Privy Council Appeal No. 11 *of* 1943

The Bank of Baroda Limited - - - - - *Appellant*

v.

The Punjab National Bank Limited and others - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH MAY, 1944

Present at the Hearing:

VISCOUNT MAUGHAM
LORD MACMILLAN
LORD WRIGHT

[*Delivered by* LORD WRIGHT]

The appellant is a company doing banking business, established in the State of Baroda, under the Baroda Companies Act, 1896-7, and having its registered office in Baroda with branches in British India. The respondent is a bank incorporated under the Indian Companies Act. Both banks have branches in Calcutta. M. P. Amin was manager of the Calcutta branch of the appellant bank. Bhagwan Das was manager of the Calcutta branch of the respondent bank. One Mitter (respondent No. 2) became a customer of the appellant bank at Calcutta. In May, 1939, one Ghose (respondent No. 3) opened an account with the appellant bank on the understanding that he should be allowed " temporary accommodation from time to time." That account was guaranteed by Mitter.

On the 13th June, 1939, Ghose's account with the appellant bank showed an opening debit balance of Rs. 1,26,339 reduced during the course of the day to Rs. 89,274. On the same date Mitter's account with the respondent bank was overdrawn to the extent of about Rs. 35,000. On that day, Mitter brought to the respondent bank two cheques drawn by Ghose on the appellant bank both in favour of Mitter and both dated the 13th June, 1939; both cheques were marked on their face with the words " Marked good for payment up to 20th June, 1939," and signed by Amin on behalf of the appellant bank. One cheque was for Rs. 1,40,000 and the other for Rs. 1,35,000. Mitter informed Bhagwan Das that the cheques would not be paid until the 20th June, 1939, and asked to be allowed to draw Rs. 2,40,000 against them. Bhagwan Das said he wanted a cheque the date of which was the same as that on which payment was to be made. Mitter then took away the cheques and returned a little later on the same day with one cheque dated 20th June, 1939, drawn by Ghose on the appellant bank in favour of Mitter or order, for Rs. 2,75,000. The cheque was crossed " & Co." and on the face of it were written crosswise the words " Marked good for payment on 20.6.39. For the Bank of Baroda Limited, M. P. Amin, Manager." It has not been questioned that

the signature was that of Amin. Mitter endorsed the cheque generally and handed it to Bhagwan Das, with two letters, in which he asked the respondent bank to credit Rs. 2,75,000 to his account " on realisation on due date," and also requested an overdraft of Rs. 2,40,000, besides the previous balance, which he promised to adjust on the 20th June, 1939.

The respondent bank on the same day gave Mitter its cheque for Rs. 2,40,000, on the Imperial Bank of India at Calcutta which Mitter duly cashed. The respondent bank debited Mitter's account with the amount.

Meantime the appellant bank had become suspicious of the conduct of Amin and had sent two senior officials to keep Amin under observation. On the 19th June Amin was suspended and early next day a notice was sent to the respondent and other banks that Amin's power of attorney had been cancelled and another branch manager appointed. On the 20th June, the respondent bank, who, though they had not yet received the notice, had become apprehensive, sent their cashier and their accountant to the appellant bank, as soon as it opened for business that morning, to present the cheque marked as above which Bhagwan Das had endorsed generally for Rs. 2,75,000, over the counter for payment. Ghose's account was then in credit to the extent of annas 7 pies 3 only. The appellant bank refused payment and returned the cheque with a memorandum attached " not arranged for." After some correspondence the respondent bank on the 31st July, 1939, commenced the present suit against the appellant bank, and also against Mitter and Ghose. As against the appellant bank, the respondents claimed as holders for value of the certified cheque, and also based their claim on a custom or usage, and in the alternative on estoppel. They claimed against Ghose as drawer and against Mitter as endorser. The two latter did not appear, nor did they give evidence at the trial; indeed they were then the subject, along with Amin, of criminal proceedings in connection with their part in the affair. It was not suggested that either Bhagwan Das or the respondent bank were actually party or privy to the fraud, however irregular from a banking point of view was the discounting of a post-dated cheque, quite apart from the original request to have a single cheque in place of the two brought in the first instance. It does not appear whether the cheque was post-dated at the request of the drawer, Ghose, or of Mitter. It seems that the amount of the cheque was not debited to Ghose's account and that there was no earmarking of funds or cover for it. Ghose's account, as already observed, was heavily overdrawn when the cheque was taken as security for the loan. It may be said that the respondent bank was not affected by irregularities of indoor management on the part of the appellant bank's manager, of which they had no notice, but the fact that money was lent on the post-dated cheque on the 13th June, though on its face it was only payable on the 20th June, and was marked for payment on that date, was a departure obvious on the face of the cheque from any practice there might be in these matters. The respondent bank however made no inquiries, and did not question the validity of the certification or marking. The effect of this will be considered later.

At the trial before Panckridge J. the evidence called included some Calcutta bankers, who deposed on the question of there being a practice in Calcutta to mark or certify cheques, but it is clear that on any view there was no satisfactory evidence that it was usual to certify post-dated cheques. Panckridge J. held the appellant bank liable on the cheque on the ground that they were acceptors because in his judgment the certification constituted an acceptance within the meaning of the Negotiable Instruments Act, though he went on to hold as a further ground that the evidence showed that bankers at Calcutta are by usage liable on cheques certified by them when presented by parties entitled thereto. He did not deal specifically with the case that the cheques were post-dated.

On appeal the judgment of the trial judge was affirmed. The Chief Justice who delivered the judgment of the court decided the case on the ground that the marking or acceptance of the cheque was in law an accept-

ance by the appellant bank, and accordingly the question of usage did not arise. He said however that the evidence was insufficient to enable him to hold that the custom alleged was established. He was prepared to consider the evidence as showing that banks in Calcutta which mark cheques regard the certification as an acceptance which makes them legally liable to pay and that they honour their obligation. The Chief Justice did not deal at length with the objections to certifying post-dated cheques, though in the memorandum of appeal it was expressly urged that to certify a post-dated cheque was outside the manager's authority and was outside any custom or usage.

In the court below the pleadings and issues were not very precise or formal, and before this Board the appeal has been presented and argued on the basis of the substantial issues.

The first and principal issue was whether the certification amounted to an acceptance within the definition contained in section 7 of the Negotiable Instruments Act, 1881, which defines an acceptor as the drawee of a bill of exchange who has signed his assent upon the bill, and delivered the same. By section 6 a cheque is defined as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

There is no provision in the Negotiable Instruments Act as to a post-dated instrument such as there is in the English Bills of Exchange Act, 1882, section 13 (2), which says that a bill is not invalid by reason only that it is ante-dated or post-dated. There are certain differences between the English Act and the Indian Act, which preceded the former by a year. But substantially the two Acts correspond. Both have been based on the law developed by the English courts as a part of the law merchant, which the common law originally received on the basis of what was proved to the Court to be the custom of European business men in their dealings, but which eventually, under the name of the law merchant was integrated with and became a part of the common law. The law of negotiable instruments was peculiarly adapted to codification, because it was so largely precise and formal. Hence the English Act was described as a codifying Act, and so was in fact the Indian Act. Both were based on the English decisions and hence these and later decisions of either country are commonly cited and relied upon. And in addition decisions from other common law jurisdictions are frequently cited as in the present case is done by the Chief Justice. But the law merchant is not a closed book nor is it fixed or stereotyped. This was explained by Cockburn C.J. in *Goodwin* v. *Robarts* L.R. 10 Ex. 337, at p. 346 and following pages. Practices of business men change, and courts of law in giving effect to the dealings of the parties will assume that they have dealt with one another on the footing of any relevant custom or usage prevailing at the time in the particular trade or class of transaction. Hence evidence is admitted of custom and usage, which when juridically ascertained and established become incorporated in the common law. Thus, in the present case, there is an alternative claim based on custom and usage. But the contention that the certification was an acceptance of the cheque is primarily a question of law, to be decided on the terms of the Act and on the authorities upon a correct understanding of the characteristics of a cheque and of the effect of certification.

The main question falls into two parts: one is whether it is legally competent to accept a cheque as if it were a bill within sec. 7 of the Negotiable Instruments Act, 1881, and the other is whether certification constitutes an acceptance. Now it is to be noted that so far as their Lordships know there is no case in the books of the acceptance of a cheque. This is an arresting fact at the outset, especially when the myriad cheques which have been drawn and paid during all these years are considered. The reason why a contrast is drawn between the acceptance of a cheque which is a bill of exchange of a special type and the acceptance of an ordinary bill of exchange depends on the distinction in fact between a bill of exchange and a cheque, which are in many respects different and distinct in their character and origin (see *Goodwin* v. *Robarts* (*supra*), at p. 346), though

in many respects they are analogous. In *Ramchurn Mullick* v. *Luchmeechund Radakissen*, 9 Moo.P.C. 46, at p. 69, this Board on an appeal from the Supreme Court of Calcutta in a judgment delivered in 1854 by Parke B. pointed out some of the essential differences: he said that a cheque is a peculiar sort of instrument, in many ways resembling a bill of exchange, but in some entirely different. He said that in the ordinary course it is never accepted: it is not intended for circulation, it is given for immediate payment, it is not entitled to days of grace. In addition, it is to be noted, a cheque is presented for payment, whereas a bill in the first instance is presented for acceptance unless it is a bill on demand. A bill is dishonoured by non-acceptance; this is not so in the case of a cheque, because the holder of a cheque, as between himself and the drawer, has no right to require acceptance. These essential differences (besides others) are sufficient to explain why in practice cheques are not accepted. Acceptance is not necessary to create a liability to pay as between the drawer and the drawee bank. The liability depends on the contractual relationship between the bank and the drawer, its customer. Other things being equal, in particular if the customer has sufficient funds or credit available with the bank the bank is bound either to pay the cheque or dishonour it at once. There is no point in its saying in effect to the drawer or indeed to the holder if it has been transferred, " I will pay if you present it again ". It is different in the case of an ordinary bill; the drawee is under no liability on the instrument until he accepts; his liability on the bill depends on his acceptance of it. As between the drawer and his bank, acceptance of a cheque is superfluous. It would be merely a confirmation of the contractual liability of the bank to honour the customer's orders to pay. The customer's right to draw a cheque depends on his having satisfied the contractual conditions which require the bank to honour his mandate to pay the cheque. But if the bank, (at least at the drawer's request), accepts the cheque, he should be entitled to protect himself as against his customer by setting aside the appropriate funds standing to the customer's credit. The change in the position of all parties which would follow on the acceptance of a cheque if regarded as an acceptance under the Act has led the highest English authorities to lay it down that cheques are not the proper subject of acceptance, or at least to say, as Chalmers stated at p. 292 of the 10th edition of the Bills of Exchange Act, that " a cheque is not intended to be accepted," though he adds " at common law there is no objection to the acceptance of a cheque if the holder likes to take it in lieu of payment ". These latter words emphasise the difference for this purpose between a bill and a cheque, and also explain why cheques are not in practice accepted. In *Macbeth* v. *N. & S. Wales Bank* [1908], 1 K.B. 13, at p. 18, Lord Alverstone L.C.J. said: " In ordinary parlance there is no acceptor of a cheque." It seems that on special occasions bankers do accept cheques drawn on themselves so as to make them payable at one of their clearing bankers, they themselves not being members of the Bankers' Clearing House, but this is rare and exceptional. Both Chalmers (*loc. cit.*) and Paget, on Banking, 4th edition, p. 164, are of opinion that marking or certification is neither in form nor in effect an acceptance of which the holder or payee can avail himself. Marking or certification is clearly not in form an acceptance, but if the form be disregarded, it is clearly in substance essentially different in its nature and effects. Marking or certification has been known in England in a very limited practice apparently referred to by the Court in 1810 in *Robson* v. *Bennett*, 2 Taunt. 388. That is a practice between bankers for the purpose of clearing. It was judicially recognised by Cockburn C.J. in *Goodwin v. Robarts* (*supra*) at p. 351 in these words: " A custom has grown up among bankers themselves of marking cheques as good for payment for the purposes of clearance by which they become bound to each other ". This is clearly different from an acceptance, the effect of which is to create a negotiable liability, fully defined in its complicated nature and characteristics by the Act. That practice is in Calcutta the subject now of rule 12 of the new Regulations and Rules of the Calcutta Clearing Banks Association, which are exhibited in the documents of this case. Rule 12 says: " It shall be permissible

for any member or sub-member in the intervals of clearing hours, to apply for the " acceptance " of a document by the member or sub-member on which it is drawn, but the latter shall have the option of issuing a debit note or cheque in lieu of ' acceptance ' of the document ". It is to be noted that though it uses the term " acceptance " it puts it in inverted commas, so as to distinguish it from a true acceptance under the Act. The practice seems to be simply that after clearing hours a cheque presented for clearing may be marked and will then be paid on the next day when clearing business is resumed. It is true that in such a case the marking bank is by the judicially established custom bound to pay it to the other bank. This certification or marking cannot however be identified with an acceptance.

In the United States, the practice of marking or certifying cheques has been established and defined by the different State Legislatures in the Uniform Negotiable Instruments Acts. It is presumably this law, as enacted in New York State in 1897, to which the Chief Justice refers in his judgment. The same measure, with trifling variations, has since been made law in the other States of the Union. Their Lordships must therefore briefly advert to this law, which gives a statutory recognition to the certification of cheques. Section 187 of the Uniform Act provides that " where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance ". It does not say that the certification is an acceptance, which is dealt with in a different part of the Act. The whole position is indeed materially different, as is clear from section 188, which goes on to define the effect of certification in the following terms: " Where the holder of a check procures it to be accepted or certified the drawer and all endorsers are discharged from liability thereon ". These sections have led to a great deal of judicial discussion in the Courts of the United States, the effect of which is summarised in the standard work of Brannan, Negotiable Instruments Law, 6th edition, p. 1146 *et seq.* These discussions also show that certification and acceptance are different things under the Act. Certification makes the banker the debtor of the holder, and discharges the drawer altogether if the certification is not made by his procurement. Certification adds a new party, the bank, as primary debtor, and necessarily involves readjusting the legal position of the original parties, drawer and payee. A similar rule has been adopted, it seems, by the Courts of Canada on the basis of the custom in Canada judicially recognised by this Board in *Gaden* v. *Newfoundland Savings Bank* [1899], A.C. 281. The custom was stated at p. 285 to be that " the only effect of the certifying is to give the cheque additional currency by showing on the face that it is drawn in good faith on funds sufficient to meet its payment, and by adding to the credit of the drawer that of the bank on which it was drawn." These last words are not very precise and their exact effect has not been argued in this appeal.

It is not here necessary or proper for their Lordships to attempt to follow in detail the Canadian authorities on this topic.

Their Lordships have referred to these matters as tending to support the view that certification is different both in its history and its effects from acceptance, even in jurisdictions in which either by statute or by custom it is declared to be " equivalent " to an acceptance.

But it is different in England and India, where the marking of a cheque has so far been only judicially recognised to import a promise or undertaking to pay as between banker and banker for the purpose of clearance. In the absence of relevant enactment or custom, the issue in England and India as to the effect of the certification of a cheque must be determined by the common law.

Their Lordships are of opinion that the certification which is relied on as constituting acceptance of the cheque is not an acceptance within the meaning of the English or Indian Act or the common law. It is not necessary categorically to hold that a cheque can never be accepted; it is enough to say that it is only done in very unusual and special circumstances.. The authority which has been strongly founded

upon by the respondent is a case in 1810, *Robson* v. *Bennett* (*supra*), where the practice already mentioned of London bankers to mark cheques presented after banking hours by one banker drawn on another in order to show that the drawer had assets and to show that they would be paid next day at the clearing house, came incidentally into question. The real issue was whether the holder had become bound, as between himself and the drawer, to treat the cheque as good payment of the debt for which it had been given; the facts were that the drawee bank had stopped payment the next morning, so that the cheque was not actually paid. The drawer claimed that the holder was bound to treat the cheque as payment because he had been guilty of laches in not presenting the cheque within banking hours on the day on which it was given. In that event the drawee bank, which had not then stopped payment, would have met the cheque because the drawer's account was sufficiently in credit. The Court of Common Pleas rejected this contention, and held that there had been no laches on the part of the holder and that by reason of the practice of bankers the actual presentment which had been made was in good time. Sir James Mansfield C.J., in giving judgment, used the phrase that " the effect of that marking is similar to the accepting of a bill ". That was a mere dictum not necessary, or indeed relevant, to the decision of the case; the banker was not even a party to the action. Having regard to the custom stated by Cockburn C.J. in *Goodwin* v. *Robarts* (*supra*) quoted above and the whole tenor of English authority, their Lordships are of opinion that the dictum cannot be justified in English or Indian law. In *Keene* v. *Beard*, 8 C.B.N.S. 372, the question was whether the holder of a cheque could sue the endorser on his endorsement. It was held that he could. No question arose as to the acceptance of a cheque, but Erle C.J., in the course of his judgment observed: " A cheque is strongly analogous to a bill of exchange in many respects. It is drawn upon a banker, and though in practice the banker does not accept the draft, he might for aught I know do so ". Further instances of incidental observations to the same effect or similar observations in well-known text writers need not be quoted. Their Lordships repeat that no case is reported in England or India so far as they are aware, of a banker being held liable or even sued as acceptor of a cheque drawn upon him. It would certainly require strong and unmistakeable words to amount to the acceptance of a cheque. That cannot be predicated of the certification here in question, which cannot therefore be regarded as an acceptance unless a custom could be established to treat certifications as acceptances.

If the respondent were entitled to claim against the appellant as on an acceptance of the cheque, there would be no defence, unless on the point that the cheque was post-dated. This problem their Lordships will consider later. If that point is for the moment disregarded the respondent's claim may, however, be put forward in default of it being held that there was an acceptance of the cheque on the ground that there is a custom which makes the appellant liable, or alternatively on the ground that by common law, apart from special custom, the respondent can claim either in contract or on an estoppel upon the actual words used in the certification.

The Chief Justice, having held that the certification constituted an acceptance, went on to say that the question of usage accordingly did not arise. He added that "before agreeing with the learned Judge that a usage such as he mentions had been established, I should require further evidence. . . . I prefer to regard the evidence as showing that banks in Calcutta, which certify and mark cheques, regard the certification or marking as being an acceptance which makes them legally liable to pay the amount thereof and that they honour their obligations." Their Lordships do not regard these two sentences as necessarily inconsistent. The latter seems to them merely to state that the general habit of business men supports the Chief Justice's decision that in law there was an acceptance. It cannot be intended to substitute a sentiment that banks ought to honour their signature whether in law binding or not, for the correct legal position when a bank feels entitled or bound to rely on the strict letter of the law and the Court is required to decide strictly the legal rights. Their Lordships agreeing with

his decision that the evidence of custom is insufficient, as they think it is both in the number and quality of the witnesses and in the certainty and precision of the evidence given, cannot in view of the decision which he had previously expressed on the issue of custom, treat the sentence as intended to find a legally binding custom. There is indeed in the evidence no instance spoken to of a dispute being settled in favour of the alleged custom; the instances given are comparatively few and from a few banks, and are mainly instances of the limited custom of bankers in the clearance, which is not questioned. In some cases given in evidence the periods between certification and clearance extend over the week-end, and in one instance at least even a few days longer. They can, it seems, be most properly regarded as instances of occasional laxity. But there is nothing to justify the finding of a custom to identify certification with acceptance.

In one essential matter, however, the evidence is not merely too weak to support a custom, but is directly opposed to it. The cheque in question was post-dated. Post-dated cheques are a peculiar species, which have been described as objectionable. The general tenor of the evidence as to them in this case is that it is at the lowest unusual to certify post-dated cheques, indeed that it is almost unknown. Bhagwan Das said that he had never certified a post-dated cheque. As to the actual certification on the particular cheque in question, he said that he took it as a representation that the appellant bank would meet the cheque on a future date, and he said he would feel no difficulty in marking a post-dated cheque, though he did not directly answer the question whether it was usual to do so, but merely said " There is no harm ", and later that it was done in rare cases. He also said that this was the only instance in which while at Calcutta he had advanced money on a post-dated cheque. His view of the law was that by marking or certifying the cheque, they became in a way the drawers of it. Another of the respondent's witnesses said that he did not think he had certified a post-dated cheque or accepted (that is taken) a post-dated cheque certified by another bank. But he expressed his view that if he certified the cheque his bank would be liable. Another witness called by the respondent said that it was not usual to certify a post-dated cheque, though in answer to a leading question on re-examination, he agreed that a bank was bound to pay a certified post-dated cheque. Another of the respondent's witnesses said that he would not discount a certified post-dated cheque; he would feel there was something suspicious in the transaction and would make enquiry. The appellant was content in the main to point out the inadequacy of the respondent's evidence.

In their Lordships' judgment, the evidence of custom fails as the Chief Justice held. As to the alternative claim in contract or on an estoppel, that claim in their judgment also fails. The certification must for this purpose be construed according to the proper meaning of the words used in their setting and independently of the doctrine of negotiability, which is the creation of legislation or established usage. If legislation or usage is ruled out, as in this case it must be, the question is whether the words read in their context, that is, as appearing on a cheque, import a promise by the certifying bank to pay the amount of the cheque whether or not there are funds to meet it, and if they do, whether there is any privity of contract between the respondent and the appellant, and if there is whether there is consideration for the promise as between these parties. If the certification on the cheque had been negotiable, as an acceptance in the proper sense would have been, the respondent bank would *prima facie* have been entitled to claim as a holder in due course, having given value to its immediate transferor, and would not be concerned with the state of accounts or the equities between the appellant bank and Ghose or Mitter, to one or both of whom the certification was issued. But this is not the case unless the certification amounted not merely to a promise but a negotiable promise by the appellant. The respondent bank must show privity of contract between itself and the appellant bank whereas there was privity of contract only as between the appellant bank and either Ghose or Mitter or perhaps both. The respondent bank claims as a holder in due course, and must so claim. If it claimed as assignee or agent for collection, it would have no better title than its assignor or principal. But in addition there clearly

was no consideration passing to the appellant from the respondent. There was thus no enforceable contract, even if the certification could be construed according to its terms as a contract to pay. Their Lordships doubt whether, on this ground, no custom being established, the words of the certification could be so construed. They might be construed as words of representation, as to the genuineness of the cheque and of the signature. If the cheque had not been post-dated, the certification might also be held to include a representation as to the then sufficiency of the drawer's account. But as the cheque was not due for payment until seven days later, a representation as to the then position would not go very far. If it was to be construed as a representation that on the due date there would be funds available, it necessarily amounted to a promise and the want of consideration would be fatal to its enforceability. The promise, if any, was a non-negotiable gratuitous promise given either to Ghose or Mitter or to both to lend the money when the 20th came. Their Lordships adopt the language of Buckley J., used in a different context in *re Beaumont* [1902] 1 Ch. 889 at p. 896, " No right had been acquired by the drawer but an expectation only. Even if the manager did not change his mind, still any agreement to lend is not enforceable and no right of property had passed to the drawee." What was in question there was a *donatio mortis causâ* of a cheque which the manager of the bank had said would be met. But the principle stated has an application to the certification here. What was said could have been revoked or disowned. It was not binding; there was no appropriation of funds or declaration of trust involved in the certification, because there were in fact no funds available on the 13th or indeed the 20th. Nor could the certification be construed as an estoppel on which the respondent could claim on the doctrine of *Pickard* v. *Sears* 6 Ad. & E. 469, and *Jorden* v. *Money*, 5 H.L.C. 185, because that doctrine is limited to a representation as to an existing fact, whereas not only were no funds available, but what is called the representation related to the future. Even if funds had been available and had been " frozen ", the bank would be entitled to release them before the 20th, in the absence of a binding promise to maintain them. It was only to the position in the future when the time for payment arrived, that the certification had reference, and whatever language was used, it necessarily amounted if it was to be effective, to a promise or nothing. From the point of view of a Court of Law, a gentlemen's agreement or honourable obligation, however important in business, has no validity.

But behind all these considerations lies the circumstance that the cheque was post-dated. The question of certifying a post-dated cheque has been adjudicated upon in the United States. It has there been held there is no authority implied by law for an officer of a bank to certify a cheque until on or after the date when it is made payable and that anyone taking a post-dated cheque before the day of its date is put upon enquiry. As to this reference may be made to Brannan *op. cit.* p. 1152. There do not seem to be any English cases on the point, presumably because the practice of certifying cheques is not judicially or legislatively established in England and the same is true of India. It was however held in *Forster* v. *Mackreth*, L.R. 2 Ex. 163, that a partner had no authority to bind his firm who were solicitors by a post-dated cheque any more than he had authority to bind the firm by a bill of exchange. No doubt the reason for denying ostensible authority is in some aspects different in the one case from that in the other. But in each case it depends on the nature and normal exigencies of the business, and a banker's business does not normally involve that a manager's authority should extend to certifying and still less making a loan against a post-dated cheque. The Chief Justice deals shortly with the difficulty by holding that the post-dated cheque was in law a bill of exchange at seven days' date, which on the 20th June became a bill of exchange payable on demand and therefore a cheque. But the material date in this context is that of the certification, issued when the bill or cheque was not due. A post-dated bill is under the English Act, sec. 13 (2), not invalid by reason only that it is post-dated. There is no similar provision in the Indian Act, but the same result would,

it seems, follow from the common law and the position of a post-dated cheque is recognised in the Indian Stamp Act. But the material invalidity is that of the certification, taken in connection with the fact that the cheque was post-dated. The true anomaly or invalidity consists in the attempt to apply certification to a cheque before it is due. Certification of a cheque when it is due may have operative effect and be valid as being directed to a cheque due *in praesenti*, such certification being presumably followed by debiting the drawer's account with the amount. This is particularly apparent when regard is had to the American or Canadian theory, that certification is equivalent to payment. It is impossible to treat the cheque as paid before it is due. The position might be different in jurisdictions where by law or custom certification is equivalent to acceptance, but nothing of the sort is applicable here. Even in such cases the difficulty of saying that there was constructive payment would remain. It is not easy to see why novel and anomalous theories should be invented to justify an unusual and unnecessary proceeding. This case can however be decided simply and sufficiently on the ground that the ostensible authority of the manager did not extend to cover the certifying of post-dated cheques and that in the present case the manager had no actual authority to do so. The bank accordingly was not bound. This in itself would be a sufficient ground for rejecting the respondent's claim.

Their Lordships are not unconscious that bankers regard their word as their bond, and honour their signature even though they might have an answer in law. This is especially true as between banker and banker. Bankers would say that the bank making the mistake or whatever it was should stand by its act. But in circumstances such as those of the present case, the mistake in certifying the cheque would have done no harm, if it had not been for the act of the other banker in discounting it, though the defect was apparent on its face. A lawyer would be disposed to hold that the responsibility lay with the latter bank. In any case the Court is here called upon to decide how the law at present stands. It is not the arbiter on questions of banking ethics or etiquette or good banking policy as a matter of business. The high standards of bankers are too firmly established to be shaken.

On the whole case their Lordships are of opinion that the action of the respondent should fail. They think that the appeal should succeed and the judgment for the respondent should be set aside, and the action dismissed with the costs in the Courts below and of the appeal.

They will humbly so advise His Majesty.

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In the Privy Council

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