[JOSEPHIDES, STAVRINIDES AND LOIZOU, JJ.]

ZOE CH. PAPAELLINA,

Appellant-Defendant,

v.

EPCO (CYPRUS) LTD.,

Respondents-Plaintiffs,

and

LIONS PRODUCTS LTD.,

Respondents—Third Party.

(*Civil Appeal No.* 4766).

Bills of Exchange—Cheque—Holder for value—Sections 27(2) *and* 29 *of the Bills of Exchange Law, Cap.* 262—*Cf. section* 27(2) *of the English Bills of Exchange Act,* 1882—*Value given for cheque by the payee (third party) to the drawer—Payee endorsing the cheque in favour of the plaintiffs—No evidence as to whether plaintiffs gave value for that cheque—Immaterial in the present case—Because the plaintiffs are deemed to be holders for value as against the drawer (appellant-defendant) under the provisions of section* 27(2) *of the statute* (supra)—*Agent, having ostensible authority to act as such receiving value for the cheque—Principal bound thereby—Principal cannot be heard to say that she did not receive value for the cheque in question.*

Agent—Ostensible authority—Agent receiving value for cheque—Principal bound—See, also, hereabove.

Cheque—See above.

Practice—Appeal—Hearing of appeal in the absence of the respondents upon proof of service of the relevant notices—The Civil Procedure Rules, Order 35, *rule* 14.

Note: The respondents, although duly served with the notice of the date of the hearing, did not appear at the hearing of the appeal. The Supreme Court proceeded under the Civil Procedure Rules, Order 35, rule 14 and disposed of the appeal as though the respondents *were present.*

This is an appeal by the defendant (drawer of the cheque

involved in this case) against the judgment of the trial Court whereby the defendant was adjudged to pay to the plaintiff (indorsee of the said cheque) the sum of £95 due on the said cheque. The facts are shortly as follows:-

The plaintiffs' claim is based on a cheque dated June 28, 1965 for the sum of £95. That cheque was originally issued by the defendant (now appellant) in favour of the third party (second respondents) who endorsed it in favour of the plaintiffs (now first respondents). The trial Judge found that a certain M.I., who was the agent of the defendant (drawer) and had ostensible authority to act as her agent handed the cheque to the third party to deliver to him playing cards which the third party did. Soon after, the third party endorsed the cheque in favour of the plaintiffs.

It was argued on behalf of the appellant that the findings of the trial Judge were not warranted by the evidence and that in any event the plaintiffs failed to prove that they gave value for obtaining the cheque from the third party, the plaintiffs having pleaded that they were *bona fide* holders for value of the cheque in question and thus having set out to prove their case under the provisions of section 29 of the Bills of Exchange Law, Cap. 262.

Section 29 of the Bills of Exchange Law, Cap. 262 reads as follows:

> "29(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:-
>
> (a) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;
>
> (b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.
>
> (2) In particular the title of a person who negotiates a bill is defective within the meaning of this Law when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

"(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder".

On the other hand section 27(2) of the said Law, Cap. 262 reads:

"(2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time."

Dismissing the appeal the Court:

Held, (1). We have in this case specific findings of fact by the trial Judge and, having heard learned counsel for the appellant (defendant) and having read the evidence, we have not been persuaded that those findings were not open to the trial Judge on the evidence adduced.

(2) Regarding counsel's submission that the plaintiffs (first respondents)—indorsees failed to prove that they gave value for obtaining the cheque from the third party and, thus failed to establish their case under section 29 of the Bills of Exchange Law (*supra*), we are of the opinion that counsel, strictly speaking, may be right so far as the plaintiffs' pleading goes, but the fact remains that the law is quite clear on the point, and that is section 27(2) of the statute (*supra*) which reproduces verbatim section 27(2) of the English Bills of Exchange Act, 1882. Now, this section of the English act was recently considered in the Court of Appeal in England in the case of *Diamond* v. *Graham* [1968] 2 All E.R. 909, where it was held that "there was nothing in section 27(2) of the Bills of Exchange Act, 1882, which required that value for the bill should have been given directly by the holder to another party to the bill as long as value had been given for the cheque". In the present case there is a finding of fact, which we see no reason for disturbing, that value was given for the cheque by the third party (playing cards) to the defendant (appellant) drawer.

(3) Once we are satisfied with the finding of fact that M.I. was the agent of the defendant and he had ostensible authority to act as her agent, we are of the view that that concludes the case; because M.I. as the agent of the defendant (appellant) handed

the cheque to the third party the latter having given value (playing cards) for that cheque to the former. That being so, the defendant (appellant) cannot be heard to say that she received no value for the bill.

(4) The appeal is therefore dismissed.

There being no appearances today on behalf of the respondents we make no order as to costs.

Appeal dismissed. No order as to costs.

Cases referred to:

Diamond v. *Graham* [1968] 2 All E.R. 909, *followed.*

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (HadjiTsangaris Ag. D.J.) dated the 24th September 1968 (Action No. 3314/65) whereby she was adjudged to pay the sum of £95.– to the plaintiff being value of a cheque issued by defendant in favour of the third party who endorsed it in favour of the plaintiffs.

C. Myrianthis, for the appellant.

No appearance for the respondents.

The judgment of the Court was delivered by:

JOSEPHIDES, J.: The respondent-plaintiff and the respondent-third party do not appear to-day. Notice of the date of hearing was served at the registered office of these two parties who appear to be registered companies. The notice was served on the 17th July, 1969. Affidavit of service put in marked "A".

The time is now 10.14 a.m.: The Court proposes to proceed under the provisions of Order 35 r. 14 to hear the appellant and dispose of the appeal as though the respondents were present.

Mr. Myrianthis for the appellant addresses the Court.

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The judgment of the Court was delivered by:

JOSEPHIDES, J.: This appeal has a rather long and chequered history. The case was originally tried by a Judge of the District Court of Nicosia. His judgment was appealed against and the appeal was heard by this Court and judgment delivered in December, 1967. That was a majority judgment and is to be found reported in (1967) 1 C.L.R. 338.

The Supreme Court by their judgment ordered a retrial of the whole case. That was done by a Judge of the District Court, who gave judgment in favour of the plaintiffs and against the defendant for the sum claimed and the defendant now appeals against that judgment.

The plaintiffs' claim is based on a cheque dated the 28th June, 1965, for the sum of £95.—. That cheque was originally issued by the defendant in favour of the third party and the third party endorsed it in favour of the plaintiffs. In paragraph 3 of the statement of claim the plaintiffs state that they are *bona fide* holders for value and to-day Mr. Myrianthis for the appellant, *inter alia*, argued that they failed to prove the necessary ingredients under the provisions of section 29 of the Bills of Exchange Law, Cap. 262. We shall consider this point at a later stage of our judgment.

Put briefly, the two versions before the Court were the following:

The defendant alleged that she had given this cheque to one Mitros Ioakim of Paphos to go to Nicosia and buy nails for her from the third party "Lions Products Ltd.," that is, the defendant's version was that Mitros Ioakim had a limited mandate to buy nails and nothing else. In argument to-day counsel for the appellant conceded that Mitros Ioakim was agent for the defendant but said that his mandate was only for that limited purpose and nothing else. In fact Ioakim came to Nicosia and it is common ground that he never took delivery of any nails from the third party, but he bought from the third party playing cards. The defendant says that, as this was outside Ioakim's mandate, she is not bound to pay the cheque, as she did not receive value for her cheque. On the other hand, it was the version of the plaintiffs and the third party that Mitros Ioakim visited Vassos Christofides (see later in this judgment) and asked for playing cards for the defendant and purchased playing cards; furthermore, that Ioakim did not make any reference whatsoever to any order for nails of

Charalambos Papaellinas, the husband of the defendant, who throughout the material time was acting as the manager for the affairs of his wife (the defendant).

It was further the case for the plaintiffs and the third party that payment for the playing cards, which the third party delivered to Ioakim, was made by this cheque, which is the subject matter of the case, that consequently the third party gave value for the cheque and that they subsequently endorsed the cheque to the plaintiff company who instituted the present proceedings against the defendant.

The trial Judge heard two witnesses on behalf of the plaintiff and two witnesses on behalf of the defendant. The first witness heard on behalf of the plaintiffs is Vassos Christofides, one of the Directors of the plaintiff company and the Managing Director of the third party. The second witness, Rogiros Iacovides, was the cashier of the plaintiff company and of the third party at the material time. The witnesses heard on behalf of the defendant were Mitros Ioakim, the man who was the disputed agent between the parties and Charalambos Papaellinas, the defendant's husband.

The learned trial Judge, after giving a summary of the evidence adduced before him and commenting freely throughout, made certain findings of fact. We must say that we are not very happy with the wording of the judgment, but having read the judgment as a whole, and the evidence, we are of the view that the findings which he made are warranted by the evidence. There are three specific findings in the judgment. They are the following:-

Firstly, after rejecting the evidence of the defendant's husband, Papaellinas, and giving his reasons for doing so, the learned Judge says " I find from the evidence before me that Papaellinas (defendant's husband) knew that at the material time Mitros Ioakim was his agent "; secondly, the Judge says " having carefully considered the evidence on this point I find that at times Mitros Ioakim was acting as the agent of defendant for transacting certain business on her behalf "; and, finally, the learned Judge gives a summary of the evidence of Vassos Christofides, whose evidence the Judge says that he accepts. This is the relevant extract from the judgment:

> " Mitros Ioakim visited him (i.e. Christofides) and asked for playing cards for defendant and purchased playing

cards as he explained. It is a fact that playing cards were delivered to Mitros Ioakim on two occasions. Mitros Ioakim made no reference whatsoever to any order of Papaellinas for nails. Payment was made by means of *exhibit* 1 (i.e. the cheque which is the subject matter of this case); therefore, he parted with his property in consideration of *exhibit* 1, which was subsequently endorsed by the third party to the plaintiff company, as described ".

And the learned Judge concludes –

"Looking at the evidence of Vassos Christofides in the light of what is probable and having seen and heard him I am disposed to accept his evidence ".

Therefore, we have specific findings of fact by the learned trial Judge and, having heard learned counsel for the appellant (defendant) and having read the evidence, we have not been persuaded that those findings were not open to the trial Judge on the evidence before him.

Counsel for the appellant further complained that findings as to specific facts which ought to have been made by the trial Judge, if his judgment was to stand, were lacking, and on the basis of that complaint counsel submitted that this Court should order a second retrial.

The findings which learned counsel submitted ought to have been made by the trial Judge were (a) the extent of the mandate of Mitros Ioakim given by the defendant; (b) whether the plaintiffs were aware of the limits of the mandate of Ioakim; (c) whether the purchase of the playing cards was within the mandate of Ioakim, and (d) whether Ioakim had ostensible authority to buy playing cards instead of nails.

As we have already held that the findings of fact which the learned Judge made were open to him on the evidence before him, on that basis we have the findings of fact necessary to decide this case; that is to say, the trial Judge found as a fact that Mitros Ioakim was the agent of the defendant, having acted so in the past on behalf of the defendant and that he had ostensible authority to act as her agent. Once we are satisfied with that finding of fact, we are of the view that that concludes the case; because Mitros Ioakim, as the agent of the defendant, handed the cheque to the third party to deliver to him playing cards. Consequently, the third party gave value

for the cheque and, once we accept the finding that value was given for the cheque, the defendant cannot be heard to say that she received no value for the bill.

The last complaint of the appellant to-day was that it was not proved that the plaintiffs gave value for obtaining the cheque from the third party, and this complaint is based on the pleading of the plaintiffs, who, he alleges, set out to prove their case under the provisions of section 29 of the Bills of Exchange Law, Cap. 262, for they claim as *bona fide* holders for value.

Mr. Myrianthis, strictly speaking, may be right so far as the plaintiffs' pleading goes, but the fact remains that the law is quite clear on the point, and that is section 27(2) of the Bills of Exchange Law, which reads as follows:

> " Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time ".

This section of ours reproduces verbatim the provisions of section 27(2) of the English Bills of Exchange Act, 1882, which was recently considered in the Court of Appeal in England in the case of *Diamond* v. *Graham* [1968] 2 All E.R. 909, where it was held that " there was nothing in section 27(2) of the Bills of Exchange Act, 1882, which required that value for the bill should have been given directly by the holder to another party to the bill as long as value had been given for the cheque ". In the present case there is a finding of fact, which we see no reason for disturbing, that value was given for the cheque by the third party to the defendant.

In the circumstances we are of the view that the appeal should be dismissed. There being no appearance on behalf of the respondents we make no order as to costs.

Appeal dismissed; no order as to costs.