

RECENT LEGAL DECISIONS.

BANKER—DRAFT BY BRANCH UPON ANOTHER BRANCH OF THE SAME BANK.—A mercantile firm in Madras obtained a draft from the branch of the National Bank of India, in that city, for three hundred and ninety-one pounds, upon the head office of the Bank in London. The Indian firm sent the draft to an English firm, in payment for goods supplied. The draft was stolen and the English firm's endorsement was forged, and in this condition it was presented to the Bank in London, and paid. The merchants then sued the bank for the amount of the draft, and in this action it was admitted that payment had been made in good faith and in the ordinary course of the Bank's business.

In his judgment, Mr. Justice Bigham, of the English Court, said: The draft was drawn by the Madras branch of the Bank upon their head office in London. It was in the form of a first and second of exchange, both of which were posted to the plaintiffs. The first of exchange was stolen in the post, the plaintiff's signature forged to it, and in this form it was presented at the Bank's head office where it was paid in good faith in the ordinary course of business. The plaintiffs duly received the second of exchange and presented it at the head office, where payment was refused. It was admitted that there was no defence at common law, but two statutory defences were set up, the first under the Stamp Act of 1853. The effect of section 19 of this Act was to protect bankers who paid any "draft or order" under such circumstances as those in this case;

but the plaintiffs said that the instrument in this case was not a draft or order within the meaning of the section, because it was drawn by one branch of a Bank upon another. In ordinary commercial language this was a draft or order to pay money; indeed the plaintiffs in their statement of their claim had so described it; and a statute ought to be construed with reference to the common untransacting business in another. Section 5 (2) pointed to this were so, that the section would apply to protect the Bank in the present case. The second statutory defence was under a section of the Bills of Exchange Act of 1883. The old Act of 1853 had used the words "draft or order," while the present Act of 1883 had the word bill. He was not sure that even in this Act, a "bill" might not be drawn by a person transacting business in one place, upon himself transacting business in another. Section 5 (2) pointed to such an instrument being a "bill." His own opinion was that this instrument might be treated as a bill, or, if not as a bill, as a promissory note, and that it would therefore come within the protection of section 60. In his view, bankers ought to be protected in the payment of such instruments as these, and, apart from authority, he should be in favour of deciding that both statutory defences were good; but the question had been determined by the Court of Appeal in the case of Gordon vs. London City and Midland Bank, where it was held that drafts in this form are not bills of exchange, and he thought therefore, that this decision must be taken as applying to all the defences raised. He was therefore constrained to give judgment against the Bank. (Brown, Brough and Co'y v. National Bank of India, 18 Times Law Reports 669).

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