1879) 5 C. P. D. 7.

Further, my Lords, I cannot think that Huggins was in any sense a customer of the bank; no doubt he was known at the bank as a person accustomed to come and get cheques cashed, but he had no account of any sort with the bank. Nothing was put to his debit or credit in any book or paper kept by the bank. The entry in the waste-book, p. 20, is only a memorandum of the transaction. Romer L.J. thought he was a customer because the bank had for years collected money for him; but, in my view, the bank collected money for themselves, not for him, in this particular transaction, and the evidence only shews that previous transactions were similar to this.

The case suggested by Romer L.J. of a customer paying in a non-negotiable cheque to his own credit when his account is overdrawn appears to me very different from that which is before your Lordships for decision.

My Lords, the reasoning of Vaughan Williams L.J. commends itself to my mind, although out of deference to his colleagues he accepted a view which he would not otherwise have entertained. I am clearly of opinion that the judgments appealed from should be reversed, and that judgment should be entered for the plaintiffs with costs, and that they should have the costs of this appeal.

*Judgment of Bigham J. and order of the Court of Appeal reversed and judgment entered for the appellants with costs here and below; cause remitted to the King's Bench Division.*

*Lords' Journals, July 22, 1901.*

|  |  |  |
| --- | --- | --- |
|  |  |  |

(1) [1897] 1 Q. B. 552.

[1901] A.C. 414