

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Prince and others v. The Oriental Bank Corporation, from the Supreme Court of New South Wales; delivered January 24th, 1878.

Present:

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

IN this case their Lordships are of opinion that the judgment of the Court below ought to be affirmed.

The action is brought to recover money alleged to have been received by the Defendants for the use of the Plaintiffs. It is essential to the maintenance of such an action that the money sought to be recovered should have been actually received by the Defendants, or that something should have occurred which is equivalent to a receipt of money, or that representations should have been made to the Plaintiffs under circumstances which would estop the Defendants from denying the receipt of the money. In the present case their Lordships think that neither of those positions is established by the evidence.

The facts lie in a small compass. The Defendants' bank, which appears to be an English corporation, has branches at Sydney, Murrumburrah, and Young, in New South Wales, the branch at Sydney being apparently the head branch. The Appellants, Messrs. Prince and Company, held a promissory note made by Messrs. Hopkins and Gate, who are described as storekeepers at Young, for the sum of 426l. 9s. The

note is dated on the 1st December 1874, and fell due on Saturday the 3rd of April 1875. Hopkins and Gate had an account with the Respondents branch bank at Young, but had no account at the Murrumburrah or Sydney branches. The note was made payable, not at Young, but at the Murrumburrah branch, and this was done at the request of the Respondents' manager of the Young branch in order that the Respondents might get some commission upon the collection of the note. This was the state of facts at the time that the note was coming due. Upon the time for payment of the note approaching, the Appellants lodged it with the bank of New South Wales, who were their own bankers, for the purpose of collection. That bank thereupon became the agent of the Plaintiffs to collect the amount. The Bank of New South Wales then handed over the note to the Defendants' bank at Sydney to collect for them, that is, for the purpose of sending it on to Murrumburrah, where it was made payable.

What occurred at the Murrumburrah branch is stated in the Respondents case, and, it may be assumed to be correctly stated, inasmuch as the statement was adopted by the learned counsel for the Appellants. It is this: "The note was trans-
 " mitted in due course by the Respondents to their
 " Murrumburrah branch, at which it was made
 " payable, and it was there stamped as having
 " been paid on the 3rd of April, the day on
 " which it fell due, and on the same day the
 " Respondents' manager at Murrumburrah sent
 " to their manager in Sydney a transfer draft in
 " favour of the Bank of New South Wales for
 " 758*l.* 3*s.* 8*d.*, being for four separate items,
 " one of which was Hopkins and Gate's note
 " for 426*l.* 9*s.*" Documents were put in at the trial to show what occurred at the Murrumburrah branch. Exhibit B, headed "Applica-

tion for a draft," is a memorandum which contains this entry, "Wanted a draft on Sydney at D in favour of Bank of New South Wales for the sum of 758*l.* 3*s.* 8*d.*" That sum is made up of this note of Hopkins and Gate for 426*l.* 9*s.*, and of three other notes or bills, making the amount of 758*l.* 3*s.* 8*d.* This memorandum appears to have been made in the ordinary course of business by a clerk for the purpose of having the draft made out by another clerk. It appears, though the instrument itself does not appear in the Record, that a draft, or what is called a draft, was made out and sent to the Sydney branch in a letter (Exhibit G), dated the 3rd of April, which contains this passage, "I enclose the following transfer drafts with particulars thereon 25/168. Manager at Melbourne 101*l.* 18*s.* 5*d.*—176. Bank of New South Wales 758*l.* 3*s.* 8*d.*"

The statement in the Respondents' case then goes on, "In the Respondents' books at Murrumburrah there was an account current between the Young agency and the Murrumburrah agency, and in that account, under date the 3rd of April, the Young agency, where Hopkins and Gate banked, is debited with their note for 426*l.* 9*s.* and other items, and under the same date credit is given for the above-mentioned draft for 758*l.* 3*s.* 8*d.* At about 2 p.m. on Sunday the 4th of April, Hopkins and Gate's store at Young was entirely destroyed by fire. On Monday the 5th of April the Murrumburrah manager wrote to the Respondents' Sydney manager, requesting him to cancel the transfer draft in favour of the Bank of New South Wales, and returning the promissory note dishonoured, and on the receipt of the latter, the Respondents' Sydney manager returned the note to the Bank of New South Wales, and on the 7th of April

“ that bank gave the Plaintiffs notice of the
“ dishonour of the note.”

The notice of dishonour is set out. It is an ordinary notice of dishonour, making no reference to what had occurred between the branches of the bank or of the memoranda made upon the bill. It nowhere appears that notice was given by the Respondents to Messrs. Hopkins and Gate that their account was charged, and there was no evidence that it ever was in fact charged with the amount of the note, and no intimation was given by the Respondents to the Appellants or to the Bank of New South Wales that it had been paid.

The note itself was put in at the trial. It is an ordinary promissory note made payable at the Oriental Bank, Murrumburrah, and upon its production it appeared that the names of the makers, Hopkins and Gate, had been struck through, or, to use the ordinary term, cancelled. There was also on it a memorandum, “ Paid 3/4/75.” But a memorandum in pencil also appeared upon the note, “ cancelled in error by J. O. Atehison.”

These being the facts, it is clear beyond dispute that the makers of this note, Messrs. Hopkins and Gate, had not paid any money in respect of it into the Bank. There is no evidence of the state of their account at Young, and it certainly cannot be taken as against the Defendants that that account was in funds. The Plaintiffs, although they called Mr. Hopkins, did not attempt to prove that the Young branch was in funds, or that Hopkins and Gate had any agreement with the Defendants' bank for the payment of this note.

It is contended on behalf of the Plaintiffs that what passed between the Murrumburrah and the Sydney branches of the bank, and the remittance by the officer at Murrumburrah to the

officer at Sydney of the transfer note, was equivalent to a payment of money to the Sydney Branch. But even so, the whole case of the Appellants must rest upon the foundation that these branches are to be treated for this purpose as if they were separate and independent banks. If they had been separate and distinct banks, it may be that the remittance by the Murrumburrah Bank to the bank at Sydney of this draft to be put to the credit of the New South Wales Bank, would, if so accepted, have been equivalent to a receipt on the part of the Sydney Bank of money from the Murrumburrah Bank to be held for the New South Wales Bank. But the difficulty of the Plaintiffs case is that these banks are not separate and distinct banks, but branches of one and the same banking corporation or establishment. They are indeed separate agencies, but agencies of one principal, that principal being the Corporation of the Oriental Bank. How then are the Defendants liable? They have not received the money, nor anything equivalent to money from any source outside their own establishment. Supposing the Murrumburrah branch had sent money from their till to the branch at Sydney, whose money would it have been?—the money of the Oriental Bank. It would have gone from the till at Murrumburrah to the till at Sydney, but would remain, notwithstanding the transfer, the bank's own money. Then, if so, the remittance of the draft and the entries, which at most are only equivalent to a transfer of money, and might be so as between distinct banks, cannot have greater effect than an actual transfer of money. They are entries and transactions only by and between the respective officers of the same bank.

If these transactions had been communicated to the New South Wales Bank or to the Plaintiffs, it may be that the Oriental Bank would have been estopped from saying that

they did not hold the money to the account of the Plaintiffs or of the New South Wales Bank. But no such communication was made; and before anything was known beyond the walls of the bank itself, the order given by the officer at Murrumburrah to the Sydney Bank to credit the New South Wales Bank was cancelled and withdrawn, and the memorandum "cancelled in error" was made upon the note. The first thing that the Plaintiffs or the New South Wales Bank hear or know is that the note is dishonoured. If any damage has arisen in consequence of negligence or delay on the part of the bank in getting payment of this note, an action may lie for such omission or negligence, in which the true amount of damages would be assessed, but their Lordships have nothing to do with any question of that kind. The single question they have now to determine is whether money has been received by the Defendants to the use of the Plaintiffs, or whether they have in any way held out to the Plaintiffs that there was money in their hands belonging to the Plaintiffs.

The mere fact of cancelling the signature of the makers, and writing "paid" on the note, corrected, as it was, before the note was sent back, by the memorandum "cancelled in error," cannot be effectual to charge the bank with the receipt of the money (see *Warwick v. Rogers*, 5 M. & G. 340); nor, unless the branches are to be regarded as distinct banks, can the uncommunicated entries in the books of the bank have such an effect (see *Stephenson v. Ingham*, 2 B. & C. 65).

The case really turns upon the position or status of these branch banks.

In principle and in fact they are agencies of one principal banking corporation or firm, and the few decisions which have taken place with respect to

them are consistent with this view. In the case of *Clode v. Bayley* (12 M. & W. 51) it was held that for the purpose of estimating the time at which notice of dishonor should be given, the different branches were for that purpose to be regarded as distinct. In considering whether notice of dishonor was given in time it was thought reasonable that the bill should be sent successively to the branch banks through which it had come to the principal bank, before giving the notice. It was pointed out by Lord Abinger that it was not possible for the bank in London to know from whom the bill came; therefore it was necessary, in the ordinary course of the transaction of business, that it should be sent to the branches before notice of dishonor could properly be given.

In the case of *Woodland v. Farr*, 7 E. & B., 519) it was held that a joint stock bank was bound to pay the cheques of a customer at that branch only at which he kept his account, and had not violated its engagement with the customer by refusing to pay his cheque at another branch. The reason of this decision is obvious. It would be difficult for a bank to carry on its business by means of various branches if a customer who kept his account at one branch might draw cheques upon another branch, however distant from that at which he kept his account, and demand that they should be cashed there. The latter branch could not possibly know the state of his account. The case decides no more than this, that the bank came under no engagement or promise to their customer to honor his cheques at any branch except that at which he kept his account.

The only other case is one that affords strong support to the view which their Lordships are disposed to take; *Garnett v. McKewan* (Law Reports, 8 Exchequer, 10.) There the Plaintiff

had accounts at two branches of the London and County Bank. His account at branch A was in funds; his account at branch B was over-drawn. He drew a cheque upon his account at branch A where he had funds, and the bank refused to pay it because his account at branch B was over-drawn, and the Court held it was justified in so doing. The principle of that decision affirms the identity of the bank, and of its separate branches; although separate agencies, they were still agencies of one principal bank, with which alone the Plaintiffs contracted. Acting upon this principle, the Court held that the money of the Plaintiff lodged at one branch, and being still there to the credit of his account, was to be treated as part of the customer's entire account with the bank, and that the whole account was to be looked at to see on which side as between him and the bank the balance stood. Mr. Baron Bramwell said: "The question is one of mixed law and fact. It is admitted that in some cases the bank could not debit the customer with a debt due to them; for example, a debt due to the bank as carrying on a different business, as that of brewers. Nor again, would they have any right to blend two accounts kept by one person with them in different characters as a personal and a trust account."—No, nor would any other bank, whether it had branches or not. "But here there was nothing except the fact that there were two branch establishments." That fact, in the opinion of the learned Judge, established no difference between the case of a bank having branches and an ordinary bank.

Another question of some importance has been argued,—whether, assuming that the bank had received the money from the makers of the note, the Plaintiffs could sue the bank for it, or whether their right of action would not be

against the New South Wales Bank, whom they employed to collect the note. The question thus barely stated does not really arise, because it is not pretended that the bank did receive money specifically for the purpose of taking up the note. If the makers of the note had paid the money to the bank with an express direction that it should be appropriated to the payment of this note, then the point would have arisen which was decided in *De Bernales v. Fuller*. That case, which is reported in a note in the 14th East, 590, appears to be in some degree an exceptional one, and turned upon the precise circumstances existing in it. At first sight it seems opposed to the general rule that a principal cannot sue a sub-agent for want of privity existing between them. The case has been referred to in several later decisions. It has never been overruled, and it has been put on a ground on which it may stand by Mr. Justice Maule, in *Warwick v. Rogers*. He says:—"In *De Bernales v. Fuller*,
 " where money was paid into a banking house for
 " the purpose of taking up a particular bill which
 " was lying there for payment, it was held to be
 " money had and received to the use of the
 " then owner and holder of the bill, and that it
 " could not be applied by the bankers to the
 " general account of the acceptor who paid in the
 " money, though the bankers' clerk had said at
 " the time the money was paid in that he would
 " not give up the bill till he had seen his master.
 " But that decision turned upon the fact that
 " the money having been expressly paid into
 " the Defendants' house for the specific purpose
 " declared at the time of taking up that par-
 " ticular bill, and that purpose not having been
 " directly repudiated till afterwards, it must be
 " taken to have been received at the time for
 " the use of the holder of the bill." It would seem, therefore, that the case may be supported on

the ground that money had been paid in specifically for the payment of the particular bill, and had been accepted by the bankers for that purpose, and that they made themselves, by so accepting the money, agents to hold it for the Plaintiffs.

The general rule, however, was affirmed by two learned Lords in the House of Lords, in the case of *Mackersy v. Ramsays* (9th C. & F., 818.) There two bills payable in India had been deposited by Mr. Mackersy with Messrs. Ramsays, who were bankers at Edinburgh, to collect for him. They sent the bills to their English correspondents, Coutts and Co., and Coutts and Co. remitted them to their own correspondents, one to Messrs. Palmer, and the other to Messrs. Alexander and Co., in India, to collect. Both bills were paid in India, one to Messrs. Palmer, and the other to Messrs. Alexander, but both these houses failed, and did not remit to Coutts. The House of Lords decided that Mr. Mackersy was entitled to recover the amount of the bills from Messrs. Ramsays, his own bankers in Edinburgh, as his principal agents, inasmuch as they were liable to him as soon as their sub-agents received the money; deciding in fact, that the receipt of the sub-agents was, as between Mr. Mackersy and Messrs. Ramsays, the receipt of Messrs. Ramsays. In the course of giving judgment, Lord Cottenham said: "From the time the bills were sent to the pursuers the Appellant did not interfere. It was not intended that he should do so, nor indeed could he have done so, as none of the intended agents acted under his authority; he therefore had no control over them. All that Mackersy undertook to do by the bills has been accomplished." Lord Campbell said: "Mackersy could not have interfered with the money either in the hands of

“ Alexander and Co. or of Coutts and Co. There
“ was no privity between him and either of
“ those houses; but payment to Alexander and
“ Company was payment to Coutts and Com-
“ pany, and payment to Coutts and Company
“ was payment to Ramsays and Company.”

In the view which Lord Campbell entertained, no action could have been brought by Mr. Mackersy against either Coutts and Company or Palmer and Company, or Alexander and Company, there being no privity between him and them which would have entitled him to sustain it.

There is a further difficulty in the way of the Plaintiffs suing the Defendants directly, and passing over his immediate agents, the New South Wales Bank. All that the Defendants apparently undertook to do was to place the amount of the bills when collected to the account of the New South Wales Bank, subject, it may be, to the accounts between the two banks.

In their Lordships' view, however, it is not necessary to determine the case upon the questions last referred to, because they are of opinion that neither the Plaintiffs nor the New South Wales Bank are entitled, for the reasons they have already given, to sue the Oriental Bank for money had and received to their use.

Their Lordships will humbly advise Her Majesty to affirm the judgment of the Supreme Court, with the costs of this Appeal.

