

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of The
Chartered Bank of India, Australia, and
China v. Henderson and another, from the
Supreme Court of Hong Kong (in Chancery);
delivered Tuesday, May 5th, 1874.*

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

IN this case the Chartered Bank of India, Australia, and China are the Appellants, and Charles Paton Henderson and Colin George Ross are the Respondents. The Respondents were the Plaintiffs in a suit brought in the Court of Hong Kong against the Appellants, and they sought to recover from them in that suit a sum of money which they had received under a bill of lading indorsed to them by Messrs. Lyall Still and Company. The Plaintiffs in the first paragraph of the prayer of their bill ask, "That it may be declared that the assignment of the said bill of lading to the Defendants was and is void, as being a fraudulent preference of the Defendants." That point is given up, and no question now arises upon it. Then in the second paragraph of the prayer they ask, "That it may be declared that all sums of money received by the Defendants in respect of 50 trusses of long ells, to which the bill of lading related, have been received by them in trust for the Plaintiffs." Now the question is whether the bank received the proceeds of those goods in

trust for the Plaintiffs or on their own account. There is no doubt that Messrs. Lyall and Still in London purchased the goods from Messrs. Henderson and Company on the terms expressed in the letter of the 1st September 1866, which is set out at page 5 of the record, viz., that the invoices should state that the proceeds of the shipments were to be remitted to Messrs. Lyall and Still—they being the firm in London—in first-class bank bills specially to meet the acceptance of Messrs. Henderson and Company's draft against the shipment. The goods had been paid for by an acceptance of Messrs. Lyall and Still, and the stipulation was that they should send them out to their firm of Lyall Still and Company in Hong Kong, and that the firm there should remit the proceeds to Lyall and Still in London in order that they should therewith take up the bill which they had accepted in payment for the goods. It may be admitted for the purpose of this case that the stipulation that the proceeds of the shipments were to be remitted in first-class bill created a trust on the part of Lyall Still and Company not to pledge the goods, but so to deal with them that they should obtain the value of them, and remit the proceeds for the purpose of taking up the bill. But, assuming that such a trust was created between Messrs. Lyall Still and Company and Messrs. Henderson and Company, the question is whether bank were bound by that trust.

Now the bill of lading was sent out to Lyall Still and Company, and on the 14th of December they, having it in their possession, endorsed and delivered it to the bank. The consideration for which they endorsed it is set out in the answer of the Defendants. Paragraph 16 states, "The
" Defendants admit that during the month of
" November 1866 they purchased from the said
" firm of Lyall Still and Company for the sum

“ of 15,000*l.* sterling certain bills of exchange
“ drawn by the said firm upon a firm trading
“ in England under the name of Chalmers,
“ Guthrie, and Company, upon the understanding
“ and agreement that the said advance should
“ be covered by shipping documents for silk
“ or other China produce; the said sum of
“ 15,000*l.* sterling was paid and advanced
“ by them to the said firm at the time they
“ purchased the said bills upon the promise
“ and understanding that the said shipping
“ documents should be delivered before the
“ departure of the next outgoing mail for
“ Europe.” It appears then that the bank
purchased bills of exchange to the extent of
15,000*l.* from Messrs. Lyall Still and Company,
and that they paid them the amount upon the
stipulation that Messrs. Lyall Still and Company
were to hand them over shipping documents to
the extent of the bills. They then go on in
paragraph 17 to show that Messrs. Lyall
Still and Company failed to perform that
agreement. They say, “The Defendants do
“ not know whether the said firm of Lyall
“ Still and Company were unable to deliver
“ to them such shipping documents as aforesaid,
“ or to repay the said advance, but they admit
“ that the said firm failed to do so notwith-
“ standing that they were urgently pressed to
“ do so by the Defendants; and the said firm
“ having been threatened by the Defendants
“ with immediate legal proceedings in the
“ event of their failing to fulfil their said
“ contract without further delay, promised
“ the Defendants that if they would abstain
“ from commencing legal proceedings against
“ them, and would consent to release them
“ from their engagement to furnish the said
“ shipping documents for silk and other China
“ produce, and allow the said sum of 15,000*l.*

“ sterling which had been paid to them in
“ advance for the said bills upon the faith of
“ their undertaking to deliver the said shipping
“ documents as aforesaid to constitute an
“ ordinary debt for money lent, they would
“ deposit with the Defendants other security
“ for the repayment of the said sum; and they
“ offered to deposit with the Defendants at once
“ in part fulfilment of such proposed substituted
“ arrangement, a bill of lading for goods of
“ the value of 10,000 dollars or there-
“ abouts,”—the bill of lading in question—
“ which they stated had already been sold
“ by them to arrive, upon the understanding
“ that the said bill of lading or the goods re-
“ presented therein would be returned to the
“ said firm upon payment by them to the De-
“ fendants of a sum equivalent to the said
“ value thereof.” Then paragraph 18 says:—
“ The Defendants admit that they assented
“ to the proposed arrangement in substitution of
“ the original agreement which the said firm of
“ Lyall Still and Company were unable to fulfil
“ as aforesaid; and the said firm in part per-
“ formance of the said substituted agreement,
“ and in consideration of the said loan and of
“ the said original agreement, handed to the
“ Defendant the bill of lading for 50 trusses
“ or bales of long ells, mentioned in paragraph
“ 18 of the said bill of complaint, which said
“ bill of lading was endorsed by the said firm
“ and was stated by them to represent the
“ said goods which they had sold to arrive,
“ and which were to be redeemable by them
“ on the terms aforesaid.”

It appears that the bill of lading was endorsed and handed over by Messrs. Lyall Still and Company to the bank in consideration of the bank's releasing them from the obligation which they had come under to hand over shipping

documents of the value of 15,000*l.*, and of their undertaking not to take the legal proceedings, criminal or civil which they had threatened. It appears, therefore, to their Lordships that there was a sufficient consideration for the endorsement of the bill of lading by Messrs. Lyall Still and Company to the bank.

Then, had the bank notice of the trust which had attached to the proceeds of these goods in the hands of Messrs. Lyall Still and Company? The bill does not charge that they had notice of the trust or of the terms upon which the goods had been sold by Messrs. Henderson and Company. It is not found by the learned judge who tried the case that they had such notice, nor is it probable that such a notice would have been given. Messrs. Lyall Still and Company were under an obligation to deliver shipping documents to the bank; they were unable to do so, and the bank threatened legal proceedings against them, and to proceed against them criminally, and then, in order to induce the bank to stay these proceedings, Messrs. Lyall Still and Company say, we will treat this 15,000*l.* as a loan, you release us from the obligation to give the shipping documents, and if you do that we will endorse and hand over to you this bill of lading. Is it likely that when they wanted to induce the bank to release them from the obligation to deliver shipping documents, and to accept the bill of lading in lieu thereof, they would have said we will hand over a bill of lading which is subject to such a trust that when the goods are sold you will not be able to receive the proceeds? It is most improbable that they would have given such a notice to the bank when they endorsed the bill of lading under the circumstances stated.

The bill of lading having been endorsed to the bank for a valuable consideration and without

notice passed the legal interest in the goods to the bank. Apparently from the statement in the answer the goods were actually delivered over to the bank, so that the legal interest passed to the bank not only by the delivery of the goods but by the endorsement of the bill of lading. But even assuming that the bank did not obtain actual delivery of the goods, there is no doubt that the endorsement of the bill of lading for valuable consideration passed the legal interest in the goods to the bank.

There is a distinction between this case and the one which was cited, of *Rogers v. The Comptoir d'Escompte de Paris*, 5 Moore's P.C.C., N.S., 538. In that case the question was whether the goods could be stopped *in transitu*, and whether the endorsement of a bill of lading prevented the unpaid sellers from stopping the goods in consequence of the insolvency. Sir Joseph Napier in delivering the judgment in that case said:—"The general rule so clearly
 " stated and explained by Lord St. Leonards,
 " is that the assignee of any security stands
 " in the same position as the assignor as to the
 " equities arising upon it. This as a general
 " rule was not disputed, but it was contended
 " that the case of a bill of lading is exceptional
 " and must be dealt with on special grounds.
 " Doubtless the holder of an endorsed bill of
 " lading may in the course of commercial
 " dealing transfer a greater right than he him-
 " self has. The exception is founded on the
 " negotiable quality of the document. It is
 " confined to the case where the person who
 " transfers the right is himself in actual and
 " authorised possession of the document, and
 " the transferee gives value on the faith
 " of it, without having notice of any circum-
 " stance which would render the transaction
 " neither fair nor honest. In such a case if the

“ vendor is unpaid one of two innocent parties
 “ must suffer by the act of a third, and it is reason-
 “ able that he who by misplaced confidence has
 “ enabled such third person to occasion the
 “ loss should sustain it.” His Lordship cited
 the well known case of *Lickbarrow v. Mason*
 as an authority for that position. Then he
 went on to consider whether there was
 any valuable consideration for the endorse-
 ment of the bill of lading and showed that it
 was endorsed and handed over in pursuance of a
 previous agreement of the 26th December 1866,
 which is also set up in this case, by which the parties
 agreed to transfer all goods and bills of lading or
 other documents for all goods “ now on the way
 “ hither, to arrive in December 1866 or January
 “ 1867.” The bill of lading was not handed
 over, nor had it even arrived at the time when
 the agreement was entered into. Sir Joseph
 Napier goes on to say,—“ But in this case, at the
 “ time of the assignment Maclean had not pos-
 “ session of the documents. Nothing was ad-
 “ vanced on the faith of them. There is merely a
 “ general description of the documents expected to
 “ arrive, without knowing their contents, or how
 “ far they might be limited or qualified. The
 “ property of the firm in the goods expected was
 “ not only subject to special stipulations in the
 “ contracts of sale in the case of two of the three
 “ parcels, but was also subject in all the three to
 “ the lien of the unpaid vendors.” Then he
 says,—“ Doubtless the vendor’s claim cannot pre-
 “ vail against the claim of a transferee for value
 “ given on the faith of a negotiable security fairly
 “ and honestly taken. To the extent to which he
 “ has so given value, he has a prior claim: But
 “ the rule is founded on the reason of it as
 “ already explained, *cessante ratione cessat ipsa*
 “ *lex*. Where there is no advance made or value
 “ given upon the faith of the documents, where

" the object is simply by a sweeping clause to
 " gather in whatever may be got to recoup
 " the creditor of a debtor who had become in-
 " solvent for an improvident advance made upon
 " the faith of a totally different security, where
 " upon the true construction of the assignment no
 " interest passed that would place the assignee in
 " a better position than the assignor, it appears
 " to their Lordships that such a transfer so made,
 " and under such circumstances, cannot be held
 " sufficient to defeat the vendor's claim." But
 the present case differs from that case, inasmuch
 as on the 14th of December 1866 the bill of lading
 was in the hands of Lyall Still and Company,
 and they endorsed and handed it over to the bank
 for the considerations to which allusion has
 already been made. It was handed over at that
 time for a valuable consideration.

Now it must be taken that the consideration
 for the deposit by the said firm of Lyall Still
 and Company with the Defendants of the said
 bill of lading was the release of the said firm
 from their original contract to supply shipping
 documents of China produce, the substitution of
 a new agreement, and the abandonment of the
 threatened legal proceedings. The Defendants
 admit that on the 22nd December 1866 the said
 firm of Lyall Still and Company did execute
 the writing or document set out in the 21st
 paragraph of the said bill, and that the said
 writing or document purports to be an assignment
 of the property therein mentioned to the Defen-
 dants jointly with the Comptoir d'Escompte
 de Paris. They admit that the said assignment
 and the facts relating thereto were the subjects
 of a suit recently heard and decided. It is, in
 fact, the same agreement as that set up in
 Rodgers's case; but they say that the deposit of
 the said bill of lading for the said 50 trusses
 of long ells by the said firm of Lyall Still

and Company with the Defendants was a transaction anterior to and independent of the said assignment, and had no relation thereto or therewith. Their Lordships are of opinion that the transfer of the bill of lading in this case was for a valuable consideration. It was transferred on the 14th December, and had no relation to the document, which was executed on the 16th of December. This case differs entirely from *Rodgers' Case*, because the bill of lading in that case was not handed over at the time, but was handed over in pursuance of the agreement generally to hand over all bills. In this case it was handed over specially at the time in consideration of the release and of the abandonment of proceedings for not delivering over the shipping documents. It therefore appears that the bank did obtain the legal right to the goods by the endorsement of the bill of lading for a valuable consideration, and whether they afterwards actually received possession of the goods or not they had a legal title to them, without notice, and that legal title was not affected by the equity arising out of the circumstances under which the goods were sold by Messrs. Henderson and Company to Lyall Still and Company.

This case comes entirely within the case of *Henderson and Company v. The Comptoir d'Escompte de Paris*, in which their Lordships held that the bank got the legal title to the goods, and that that legal title was not affected by the equity arising from the terms upon which the goods were originally sold.

It was suggested that probably the bank gave back the bill of lading in consideration of Lyall Still and Company's handing over to them the proceeds which they had received from the purchasers,—that Lyall Still and Company having got the proceeds which had been paid to them in anticipation, they handed over those

proceeds, got the bill of lading back, and then handed over the goods to the purchasers. Even if Lyall Still and Company did sell the goods and receive the proceeds from the purchasers, and hand over the money to the bank, the bank would not be affected by the equity between Messrs. Lyall Still and Company and Messrs. Henderson and Company as they had no notice of the terms upon which the goods were sold, and when Lyall Still and Company handed over to the bank the money which they had received as payment for the goods the bank got a legal title to the money and was not affected by any equity which might exist between Messrs. Henderson and Company and Lyall Still and Company arising out of the agreement under which the goods were sold. Therefore, under no circumstances were the bank liable or affected by the equity existing between Messrs. Henderson and Company and Lyall Still and Company, and they cannot be declared to be trustees for Messrs. Henderson and Company of the proceeds of the goods.

Under these circumstances their Lordships will advise Her Majesty that the suit cannot be maintained, that the decision of the learned judge ought to be reversed, and that the bill be dismissed with costs in the Court below, and the costs of this Appeal.