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'JAMES MAKIN AND ANOTHER v. ANDREAS CONSTANTINOU

[VASSILIADES, P., TRIANTAFYLLIDES, AND LOIZOU, JJ.]

JAMES MAKIN AND ANOTHER,

Appellants-Defendants,

v.

ANDREAS CONSTANTINOU,

Respondent-Plaintiff.

(*Civil Appeal Nos.* 4586, 4587, *Consolidated*).

Bills of Exchange—No signature of drawer—Mere printed business name of the drawer firm—Not treated as signature or proper signature by the drawer within section 3 *of the Bills of Exchange Law, Cap.* 262—*Therefore, the bill in question is not a valid, or complete and regular bill binding as such on the drawee-acceptor—No estoppel can arise against the acceptor appellant* 1 *unde section* 54 *of the said Law, Cap.* 262 *precluding him from denying to the respondent-indorsee the validity of the said bill—Whatever may be the estoppels provided under the said section* 54 *against an acceptor of a bill, they are only made available to a holder in due course—And it is clear that the bill in question, not being properly signed by the drawer, was not a complete and regular bill on the face of it, so that the respondent-indorsee could be held to be a holder in due course of such bill–as such holder is defined by section* 29 *of the statute, Cap.* 262 (supra)—*But as appellant* 2–*the drawer–has duly indorsed the said bill as payable to the respondent, it follows that the respondent being the immediate indorsee of appellant* 2 *as indorser, the latter is estopped under section* 55 (2) (*c*) *of the aforesaid Law, Cap.* 262 *from denying to the respondent that the bill in question was at the time of its said indorsement a valid and subsisting bill—The appellant* 2 *is, therefore, liable to the respondent on the said bill—See, also, herebelow.*

Bills of Exchange—Foreign Bill—Protest—Section 51 (2) *of Cap.* 262, (supra)—*Inland Bill—In the present case the bill was held to be an inland bill—Notwithstanding that the drawee-acceptor thereof appeared on the face of it to have an address outside the territory of Cyprus—Because the bill purports on the face of it to have been both drawn and made payable within Cyprus—Thus, it is an inland bill under section* 4 (1) (*a*) *of Cap.* 262 (supra) *and by virtue of sub-section* (2) *of the same section, unless the*

contrary appears on the face of a bill, the holder may treat it as an inland bill—In which case a protest under section 51 (2) of Cap. 262 is unnecessary.

Bills of Exchange—Signature of the drawer necessary—Section 3 of Cap. 262 (supra)—No estoppel against the acceptor under section 54 of the same Law, Cap. 262—Holder in due course—Section 29—Indorsement of a Bill—Liability thereon of the Indorser to the immediate indorsee—Estoppel against indorser under section 55 (2) (c) of Cap. 262 to deny to the said indorsee the validity of the Bill—Foreign bill—Protest—Inland Bill—Section 4(1) (a) and (2) and section 51 (2) of Cap. 262 (supra)—See, also, above under the headings Bills of Exchange.

Estoppel—Estoppels under sections 54 and 55 (2) (c) of the Bills of Exchange Law, Cap. 262—See above.

Indorsement—Indorsement of a bill of exchange—Liability of the indorser to the immediate indorsee—Estoppels—See above.

Foreign Bill—See above.

Inland Bill—See above.

Protest—Protest of a foreign bill—See above.

Signature—Signature by the drawer of a bill of exchange—See above.

These two appeals have been filed by the appellants-defendants against the judgment given by the District Court in favour of the respondent-plaintiff on a bill of exchange; they have been consolidated as they both arose out of one and the same transaction and involve common issues.

The facts of the case are shortly as follows :

In March, 1965, the respondent entrusted to appellant 2, carrying on business under the business name of "Autohall", his Skoda car for sale at the price of £80. At the end of April, 1965, he was given by an employee of "Autohall" what purported to be a bill of exchange for the sum of £80, being the price of his said car. The bill was drawn on appellant 1 who had signed it as an acceptor. The respondent asked that the bill should be indorsed, as payable to him, by appellant 2. Thereupon such indorsement was made, the stamp of "Autohall" was affixed and the indorsement was signed by appellant 2 himself. The said bill had already been signed by appellant 1, as acceptor, because appellant 2 had sold him the respondent's

Skoda car for £100 *i.e.* the £80 paid for by means of the bill plus another £20 paid directly to appellant 2 and retained by the latter as his own profit out of the transaction. A short while later appellants refused payment of the Bill and respondent instituted the present proceedings before the District Court of Limassol and obtained in his favour the judgment appealed from.

It has been argued, *inter alia,* by counsel for appellant 1 (the drawee and acceptor of the bill) that the bill in question is not a valid bill because it has not been signed by the drawer (appellant 2) as required by section 3 of the Bills of Exchange Law, Cap. 262. As a matter of fact the word "Autohall" appears printed in capital letters at the bottom right-hand corner of the bill and right under the said printed word there exists a dotted line indicating that there would be a signature on this dotted line so as to complete the signature of the drawer. Counsel for the respondent argued that on those facts the bill was properly signed. He argued, next, relying on section 54 of Cap. 262 (*supra*), that appellant 1, as an acceptor for value of the bill, was estopped from denying the validity of the bill.

Counsel for appellant 2 argued that as the bill, having not been signed by the drawer, is not a bill at all, he is not estopped by virtue of section 55 (2) (c) of Cap. 262 (*supra*) from denying to the respondent that the bill in question was at the time of making his said indorsement a valid and subsisting bill. Counsel for appellant 2 further argued that, in any event, the bill in question is a foreign bill and as there is no evidence of a protest of such bill, as provided under section 51 (2) of Cap. 262 (*supra*), appellant 2 has been discharged from any liability as indorser.

In allowing the appeal of appellant 1 and in dismissing the appeal of appellant 2, the Court :

Held, I. With regard to the appeal of appellant 1 :

(1) We have inspected this bill and we are inclined to agree that it has not, indeed, been properly signed by the drawer, "Autohall" therefore, it is not a complete and regular bill on the face of it as required by section 3 of the Bills of Exchange Law, Cap. 262.

(2) (*a*) Counsel for the respondent-plaintiff has relied, next, on section 54 of Cap. 262 (*supra*), for the purpose of arguing that appellant 1, as an acceptor for value of the bill, was precluded from denying to the respondent the validity of the

bill in question. But whatever may be the estoppels provided under section 54 (*supra*), against an acceptor of a bill, they are only made applicable in favour of a holder in due course and it is clear that the said bill, not being properly signed by the drawer, was not a complete and regular bill on the face of it, so that the respondent could be held to be a holder in due course of such bill—and such a holder is defined by section 29 of the Law Cap. 262, (*supra*).

(b) Useful reference may be made, in relation to what is a bill complete and regular on the face of it, to the case of *Arab Bank* v. *Ross* [1952] 1 All E.R. 709, wherein it was held that the mere omission of the word "company" from the signature of the indorser partnership on two promissory notes—when such word had not been omitted from the description of the same partnership as the payee under these notes—caused such promissory notes not to be complete and regular on the face of them.

(3) For the above reasons we find that the appeal of appellant 1 should succeed and the judgment of the trial Court in so far as he is concerned should be, and is hereby, set aside.

Held, II. With regard to the appeal of appellant 2 :

(1) (*a*) We have no difficulty in holding that as the respondent is the immediate indorsee of appellant 2 as indorser of the bill in question, this appellant 2 is estopped, by virtue of the provisions of section 55 (2) (*c*) of Cap. 262 (*supra*), from denying to the respondent that the said bill was at the time of its indorsement a valid and subsisting bill.

(b) It was argued by counsel on behalf of appellant 2 that the said provision cannot be applied in this case, because the bill, having not been signed by the drawer, is not a bill at all and section 55 (2) (*c*) (*supra*) applies only to bills. We do not agree with this ingenious argument, because if that were so then it would render section 55 (2) (*c*) both a meaningless and unnecessary provision.

(2) We do not agree either with the argument that the bill in question is a foreign bill and as there is no evidence of any protest of such bill, as provided under section 51 (2) of Cap. 262 (*supra*), appellant 2 has been discharged from any liability as indorser. It is correct that the drawee and acceptor of the bill—appellant 1—appears on the face of the bill to have an address—Police R.A.F. Akrotiri—outside the territory

of the Republic. But we cannot agree that this is in fact a case of a foreign bill, because the Bill purports on the face of it to have been both drawn and made payable within Cyprus, and, thus, is an inland bill within section 4(1)(*a*) of Cap. 262 (*supra*); and by virtue of sub-section (2) of this section 4 unless the contrary appears on the face of a bill the holder may treat it as an inland bill.

(3) It follows that the appeal of appellant 2 fails and is hereby dismissed.

Appeal of appellant 1 *allowed. No order as to costs both here and below. Appeal of appellant* 2 *dismissed with costs of this appeal in favour of respondent.*

Per curiam : We leave open the question whether or not the bill in question could be treated as an acknowledgement of debt by, and could form the basis for appropriate proceedings against, appellant 1 (see Halsbury's Laws of England, 3rd Ed. Vol. 3 p. 142, note (p)).

Cases referred to :

Arab Bank Ltd., v. *Ross* [1952] 1 All E.R. 709, *considered.*

Appeal.

Appeal against the judgment of the District Court of Limassol (Malyali D.J.) dated the 20th May, 1966, (Action No. 1081/65) whereby the defendants were adjudged to pay to the plaintiff jointly and severally the sum of £80.— under a bill of exchange.

St. G. McBride for appellant No. 1.

A. Lemis, for appellant No. 2.

P. Pavlou, for the respondent.

Cur. adv. vult.

VASSILIADES, P. : The Judgment of the Court in this case will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J. : These two appeals have been filed by the Appellants-Defendants against the Judgment given, on the 20th May, 1966, in favour of the Respondent-Plaintiff,

by the District Court of Limassol in civil action 1081/65; they have been consolidated as they both arose out of one and the same transaction and action and they involve common issues.

According to the facts, as found—correctly in our view—by the learned trial Judge, the Respondent was the owner of a Skoda car (under registration F. 173), which he wanted to sell. Appellant 2 carries on a business in Limassol, under the business name of "AUTOHALL". He deals with the purchase and sale of used, as well as new, cars.

In March, 1965, the Respondent entrusted to Appellant's 2 office his said car for sale, at a price of £80. Eventually, at the end of April, 1965, he was given, by an employee of AUTOHALL, what purported to be a bill of exchange for the sum of £80, being the price of his said car. The bill was drawn on Appellant 1 who had signed it as an acceptor. "AUTOHALL" (Appellant 2) was the drawer and payee of such bill.

After consulting his lawyer, the Respondent went back to the AUTOHALL office and asked that the bill should be indorsed, as payable to him, by Appellant 2. Thereupon such indorsement was made, the stamp of AUTOHALL was affixed, and the indorsement was signed by Appellant 2, himself.

The bill had already been signed by Appellant 1, as acceptor, because Appellant 2 had sold him the Respondent's car for £100 *i.e.* the £80 paid for by means of the bill plus another £20 paid directly to Appellant 2 and retained by him as his own profit out of the transaction.

A short while later the Respondent, through his lawyer, asked for payment of the bill by Appellant 1 and, as he got no result, he asked for payment by Appellant 2; when the latter refused payment, as well, the Respondent instituted the present proceedings.

It has been submitted, *inter alia*, by counsel for Appellant 1, that the bill in question, is not a valid bill because it has not been signed by the drawer, AUTOHALL. as required by section 3 of the Bills of Exchange Law, Cap. 262.

We have inspected this bill, which is an exhibit in the case, and we are inclined to agree that it has not, indeed, been properly signed by the drawer, AUTOHALL. As a matter of fact the word "AUTOHALL" appears printed in capital letters at the bottom right-hand corner of the bill; but we cannot agree

with counsel for Respondent that we should, in the circumstances of this case, treat this printed business name as being the signature of the drawer; the more so, as right under the said printed business name there exists a dotted line, which clearly indicates that the printing of the business name was intended to dispense with only the affixing of the stamp of AUTOHALL and that there would be a signature on the dotted line so as to complete the signature of the drawer.

Counsel for Respondent has relied, next, on section 54 of Cap. 262, for the purpose of arguing that Appellant 1, as an acceptor for value of the bill, was precluded from denying to the Respondent the validity of the bill. But whatever may be the estoppels which are provided for, by means of section 54, against an acceptor of a bill, they are only made applicable in favour of a holder in due course and it is clear that the bill in question, not being properly signed by the drawer, was not a complete and regular bill on the face of it, so that the Respondent could be held to be a holder in due course of such bill—as such a holder is defined by section 29 of Cap. 262.

Useful reference may be made, in relation to what is a bill complete and regular on the face of it, to the case of *Arab Bank Ltd.* v. *Ross* ([1952] 1 All E.R. p. 709) wherein it was held that the mere omission of the word "company" from the signature of the indorser partnership on two promissory notes—when such word had not been omitted from the description of the same partnership as the payee in relation to the said notes—caused such notes not to be complete and regular on the face of them.

For the above reasons we find that the appeal of Appellant 1 should succeed and the Judgment of the trial Court in so far as he is concerned should be, and is hereby, set aside.

We leave open the question whether or not the bill in question could be treated as an acknowledgement of debt by, and could form the basis of appropriate proceedings against, Appellant 1 (see Halsbury's Laws of England, 3rd ed. vol. 3 p. 142, note (p)); the present proceedings have all along been conducted on the basis of their being a claim based on a bill of exchange, and such question cannot be properly determined herein.

Having decided already, as aforestated, this appeal in favour of Appellant 1, we need not deal with the other grounds of appeal which were raised by counsel for such Appellant, and

who has, also, stated to the Court, during the hearing of the appeal, that Appellant 1 no longer insists that he should have been given judgment in his favour on the counterclaim.

Coming now to the appeal of Appellant 2, we have no difficulty in holding that as the Respondent is the immediate indorsee of Appellant 2 as indorser of the bill concerned, such Appellant is estopped, by virtue of the provisions of section 55 (2)(*c*) of Cap. 262, from denying to the Respondent that the bill in question was at the time of his indorsement a valid and subsisting bill.

Counsel for Appellant 2 has argued that the said provision cannot be applied in this case because the bill, having not been signed by the drawer, is not a bill at all—and section 55 (2) (*c*) applies only to bills. We do not agree with this ingenious argument of learned counsel, because if that were to be so then it would render section 55 (2) (c) both a meaningless and an unnecessary provision.

We might usefully deal, next, with some other submissions made by counsel for Appellant 2 :

He has argued, that the bill in question is a foreign bill and that as there is no evidence of any protest of such bill, as provided for under section 51 (2) of Cap. 262, Appellant 2 has been discharged from any liability as indorser.

It is correct that the drawee and acceptor of the bill, Appellant 1, appears on the face of the bill to have an address—"Police R.A.F. Akrotiri"—outside the territory of the Republic, but we cannot agree that this is in fact a case of a foreign bill, because the bill purports on the face of it to have been both drawn and made payable within Cyprus, and, thus, is an inland bill in the sense of section 4 (1) (*a*) of Cap. 262; and by virtue of subsection (2) of section 4 unless the contrary appear on the face of a bill the holder may treat it as an inland bill.

It has been argued, further, by counsel for Appellant 2 that the bill was not presented for payment. In our opinion the trial Court was quite right in finding, in the circumstances of this case, as they have been set out earlier, that the bill was duly presented for payment and we can find no merit in this submission of counsel for Appellant 2.

There being no other ground of substance which has been raised by Appellant 2 we hold that his appeal fails and is hereby dismissed accordingly.

Regarding costs, we order that the order for costs of the Court below as against Appellant 1 should be set aside; but in the circumstances of the present case we have decided to make no order, as between such Appellant and the Respondent, regarding the costs before the trial Court or regarding the costs of this appeal. We award to the Respondent the costs of this appeal as against Appellant 2.

Appeal of Appellant 1 *allowed.*
Appeal of Appellant 2 *dismissed.*
Order for costs as aforesaid.