

## IRREGULAR ENDORSEMENTS

*Yeoman Credit Ltd. v. Gregory*

Can a person become a holder in due course of a cheque despite an irregular indorsement? An affirmative answer to that question seems to follow from *Yeoman Credit Ltd. v. Gregory*.<sup>1</sup>

The facts of this case were as follows: The plaintiff company provided finance for hire-purchase transactions carried out by Express Coach Craft Ltd. To secure these transactions, the plaintiffs drew bills of exchange payable "to our order" on Express Coach Ltd. These accepted the drafts, payable at the National Provincial Bank. The directors of the Express company indorsed these cheques. Shortly before the date of presentment, these bills of exchange were indorsed on behalf of the plaintiff company. This indorsement was written below the signature of the directors, and a rubber stamp with the words "Pay to Barclays Bank Ltd., value on collection, per pro Yeoman Credit Ltd." was attached.

Before the date of presentment, the plaintiff company was informed that there were no funds in the National Provincial Bank. The company was asked to present the bills to the Midland Bank. The bills were presented to the National Provincial Bank and the Midland Bank but were dishonoured. An oral notice of dishonour was given to the directors two days after the date of presentment.

Several defences were raised by the defendants-directors. In the first place, they denied liability on the bills. Megaw J. referred to s. 50 of the Bills of Exchange Act, 1882<sup>2</sup> which reads:

"Where a person signs a bill other than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course."

The learned judge pointed out that the directors did not sign the bills as drawers or acceptors. He held, therefore, that they could only have incurred the liabilities of indorsers, provided the plaintiff company was a holder in due course.

It was objected that, in view of the irregularity in the indorsement, the plaintiff company could not be regarded a holder in due course. Megaw J. referred to *Gerald McDonald & Co. v. Nash & Co.*<sup>3</sup> in order to show that the order in which indorsements appear at the back of a cheque is immaterial. He explained that whether the indorsement of the payee appears above or below that of the holder would not, in itself, render a cheque incomplete on its face.

The difficult point in the present case was, however, the restrictive character of the plaintiff's indorsement. Megaw J. agreed that "The restricted indorsement, of course, taken as a whole, would mean that the defendant, if he receives the bill with such indorsement on it, would have no title to it and could do nothing with it because it was a restricted indorsement not addressed to him."<sup>4</sup> The learned judge, nevertheless, decided that it was permissible to bring evidence to show that, despite its wording, the indorsement was not, in fact, meant to be restrictive. He decided that the intention of the parties throughout was that if Express Co. — the acceptors — dishonoured the bill, the plaintiff company should be entitled to recover from the defendants. He then said:<sup>5</sup>

"I have come to the conclusion that it would be wrong to say that this form of indorsement is one which prevents the bill from being a bill, which is complete and regular on its face, or which makes it something which is not

1. [1963] 1 W.L.R. 343.

2. 45 & 46 Vict. c. 61.

3. [1929] A.C. 625.

4. [1963] 1 W.L.R. at p. 351.

5. *Ibid.*, at p. 352.

complete and regular on its face. Just in the same way as the courts have found it possible to say that the order of the indorsements is something which, if explained by extrinsic evidence, is not a fatal defect, so also I think the fact that the indorsement which is put on is a restricted indorsement is not fatal when the facts and circumstances are explained by extrinsic evidence and when it appears that the intention at all times was that the defendant should be liable on Express's default. I think it is permissible under section 20 of the Act, having regard to the intention of the parties, to treat this indorsement as though it had been made first as an indorsement in blank, which would validate the indorser's signature as an indorser, and, secondly as a restricted indorsement for collection just as though the indorsement had been written on in blank at one moment of time, and at a subsequent moment of time there had been written above, as the holder was plainly entitled to do, a restriction."

It is, with respect, difficult to agree with this reasoning. There is a great difference between indorsements arranged in a wrong order and a restrictive indorsement. It is only fair to conclude that, despite the place of his indorsement, that of the payee was, in fact, the first one. Since there is no provision in the bills of exchange act about the place of indorsements, except that they might be at the back of the bill, there is no reason to hold that the order of the indorsements could render a bill incomplete on its face. A restrictive indorsement belongs to an entirely different category. It is an indorsement which can confer a title only on the person indicated in it. Another person cannot take under it. To say that, despite such an indorsement, a person who takes the bill can become a holder in due course is surprising. If a bill shows that the holder has, on the face of it, no good title, why should he be considered a holder in due course? Moreover, it is remarkable to say that evidence can be brought to clarify the true position. Since there is an obvious irregularity, *i.e.* a defect in title, there is no reason why evidence should be heard to clarify this. If it is allowed, the whole aspect of "regularity on the face" in s. 29 of the Bills of Exchange Act, 1882 would lose its meaning.

While the court rejected the director's first defence, it allowed another one. The judge held that in the case of one of the bills, which was presented to Midland Bank before the National Provincial Bank, there was no proper presentment. Since the bill was accepted payable at specified place, (*i.e.* the National Provincial Bank), the liability of indorsers depended on proper presentment. The holder would have been allowed to present the bill at a different place only if the indorsers agreed to such substitution.

In the case of most of the other bills there was an unjustified delay in sending notice of dishonour. This, too, was decided to have released the indorsers. The fact that the notice was given orally was not held to be objectionable.

The decision on these two issues is submitted to be unexceptionable.

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