Privy Council Appeal No. 90 of 1917.

The firm of Sadasuk Janki Das - - - - - - *Appellants*

v.

Maharaja Sir Kishan Pershad Bahadur and another - - *Respondents*

FROM

THE COURT OF THE RESIDENT AT HYDERABAD (DECCAN).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST NOVEMBER, 1918.

Present at the Hearing:

LORD BUCKMASTER.
LORD DUNEDIN.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD BUCKMASTER.]

On the 14th April, 1910, Mohan Lal borrowed from the plaintiffs, who are the appellants on this appeal, the sum of Rs. 35,000, and to secure repayment drew and accepted in their favour fourteen *hundis*—each for the sum of Rs. 2,500—the first payable ten months after the 14th April, 1910, and the remainder at successive intervals of one month. Each *hundi* was in the same form, and it is agreed that the true translation is as follows:—

"By order of Sirkar may his happiness increase.

to

Mohan Lal, son of Hira Lal.

Six months from the date of the execution of this *hundi*, please pay to Seth Sadasuk Janki Das Sahu of the Residency Bazars or to his order the sum of H. S. Rs. 2,500 (half of which is Rs. 1,250) which sum I have received in cash in the Residency Bazars from the said Seth Sahib.

Dated 3rd Rabi-us-sani 1328-H (14th April, 1910).

Mohan Lal (In Urdu),
Acting Superintendent of the Private Treasury of His Excellency Sir Maharaja, the Prime Minister of H.H. the Nizam.

[On the back.]

This *hundi* has been accepted by Mohan Lal, son of Hira Lal, in favour of Seth Sadasuk Janki Das, inhabitant of the Residency Bazars, Hyderabad.

Dated 3rd Rabi-us-sani 1328-Hijri.

Mohan Lal (In Urdu)."

The whole of the *hundis* were dishonoured, and the appellants accordingly took proceedings on the 15th of August, 1913, against Mohan Lal and the Maharaja Sir Kishan Pershad Bahadur, the respondents on this appeal, claiming the amounts due upon the *hundis* with interest. It would, of course, have been open to the plaintiffs had they thought fit to have framed their case in an alternative form, and to have sued both on the *hundis* and alternatively upon the consideration.

It is indeed urged by the appellants that the plaint in fact embraced both these forms of relief, but their Lordships are unable to accept this contention, which does not appear to have been raised in the Courts below. In their opinion the plaint was confined to an action brought upon the *hundis* themselves, and the sole question for decision upon this appeal is whether upon the form of the *hundi* the first respondent, the Maharaja, was properly included as a defendant to the suit, or whether as against him the claim is demurrable.

The District Judge on the 19th September, 1914, dismissed the suit against the Maharaja, but passed a decree against Mohan Lal. The plaintiff appealed from this judgment to the First Assistant Resident at Hyderabad who, on the 28th April, 1915, reversed the judgment of the District Judge and remanded the case to be disposed of on the merits, holding that the *hundis* were drawn in a form sufficient to charge the Maharaja upon these if agency were proved; but this judgment was reversed by the Resident at Hyderabad on the 27th September, 1915, and from this judgment the present appeal has been brought.

The real point for decision is whether the *hundis* have been so drawn that in form they bind the Maharaja. If they have, it will then become necessary to determine whether in fact Mohan Lal had authority for the purpose. If they have not, this question of agency does not and cannot arise in the present suit.

Now, in the actual operative part of the *hundis* there is nothing by which the Maharaja can be bound. Each one is drawn in the name of Mohan Lal alone, and accepted by him without qualification, for the addition of the words, "Acting Superintendent of the Private Treasury of His Excellency Sir Maharaja, the Prime Minister of H.H. the Nizam," is, in their Lordships' opinion, nothing but a description of Mohan Lal's position, and is certainly not a signature in the form necessary for an agent signing on a principal's behalf.

The appellants, however, place great reliance on the preliminary words:—"By the order of Sirkar may his happiness increase," and contend that such a preface to the instrument implies that subsequent signatures are signatures on behalf of the Sirkar.

Their Lordships cannot accept this contention. It is of the utmost importance that the name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can be instantly recognised as the document passes

from hand to hand. In this case the preliminary words mention no more than that Mohan Lal has been directed to execute the *hundis*, and they do not necessarily imply that he has been clothed with authority to execute them in any other form than that in which they were actually prepared—a form which it has already been shown constituted nothing more than a personal liability on behalf of Mohan Lal.

The statement, to which reference has been made, which appears on page 99 of Messrs. Iyenger and Adiga's book on negotiable instruments, that " outside evidence is inadmissible on any person as a principal party unless his—the principal party's--name is in some way disclosed in the instrument itself," is not in itself an adequate statement of the law. It is not sufficient that the principal's name should be " in some way " disclosed, it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the bill.

Their Lordships' attention was directed to secs. 26, 27 and 28 of The Negotiable Instruments Act of 1881, and the terms of these sections were contrasted with the corresponding provisions of the English Statute. It is unnecessary in this connection to decide whether their effect is identical. It is sufficient to say that these sections contain nothing inconsistent with the principles already enunciated, and nothing to support the contention, which is contrary to all established rules, that in an action on a bill of exchange or promissory note against a person whose name properly appears as party to the instrument it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal.

The judgment of the Resident appears to their Lordships to place the correct interpretation upon the documents in this case, and to state accurately the principles of law that are to be applied. For this reason they think that the appeal must fail, and they will humbly advise His Majesty that it should be dismissed.

In the Privy Council.

THE FIRM OF SADASUK JANKI DAS

v.

MAHARAJA SIR KISHAN PERSHAD BAHADUR AND ANOTHER.

DELIVERED BY LORD BUCKMASTER.

Printed by Harrison & Sons, St. Martin's Lane, W.C.

1918.