Bhagwan Das Vs. Creet

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Court : Kolkata

Decided On : May-25-1903

Reported in : (1904)ILR31Cal249

Judge : Banerjee and; Pargiter, JJ.

Appellant : Bhagwan Das

Respondent : Creet

Judgement :

Banerjee and Pargiter, JJ.

1. In this appeal, which arises out of a suit brought by the plaintiff-appellant to recover a certain sum of money due upon a chegue, two questions have been raised on behalf of the plaintiff-appellant: first, whether the Court of Appeal below was right in holding that the defendant No. 1 was not liable for the money which defendant No. 2 had obtained from the plaintiff on the presentation of a forged cheque, when defendant No. 2 presented the cheque; as the agent of the defendant No. 1; and, secondly, whether the lower Appellate Court was right in holding that the defendant No. 2 was not the agent of the defendant No. 1, without considering the evidence of agency furnished by the fact of defendant No. 1 previously.

2. Upon the first point the case of Young v. Drote (1827) 4 Bing. 253 is relied upon. That case, as Lord Macnaghten observes in Scholfield v. Earl of Londesborough [1896] A.C. 514, 'is a case which has excited as much diversity of opinion as any case in the books.' But even accepting its any authority a clear and unquestionable, we do not think that it helps the appellants in any way. There Best C.J., at the outset of his judgment observes: 'Undoubtedly, a banker who pays a forged cheque is in general is in general bound to pay the amount again to his customer, because in the first instance he pays without authority. On this principle the two cases which have been cited (sic) decided, because it is the duty of the banker to be acquainted in his customer's handwriting, and the banker, not the customer, (sic) suffer if a payment be made without authority. But though that rule be perfectly well established, yet if it be the fault of the customer that the banker pays more than he ought, he cannot be called on to pay again.'

3. That shows that it was on the principle of negligence imputable to the customer that a banker can make the customer liable if payment had been made on a forged cheque; and in this case nothing having been said as to defendant No. 1 being negligent in any way,--no foundation having been laid for a case of negligence, we do not think that the Principle of Young v. Grote (1827) 4 Bing. 253 can be applied to it at all.

4. Then, as to the second point, we are of opinion that it is concluded by the finding of fact arrived at by the Court of Appeal below. That finding is perhaps not so categorically and expressly stated as it might have been. But reading the last two paragraphs of the judgment, we must say that there can, be no doubt that the lower Appellate Court has found that, as a matter of fact, the defendant No. 2 is not shown to have been the agent of defendant No. 1 upon the whole evidence. The learned Judge in the Court of Appeal below states in his judgment: 'Was Ramsukh the appellant's agent at all? Did the appellant by any act of his give the plaintiffs to understand that Ramsukh was his agent?' And after having stated the questions he arrived at his conclusion, which could have been arrived at only upon a complete negative answer to these questions being returned.

5. The contentions urged before us therefore fail, and this appeal must be dismissed with costs.