

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Aga Ahmed Ispahany v. Judith Emma Crisp, from the Court of the Recorder of Rangoon; delivered 5th December 1891.

Present:

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Sir Richard Couch.*]

The suit in this case was brought by the Appellant against the Respondent and James F. Crisp, her son, for Rs. 15,000, and Rs. 108. 12 for interest thereon, and for a declaration that the Plaintiff is entitled to a charge or lien upon the property mentioned in the plaint for or in respect of the amount that might be decreed in the suit; and also for a sale of the premises equitably mortgaged, in the event of the Defendants failing to pay the amount decreed. On the 12th December 1888, the Respondent, Mrs. Crisp, executed a general power of attorney, by which she constituted and appointed her son, J. F. Crisp, her attorney and agent. The only parts of the power of attorney which it is necessary to state are the following passages:—“ And
“ also to buy sell mortgage let and lease as
“ the case may be any houses or lands and to
“ borrow and take loans of money in my name
“ upon such terms and conditions as he shall
“ think proper. . . . and generally to act for

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“ me in all matters and things touching or concerning all or any of my affairs as fully and effectually to all intents and purposes as if I were acting therein in person.” It was in evidence that Mrs. Crisp had two or three times before April 1889 lent her son money on his promissory note. About the end of April 1889, J. F. Crisp asked the Manager of the National Bank of India if he would advance money on his property. Crisp said it was his mother’s, and that he had power to deal with it. The Manager said he would make the advance if Crisp would give him a good name. Crisp then brought to the Manager two joint and several promissory notes, one for Rs. 10,000 and the other for Rs. 5,000, both dated the 30th April 1889, payable three months after date to the Appellant or order, signed “ J. F. Crisp ” and “ p. p. J. E. Crisp, J. F. Crisp.” The Manager said he must have the title deeds as well, and J. F. Crisp on the same day deposited with the Manager the title deeds of landed property in Phayre Street, Rangoon, belonging to Mrs. Crisp, being the property mentioned in the plaint, and the notes were discounted. J. F. Crisp had not asked his mother’s consent to the deposit, but in the evidence she gave in the suit it appeared that, about the time of the loan, he told her that he had signed two promissory notes for his own use in her name, and that to secure the amount borrowed he had pledged her deeds to the Bank, and to that she made no objection; and it is clear that she assented to the deposit with the Bank, but she said she objected to her son pledging the deeds with the Appellant. The notes became due on the 2nd August, and on that day J. F. Crisp wrote to the Appellant the following letter :—

“ Dear Sir,

Rangoon, 2nd August 1889.

“ In consideration of your paying this day the Rs. 15,000 due to the National Bank of India, Limited, I hereby agree to

your keeping the papers of the Phayre Street property with you as security and that I will have the same settled within three months from date, and pay you interest at 9 per cent. per annum."

Upon receiving this letter the Appellant wrote a cheque for Rs. 15,000 in favour of the Bank, and sent it to Crisp, who took it to the Bank, and was told by the head clerk that they would deliver the documents after the cheque, which was on another bank, had been passed. The next day, the 3rd August, the title deeds were delivered to Crisp's man. The head clerk said in his evidence that he thought the man was the Appellant, and it may be inferred that it was intended to deliver the deeds to him. The Appellant afterwards applied to the Bank for the deeds, and was told they had been delivered to Crisp's man. On the 5th August Crisp wrote to the Appellant, "I am sorry to say that my mother objects to keep her papers with you pending the settlement of accounts existing between you and me," and the deeds remained in Crisp's hands.

The learned Recorder of Rangoon, from whose decision this appeal is brought, made a decree against J. F. Crisp for the amount claimed, but as to Mrs. Crisp he held that, though she assented to the pledge to the Bank, she did not assent to the deeds being pledged with the Appellant, and he dismissed the suit as against her.

It is a rule of equity that if the indorser of a bill of exchange pays the holder of it he is entitled to the benefit of the securities given by the acceptor, which the holder has in his hands at the time of the payment, and upon which he has no claim except for the bill itself (*Duncan, Fox, & Co. v. North and South Wales Bank*, Law Rep. 6, Appeal Cases, 1). The same rule is applicable to the indorser of a promissory note. It is possible that there may be circumstances

which would create an exception to this rule, but this case is not one. Therefore the Appellant, when he paid the Rs. 15,000 to the Bank, became entitled to the benefit of the deposit of the title deeds. No further assent by Mrs. Crisp was necessary to entitle him to it. But although, in his plaint, he stated the fact of the deposit with the Bank as a security for the repayment of the loan he did not rest his claim upon this equity. He founded it upon the letter of the 2nd August, alleging that he agreed to the proposal in that letter, and gave the cheque for Rs. 15,000. In their Lordships' opinion Mrs. Crisp was bound by that letter, although she did not personally assent to the Appellant keeping the title deeds as security. When the notes became due the Bank might have sued her upon them, and have also taken proceedings to have the mortgaged property sold. The letter of the 2nd August was intended to prevent this, and the arrangement for continuing the security in consideration of getting three months additional credit was, in the opinion of their Lordships, within the general authority given to J. F. Crisp by the words of the power of attorney before quoted, "and generally to act for me, &c." Their Lordships are therefore of opinion that on both grounds the decree is erroneous in dismissing the suit as against Mrs. Crisp, and they will humbly advise Her Majesty to reverse it, and to make a decree against both Defendants according to the prayer in the plaint, with costs. The Respondent will pay the costs of this appeal.
