

(1925) 03 CAL CK 0040
In the Calcutta High Court

Sreelal Mangtural

APPELLANT

Vs

The Lister Antiseptic Dressing Co., Ltd.

RESPONDENT

Date of Decision : 27-03-1925

Acts Referred:

Companies Act, 1956 — Section 89

Citation : (1925) ILR (Cal) 802

Hon'ble Judges : Sanderson, C.J; Rankin, J

Bench : Division Bench

Judgement

Sanderson, C.J.—This is an appeal by the plaintiff firm, Sreelal Mangtural, against the judgment of Mr. Justice Thornhill which was delivered on the 20th of June 1924.

2. The suit was brought under Order XXXVII of the CPC and was based, upon five hundis, four of which were dated the 19th of May 1922, and one was dated the 23rd of May 1922. In all material respects they were in the same form; and, it will be sufficient if I refer to that which is marked A. It was in these terms: "Calcutta, 19th May 1922. One hundred and eighty days after date without grace I promise to pay to Messrs. Mitra and Sons or order the sum of rupees five thousand, only for value "received in cash, Sd. Mrigendra Lal Mitra." That document appears to be in the form of an ordinary promissory note; but for some reason, which is not apparent at present, it was accepted by Mrigendra Lal Mitra on the face of the document. It was endorsed by the payees, "Mitra and Sons". There was a further endorsement upon it, as follows; "Mitra and Sons, Managing Agents, Lister Antiseptic Co., Ltd."

3. The suit was brought by the plaintiffs on the allegation that the plaintiffs were the holders in the ordinary course for valuable consideration: that the notes were endorsed by Mitra and Sons to the defendant company and that the latter endorsed them to the plaintiffs: they relied upon the second endorsement, which I have read, as an endorsement by the "Lister Antiseptic Co. Ltd".

4. The learned Judge came to the conclusion that the documents were not endorsed by or on behalf of the company: and, he held that the words "Managing Agents, Lister Antiseptic Co., Ltd." were descriptive or decorative and that "they do not indicate that the instrument was made or endorsed by or on behalf of the company".

5. The material section of the Indian Companies Act, 1918, is Section 89 which provides as follows: "A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person "acting under its authority, express or implied."

6. In this case it has not been suggested that the promissory note was endorsed in the name of the company. The allegation put forward on behalf of the plaintiffs was that it had been endorsed by Mitra and Sons on behalf or on account of the company.

7. The principle upon which this case must be decided, in my judgment, was stated by Lord Justice Kennedy in the case of *Chapman v. Smethurst* [1909] 1 K. B. 927, 930, which is as follows: The proper test to apply in such cases is laid down in *Lindley on Companies*, 6th Edition, Vol. 1, at page 280, where it is said: The question is in every case one of construction; is the bill or note the bill or note of the company or not Does it really purport so to be, for, although given for the purposes of the company, the bill or note may not even purport to bind it If on the true construction of the instrument the bill or note is the bill or note of the company, the company will be liable upon it, and not the individuals whose names are on it, unless the bill or note is the bill or note of both. On the other hand, if on the true construction of the bill or note it is not the bill or note of the company, the persons whose names are upon it will be liable upon it, whether they intended to be so or not.

8. The principle was also stated by Lord Buckmaster in the case of *Sadasuk Janki Das v. Maharaja Sir Kishan Pershad*. I. L. R. (1918) Cal. 663, 46 L. R. I. A. 33. Lord Buckmaster is reported to have said as follows: "It is of the utmost importance that the name of a person or firm to be charged upon a negotiable document should be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can be instantly recognised as the document passes from hand to "hand." The learned Lord proceeded to say: The statement, to which reference has been made, which appears on page 99 of *Messrs. Iyenger and Adiga's* book on *Negotiable Instruments*, that outside evidence is inadmissible on any person as a principal party unless his---the principal party"s---name is in some way disclosed in the instrument itself", is not in itself an adequate statement of the law. It is not sufficient that the principal"s name should be in some way, disclosed; it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the bill.

9. It is, therefore, a question of construction whether the company has been made liable by the endorsement, which appears on the back of these promissory notes, and which is as follows:---"Mitra and Sons, Managing Agents, Lister Antiseptic Co., Ltd."

10. In my judgment it is possible that any one taking these promissory notes might infer that the words which appear after the endorsement "Mitra and Sons" were merely descriptive of "the firm of Mitra and Sons", and it is not clear that the responsibility of the company would be recognised by any one to whom the documents were transferred.

11. The only point which, in my judgment, was of any substance was that these documents bore the endorsement "Mitra and Sons" twice: and it was urged that if the words "Managing Agents, Lister Antiseptic Co., Ltd." were merely descriptive of the firm of Mitra and Sons there would be no reason for "Mitra and Sons" endorsing the documents twice. It was urged that if the words, to which I have referred, were intended to be merely descriptive they might have been inserted after the first endorsement which appears upon the promissory notes.

12. I am unable to accede to that argument. It seems to me that it would not be clear to any one, who took the documents, that the responsibility of the company was intended to be involved. It might be that upon consideration of the documents one person might come to the conclusion, that the responsibility of the company was intended to be involved; on the other hand, another person, taking these documents, might come to the opposite conclusion, viz., that it was intended that the personal liability of Messrs. Mitra and Sons only was involved. The endorsement on the documents does not comply with the test laid down by the learned Lord that the "responsibility is made" plain and can be instantly recognised as the document passes from hand to hand".

13. For these reasons, in my judgment, the learned Judge's judgment was correct.

14. An application was made to this Court for leave to amend the plaint in order to include a claim for money which it was alleged the plaintiffs had advanced to the company. There was no application at the trial for such an amendment and it is sufficient to say that, in my judgment, it is too late now for the plaintiffs to make that application. There is a further reason that there is not in the plaint sufficient indication, as to what, if any, the consideration was. Therefore, in my opinion, the application for amendment should be refused.

15. The result is that this appeal must be dismissed with costs.

16. Rankin J. I agree.