BOMBAY HIGH COURT

Sunderdas Sobhraj

Vs.

Liberty Pictures

Suit No. 296 of 1951

(Desai, J.)

28.11.1955

JUDGMENT

Desai, J.

The Plaintiffs sue to recover two sums of Rs. 5000 and Rs. 34,000 with interest from the Defendants. The Defendants are a partnership firm of which at all material times the partners were according to the Plaintiffs' Jamnadas, Lavji, Abbasbhai and Vyas. It is the Plaintiffs' case that on 16-6-1948 the plaintiffs lent and advanced to the Defendants for the purposes of their business a loan of Rs. 10,000/- at interest. As collateral security for repayment of that loan Jamnadas, who had approached the Plaintiffs for the loan, delivered to the Plaintiffs a postdated cheque for Rs. 10,000/-. That cheque which was post-dated 19-6-1949 was drawn on behalf of the Defendants by Jamnadas and made out in favor of the Plaintiffs. The cheque was presented by the Plaintiffs on 20-3-1949 for payment and again on 22-6-1949 but it was dishonoured. The memo of the Bank showed the remarks : "not arranged for". The Plaintiffs intimated about the dishonour of the cheque to all the partners of the Defendants and called upon them to pay the Plaintiffs that amount. A sum of Rs. 5000/- was paid by the Defendants to the Plaintiffs in part payment on 12-7-1949 and the balance of Rs. 5000/- is the subject-matter of one of the claims of the Plaintiffs in this suit. At the hearing of the suit the Defendants gave up their contention that they were not liable to repay this amount of Rs. 5000/-.

2. It is also the case of the Plaintiffs, and that is now the subject-matter of dispute between the parties, that on 5-8-1949 the Plaintiffs lent and advanced to Messrs. Jamnadas and Co., of which Jamnadas was the sole proprietor, a sum of Rs 34,000 at interest. As collateral security for repayment of that loan of Rs. 34,000 Jamnadas delivered to the Plaintiffs a crossed and bearer cheque for Rs. 34,000/- which was post-dated 20-8-1949. That cheque was drawn by the Defendants in favor of Jamnadas and Co., and was signed on behalf of the Defendants by Jamnadas, as a partner of the Defendants firm. Jamnadas endorsed over that cheque as the

proprietor of Jamnadas and Co. in favor of the Plaintiffs, when he handed over the same as security for the personal loan of Rs. 34,000/-. The cheque was presented by the Pltffs. for payment but was dishonored. On 24-8-1949 the Plaintiffs through their attorneys addressed letters to all the partners of the Defendants calling upon them to pay the amount of Rs. 34,000/-. In the correspondence that ensued between the parties the Defendants denied their liability in respect of both the sums of Rs. 5,000/- and Rs. 34,000/-.

3. Various contentions were raised by the Defendants in their written statement but the sole contention that was urged at the hearing of the suit was that although Jamnadas was a partner of the Defendants with full powers to manage the affairs of the Defendants and the power to borrow moneys and operate on banking account of the defendants, he had no authority either express or implied to draw, sign or deliver to the Defendants the cheque in dispute by making the amount payable to his firm of Jamnadas and Co., i.e. to himself.
It was also urged that the Plaintiffs knew that the cheque was drawn by Jamnadas in his own favor and that they were consequently on the facts and circumstances of the case not entitled to claim to be holders-in-due course of this cheque. As the Defendants gave up a number of contentions raised by them in their written statement it is not necessary to summarise their defence here. Most of the facts are not disputed and the brief evidence to which I shall immediately refer clearly shows that the facts are mostly not disputable.

4. Laxmichand Sobhraj, a partner in the Plaintiffs firm was examined on behalf of the Plaintiffs. He stated that he attended to the monetary transactions in dispute. He said that lie knew that in the Defendant firm there were four partners, viz. Jamnadas, Lavji, Abbasbhai Kagalwalla and Nanubhai Vyas. He knew Jamnadas and Lavji since 1947, and both of them had dealings with his firm and had borrowed moneys on their personal account.
According to him Lavji did separate business of his own in the name of Lavji D. at Kissan Mahal, Tribhowan Road. He stated that Jamnadas also did his own business in the name of Jamnadas and Co. and was the sole proprietor of that business. He stated that the Defendants had their office in the same premises in which Lavji carried on his own business. He also stated that he used to go to the office of the Defendants in Bombay as he had money dealings with both. Jamnadas and Lavji. In view of the fact that the Defendants are not now disputing their liability to the Plaintiffs in respect of the balance of Rs. 5000/- under the first loan I need not refer to the evidence of Laxmichand relating to that transaction. That evidence is on the same lines as those mentioned by me while summarising the Plaintiffs' case in the plaint in respect of that balance of Rs. 5000/-.
5. As to the monetary dealing between the Plaintiffs and Jamnadas now in dispute Laxmichand stated that on 5-8-1649 Jamnadas came to his pedhi. He had brought with him a post-dated cheque bearing date 20-8-1949 for Rs. 34,000/- signed by himself on behalf of the Defendants and drawn in favor of Jamnadas and Co. which was Jamnadas's own firm. Laxmichand was informed by Jamnadas that he had to take this amount of Rs. 34,000/- from the Defendants but the Defendants were unable to pay this amount. Jamnadas further stated that he wanted Rs.

34,000/- at once for his own business and the Plaintiffs should therefore discount the cheque and pay him Rs. 34,000/-. This was all that the witness stated about this cheque but a question was put to him by learned counsel for the Plaintiffs whether Jamnadas had told him how he had become entitled to receive Rs. 34,000/- from the Defendants, and the witness replied that Jamnadas had told him that he had given certain pictures of his own to the Defendants for distribution and he was entitled to receive Rs. 34,000/- from the Defendants. He went on to state that he knew that the Defendants were distributing certain pictures belonging to Jamnadas on commission basis. He stated that he accepted Jamnadas's word when Jamnadas stated that he was entitled to receive Rs. 34,000/- from the Defendants in respect of these pictures given to the Defendants for distribution. Relying on that statement of Jamnadas the Plaintiffs gave the loan of Rs. 34,000/- to Jamnadas and Jamnadas handed over the post-dated cheque to Laxmichand duly endorsed in favor of the Plaintiffs. Laxmichand went on to state that on 5th August 1949 Jamnadas also told him that the pictures Mela, Dada and Char Din belonged to him and those were the pictures which the Defendants were distributing on Commission basis. Laxmichand produced an entry from his cashbook under date 5-8-1949 for Rs. 34,000/- debiting the amount for the purchase of the cheque.

That was the system followed by the Plaintiffs when they advanced moneys against cheques or when they discounted cheques. The cheque was presented for payment on 22-8-1949 but was dishonoured. Thereupon the Plaintiffs debited in their books the amount of Rs. 34,000 to the account of Jamnadas and Co. and the Defendants. On 24-8-1949 the Plaintiffs' attorneys addressed notices to all the partners of the Defendants calling upon them to pay the amount of Rs. 34,000/-.

6. In his cross-examination Laxmichand stated that he relied on the word of Jamnadas when Jamnadas stated that he was entitled to receive Rs. 34,000/- from the Defendants. He did not make any inquiries either from Lavji or any other partner of the Defendants about it. He solely relied on the word of Jamnadas. At that time Jamnadas was already indebted to the Plaintiffs to the extent of Rs. 75,000/- on two mortgages. Laxmichand admitted in his cross-examination that he knew at the time he advanced the loan of Rs. 34,000/- that the cheque for Rs. 10,000/- had been twice dishonoured. He also knew that Jamnadas had made defaults in making repayment in respect of the two mortgages; but he denied any knowledge of the fact that the financial position of Jamnadas at that time was unsound. He also stated in his evidence that prior to 16-6-1949 the Plaintiffs had no dealings with the Defendants. He also admitted that he knew that Abbasbhai was a substantial party; but he did not make any inquiry of Abbasbhai when the cheque for Rs. 34,000 was given to him and when that cheque was dishonoured. It was put to the witness that in fact on 5-8-1949 Jamnadas had overdrawn a sum of Rs. 50,000/- from the Defendants in his account of the picture Mela; and that nothing was due to Jamnadas in his account with the Defendants in respect of the picture Char Din. It was also put to him that the picture Dada did not belong to Jamnadas but was owned by the Defendants. Laxmichand stated that he did not know that such was the position nor did he know that on 5-8-1949 Jamnadas was indebted to the Defendants and that nothing was payable to him by the Defendants. He admitted that in the

affidavits made by him at the time of summons for Judgment in this suit he had not made any reference to the representations which according to his evidence here were made to him by Jamnadas on 5th August about Jamnadas being entitled to receive from the Defendants Rs. 34,000/- or about the distribution of Jamindar's pictures. Those were certainly material facts which, is true, should normally have been mentioned in at least in the affidavit in rejoinder, if not in the affidavit in support of the summons. In his re-examination he stated that the loan of Rs. 75,000/- on the mortgages given by the Plaintiffs to Jamnadas was fully secured. This was all the evidence led on behalf of the Plaintiffs. I am not prepared to accept the evidence of Laxmichand when he deposed to the representations made to him by Jamnadas when the cheque for Rs. 34.000/- was negotiated by him. In my view Laxmichannd did not make any inquiry of Jamnadas or of any other partner of the defendants when he accepted the cheque for Rs. 34,000/ as endorsed of the same from Jamnadas and Co. and relied on the endorsement on the cheque.

7. Shashikant Joshi an accountant in the employment of the Defendants was examined. He was in the service of the Defendants till 1952. He stated that he knew Jamnadas who was a partner in Defendants firm in 1949 and prior thereto. According to Joshi Jamnadas was a partner in the Defendant firm only till 1949. Joshi stated that he used to write the accounts of the Defendants and also supervise the writing of the accounts. He stated that taking into account the profits and loss of the business and other items in the accounts of the partnership on 5-8-1949 Jamnadas was not entitled to receive anything from the firm. On the other hand he was indebted to the firm. That according to Joshi was the position of Jamnadas qua the firm. Joshi stated that separate accounts used to be kept in respect of distribution of pictures. Picture Mela belonged to Jamnadas and defendants were distributing that picture on commission. A separate account of Jamnadas and Co. relating to that picture was maintained in the books of the Defendants. Producing that account Joshi stated that in fact in that account Jamnadas had overdrawn to the extent of Rs. 50,000/-. The Picture Dada did not belong to Jamnadas but belonged to the Defendants. Joshi stated that a separate account of Jamnadas and Co. in respect of the picture Char Din was maintained in the books of the defendants. That account shows that Jamnadas had overdrawn Rs. 1000/- in that account. Joshi lastly stated that from the books of account he could say that no sum of Rs. 34,000/- or any other sum was payable by the Defendants to Jamnadas on 5-8-1949. In his cross-examination he stated that Mela and Char Din were the only pictures of Jamnadas that the Defendants were distributing.

He stated that there was no guarantee or advance given or paid by the Defendants to Jamnadas in respect of these pictures. This suggestion was made because if any advance or guarantee was given the account of Jamnadas was bound to show that Jamnadas had overdrawn large sums although the real position would be different. But as I have already stated Joshi deposed that there was no advance paid or guarantee given in respect of those pictures of Jamnadas.

8. Lavji Kanakia, a partner in the Defendants firm was next examined. He produced the deed of partnership of the Defendants firm. That writing is dated 16-7-1945 and shows that the partners were, Jamnadas, Lavji, Nanubhai Vyas and Abdulhusein Hyderabadwalla. Lavji stated that no amount of Rs. 34,000/- or any other amount was payable by the Defendants to Jamnadas on 5-8-

1949. He further stated that there was no conversation between any of the partners that Jamnadas should be paid Rs. 34,000/- by the firm. He went on to state that none of the partners knew on 5th August or thereafter that a cheque for Rs. 34,000/- had been drawn by Jamnadas in favor of his firm of Jamnadas and Co. and negotiated with the Plaintiffs. Very little was asked to this witness in cross-examination. He stated that the work of the Defendants was principally done by Jamnadas and himself and that Jamnadas and the witness had the power given to them under the partnership deed. This was all the evidence led on behalf of the Defendants.

9. Three questions arise : (1) Whether the implied authority of a partner to draw cheques in the name of the firm where it does exist can also extend to drawing by such partner of a post-dated cheque in his own favor and then endorsing it in favor of a third party who is aware of the fact that the post-dated cheque has in fact been drawn by such partner in his own favor ? (2) Whether a third party who is the endorsee of the post-dated cheque for consideration can in such a case without proving anything more prefer a claim to be a holder in due course ? (3) Whether it would be incumbent on the endorsee of the post-dated cheque in any such case to show that he did net have sufficient cause to believe that any defect existed in the title of the payee, that is, the person from whom he derived his title ?

10. To take the first question first. It was urged on behalf of the Plaintiffs that the first question to be determined by the Court was not of the authority of Jamnadas but whether the Plaintiffs were holders in due course of the cheque. Now it is true that the Plaintiffs must succeed if they become holders in due course of this cheque for Rs. 34,000/-. But the question of authority of Jamnadas express or implied in the matter of drawing and endorsing of this post-dated cheque is inseverably and vitally connected with the claim of the Plaintiffs to be holders in due course of this cheque. In my opinion where it ex facie appears that a negotiable instrument is made by a partner purporting to act on behalf of the firm, and given to secure his private debt the first thing to be ascertained is whether he had authority, express or implied, to do so. Now in the case before me there is no evidence at all to show that Jamnadas was expressly authorized by his partners to draw this postdated cheque in his own favor. Nor am I able to read the express term contained in the partnership agreement which no doubt conferred full powers of management of the business of the Defendants on Jamnadas and Lavji and also authorized them to borrow moneys and maintain and operate banking accounts on behalf of the Defendants,, as authorizing Jamnadas on behalf of the firm to enter into on behalf of the firm any contracts with himself. Partnership firms can and at times do enter into contracts with one of the partners but this can only be with the consent and knowledge of all the partners. It is not necessary here to refer to the application of the doctrines of ratification, acquiescence, waiver or estopped for no such consideration arises in the present case. A partner without the, knowledge and consent of his other partners cannot on behalf of the firm enter into a contract with himself. That partners in any particular case may permit this to be done or acquiesce in it is a totally different matter. The question before me is one of agency and authority and it is not possible to interpret the authorization clause in the partnership agreement as conferring on Jamnadas the power either to

enter into any contract with himself or to draw on behalf of the firm any cheque in his own favor. Nor is there any evidence showing that the other partners had in fact or by their conduct authorized Jamnadas without reference to them to enter into on behalf of the firm any contract with himself or to draw in his own favor any cheque on the firm's account with the Bank. Great reliance was placed by Mr. Banaji, learned counsel for the Plaintiffs, on the express authority of Jamnadas and it is for that reason that I have permitted myself to digress a little in order to dispose of immediately that point of express authority.

11. To turn to the proposition under consideration. The general extent of the implied authority of a partner to bind the firm is defined in Section 19 of the Partnership Act. The general rule stated in a classical passage in Story on Partnership so often cited with approval by their Lordships of the Privy Council and Courts in India is that :

> "Every partner is in contemplation of law, the general and accredited agent of the partnership, or as it is sometimes expressed, each partner is 'propositus negotus societatis', and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership. Hence, if the partnership be of a general commercial nature, he may pledge or sell the partnership property; he may buy goods on account of the partnership; he may borrow money, contract debts and pay debts on account of the partnership; he may draw, make, sign, indorse, accept, transfer negotiate, and get discounted, promissory notes, bills of exchange, cheques and other negotiable paper in the name and on account of the partnership."

It is essential to note that this well-established rule relating to the agency of a partner only embraces acts of a firm quod third parties. Section 19 which defines the extent of this implied authority of a partner is to be found in Chapter III of the Partnership Act which deals with "Relations of Partners with third Parties". It is also of interest to observe that the Legislature while in Sections 19 to 21 of the Act lays down the rules relating to the implied authority of a partner, the extension and restrictions of this implied authority and a partner's authority in emergency, has, for obvious reasons, not deemed it necessary to say in terms that acts outside the stated limits are not binding on the firm. The English Act contains a provision which runs as follows :

> "Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners but this section does not affect any personal liability incurred by the individual partner."

The implied authority of a partner to bind the firm is therefore restricted to acts usually done in the business of the kind carried on by the firm. But if all that can be said of an act is that it was convenient or that it facilitated the transaction of the business of the firm or that it was done

because it was in the interest of the firm to contract with an individual partner, that is not sufficient to bind the firm in the absence of evidence of sanction by the other partners. The same principle applies and with the same certainty where a partner purporting to act on behalf of the firm draws a cheque in his own favor and then endorses it in favor of a third party to secure repayment of his own separate debt. In any such case if the third party is aware of the fact that the negotiable instrument was made or endorsed by a partner in his own favor and then negotiated with the third party that would be a circumstance and a reasonable ground which should put the third party upon further inquiry. It would be on the third party in such case to show that there were circumstances attending the transaction which afforded him reasonable ground for belief that the transaction was sanctioned by the other partners or to show by fair implication that the other partners had in fact authorized or confirmed the transaction. These results must indeed flow from the known limitations of the law of agency and the law of partnership is a branch of the law of agency. A *bona fide* holder for value without notice would, of course, be in a different position.

12. In view of the observations I have already made the remaining two questions do not require any elaborate discussion. The rule as laid down in Section 9 of the Negotiable Instruments Act which defines "holder in due course" is stricter than the rule of English Law on the subject and a payee or endorsee of a negotiable instrument can, under our law, prefer a claim to be a holder in due course of the instrument only if he obtained the same without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. A *bona fide* holder for value without notice is, of course, as I have already observed, in a different position. But, a third party who knowingly accepts any negotiable instrument from a partner in a firm drawn or endorsed by the partner in his own favor although he parts with consideration for the same must take the instrument with the knowledge of the principles of justice and equity applied to every contract involving the element of agency and the natural result of the limitations inherent in such agency. In any such case he takes the instrument with notice that there is something about it which cannot be ignored or overlooked. As I have already pointed out he is put upon further inquiry and it is upon him to show that there was no failure by him to avail himself of all reasonable means of inquiry into the title of the partner who endorsed the instrument in his favor and that there was sufficient cause for him to believe that no defect existed in the title of that partner.

13. Learned counsel for the Defendants relied on the following statement of law in Lindley on Partnership (11th Edition) at p. 245.

> "Again, although a partner may be a *bona fide* holder, for his separate use, of the paper of his firm, yet if he gives such paper in payment of a separate debt of his own, this is prima facie an irregular proceeding and a fraud on his co-partners. Consequently, the creditor taking the paper must rebut this prima facie inference before he can compel the firm to pay. A *bona fide* holder for value-without notice is of course in a different position." It

> was urged on behalf of the plaintiffs that this proposition has been too widely stated and that the cases cited in the foot-note under it do not bear cut the rule. I do not agree. This statement of law has to be read in its own context and is made while considering the liability of partners in respect of acts which are unauthorized and are known so to be.

A dealing known to be between a partner purporting to act on behalf of the firm and himself is prima facie deemed to be an unauthorized act because it is affected by the limitations inherent in the doctrine of the agency of a partner. I read this statement of law from Lindley as expression of the view that a third party who in respect of a private debt of a partner accepts from him any paper of his firm with knowledge that the partner himself is negotiating the same takes it at his own peril and will not be able to hold the firm liable unless he rebuts the prima facie inference or presumption that the proceeding was irregular and unauthorized. The cases cited in the footnote need not be analyzed here. In my opinion they support the proposition if the same, is to be read in its proper context. Divorced of its context the passage may convey the impression of a statement of too broad a proposition but the statement is made in a section dealing with unauthorized acts which are known so to be. Indeed the last sentence leaves little scope for any doubt or uncertainty on this point. The whole passage in my view leads conveniently to the operation and effect of a principle which I venture to think must be assented to as being just.

14. It was urged on behalf of the Plaintiffs that in any event it was established that Jamnadas had full power to borrow money and draw cheques on behalf of the Defendants and that Jamnadas and Co., a firm of which Jamnadas was the sole proprietor was a constituent of the Defendant firm. It was argued that it followed from these facts that the authority of Jamnadas extended to drawing of cheques on behalf of the Defendants in favor of himself and since Laxmichand knew that Jamnadas and Co. was a constituent of the Defendant firm it was not incumbent on him to make any further inquiry into the matter.

It was further said that this would be the position even if Laxmichand's evidence about the representations made to him by Jamnadas is not to tie believed. It was stated that Laxmichand acted *bona fide* and parted with consideration when he accepted from Jamnadas this cheque as security for the loan advanced by him and must be regarded as a holder in due course. It was also stated that if any presumption had to be drawn against the Plaintiffs in the matter of this cheque which made it necessary for the plaintiffs to show that they did not have sufficient cause to believe that no defect existed in the title of Jamnadas, and that presumption had been amply rebutted. Now, as I have already observed, I do not accept the evidence of Laxmichand about the representations said to have made to him by Jamnadas. The only fact on which the Plaintiffs can rely is that Laxmichand had knowledge of the fact that some pictures of Jamnadas were 'being distributed by the Defendants on commission basis. I need not refer again to what I have already said, Laxmichand as I have pointed out was put on further inquiry in the matter of this cheque and as emerges from his own evidence he could very easily have made an inquiry of the Defendants firm or of the other partners of Jamnadas whom he knew and whom he could readily have contacted. He neglected to do so. and even if he is to be wholly believed he relied only on

the word of Jamnadas. He should have known that until accounts of a partnership business are finally made up no partner can be said to be a creditor of the firm or the other partners and even if there are separate business dealings between a partner and his firm the partner may have already been paid or even otherwise may not in fact have become entitled to receive any amount from the firm. But this is not all. As was rightly pointed out by Mr. B.J. Kapadia learned counsel for the Defendants, there had been no monetary dealings between the defendants and the Plaintiffs prior to 13-6-1949 when the first cheque for Rs. 10,000/- was given to the Plaintiffs by Jamnadas on behalf of the Defendants. The cheque was twice dishonored on 20th and 22nd June and a sum of only Rs. 5000/- was repaid on 12th July. Laxmichand knew all the partners in the Defendant firm, and knew that Abbasbhai was a substantial party. Then again when he gave the loan of Rs. 34,000/- to Jamnadas the latter owned about Rs. 75,000/- to the Plaintiffs. No doubt the loan was fully secured but there had been defaults by Jamnadas in making payments to the Plaintiffs under those mortgages. It was contended that all these facts coupled with the fact that the cheque was drawn on behalf of the firm by Jamnadas in his own favor should have immediately put Laxmichand on inquiry when Jamnadas offered to endorse the cheque in favor of the Plaintiffs as security for the loan of Rs. 34,000-0-0. Instead of making any inquiry and being diligent in the matter Laxmichand, even if his evidence be accepted on this point, chose to rely on the representations made by Jamnadas. It was also urged that the evidence led on behalf of the Defendants clearly established that in no sense was Jamnadas on 5-8-1949 entitled to receive any moneys from the Defendants but was; on the contrary indebted to the firm and that the Plaintiffs could not, therefore, claim to be regarded as holders in due course of the cheque and claim any rights higher than those of Jamnadas. There is in my judgment considerable force in this contention of the Defendants who are virtually represented by the other partners of Jamnadas who also claim to be innocent parties and are shown to have had no knowledge of the transaction between the Plaintiffs and Jamnadas. The other circumstances relied on by the Defendants are of course by themselves of no particular importance but coupled with the principal fact of knowledge that the cheque was drawn by a partner in his own favor and then endorsed in favor of the Plaintiffs, were collectively sufficient to put the Plaintiffs on further independent inquiry into the matter.

15. There is yet another aspect of the matter which cannot be overlooked. The cheque was endorsed in favor of the plaintiffs on 5-8-1949. It was a post-dated cheque as of 29-8-1949. Mr. Banaji argued that the post-dated cheque is not by itself so irregular as to preclude the *bona fide* purchaser of the instrument from being a holder in due course and relied on a decision of a Court of Appeal in England in the *Royal Bank of Scotland v. Tottenham*[1], The proposition is unassailable. So also is the proposition that if a partner has implied authority to borrow money, he can speaking generally, do so by discounting a postdated cheque of the firm. Nevertheless the offer of the post-dated cheque in circumstances similar to those that were present in this case was in my judgment an additional factor that should have made the plaintiffs more diligent in the matter of making some further and independent inquiries about this cheque. This they admittedly neglected to do.

16. In substance and in effect Jamnadas was in the matter of this transaction acting both as principal debtor as well as guarantor claiming to be the holder of the cheque by virtue of his purported agency. If the whole position be viewed in this manner the conclusion must result that it would in such a case become incumbent on the creditor to make reasonable independent inquiry into the credentials of the partners who professes to have acted as the agent of the firm and he cannot bind the firm by merely showing that he relief on some representations of that partner which, representations if not wholly suspect would at least be interested. That the partner who has made and endorsed-the instrument is also a constituent of the firm does not in the present contest relieve the recipient of the instrument of his duty to satisfy himself about the title of that partner to make or hold the instrument. His duty demands much more vigilance of him than blind reliance on the word of an interested party who virtually fills the position both of the debtor and guarantor. But, as I have already observed I am not at all satisfied that Jamnadas had in fact made any representations to Laxmichand when the cheque was endorsed in favor of the Plaintiffs. It seems tome that the Plaintiffs were content without making, any inquiry into the matter to accept the cheque from Jamnadas as security for the personal loan of Rs. 34,000/- in the erroneous belief that Jamnadas had in law the authority to draw the cheque in his own favor and that since the cheque was being endorsed in their favor by Jamnadas and Co., they would become entitled to sue the drawers of the cheque claiming to be the holders in due-course of the same.

17. For all these reasons I conclude that the Plaintiffs' claim for Rs. 34,000/- against the defendant firm must fail.

18. My answers to the issues are :

> Issues Nos. 1 to 4 were conceded by the Defendants and will be answered in the affirmative.
> Issue No. 5 in the affirmative.
> Issue Nos. 6 and 7 in the negative.
> Issue No. 8 : Defendants are liable to pay to the Plaintiffs Rs. 5,000/- with interest thereon at 6 p.c. from 19-6-1949 till judgment. There will therefore, be a decree for the Plaintiffs against the defendants for Rs. 5000/- with interest thereon at 6 per cent, per annum from 19-6-1949 till Judgment.

19. Mr. Laud states that no order for costs should be made in favor of the Defendants or Plaintiffs. In my opinion the submission is reasonable. Mr. Banaji is content with the suggestion made by Mr. Laud. There will, therefore, be no order for costs and each party will bear its own costs.

20. Interest on judgment will be at 4 per cent.
Order accordingly.