

Eng. Rep.]

POLLARD V. THE GOV. AND CO. OF BANK OF ENGLAND.

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the hands of an assignee, maintaining the conclusions of the said petition, it is considered and adjudged that the said attachment, and all the proceedings thereunder, be, and the same are hereby set aside and quashed, and further the *demande* of the plaintiff is hereby dismissed. The whole with costs against the plaintiff," &c.

*Judgment of Superior Court reversed.*

## ENGLISH REPORTS.

### POLLARD V. THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND.

*Bill of exchange—Custom of bankers—Payment by agent under mistake of facts—Clearing-house system.*

A bill of exchange payable at L's bank at N. was presented by the agent of the branch Bank of E. at the former bank for payment, the latter bank having discounted the same for P. The bill was presented for payment in the morning, and instead of cash being given for the same, it was marked with the initials of L's bank, signifying, according to the usual custom of bankers, that the same would be honoured, and a "credit note" was given to the branch Bank of E. for the same, to be honoured in exchange after the termination of business at four o'clock on the same day, and at the usual daily settlement among the bankers at N. Before four o'clock, however, L's bank discovered that the acceptor had stopped payment, and thereupon immediately applied to the agent of the Bank of E. to cancel the credit note given by L's bank in the morning. This, however, was refused; but the Bank of E. debited their customer P. with the amount of the bill as unpaid; and, in an action against them by P. for the amount, they (the Bank of E.) being indemnified by L's bank.

*Held*, that on the presentation of the bill for payment, the initialing the same and giving a credit note amounted to more than a mere provisional arrangement made for convenience sake between the bankers, and subject to a subsequent revocation by the parties; that such a recognition of the bill of exchange was in the nature of payment; and that, therefore, the Bank of E. having received payment of the bill, were not entitled to debit the amount thereof against their customer; and that P., therefore, was entitled to recover.

[19 W. R. 1168, Q. B.]

This was a question submitted by special case without pleadings for the decision of the court, and the point in dispute was whether the plaintiffs, Pollard & Co., were entitled to have credit in their account with their bankers, the defendants, at their branch at Newcastle-upon-Tyne, for the amount of two separate bills of exchange for £219 15s. and £276 1s. 10d. respectively, drawn by the plaintiffs upon and accepted by Messrs. John Hopper & Son, millers, of Gateshead, and payable at the bank of Messrs. Lambton & Co., Newcastle-upon-Tyne, and which bills were indorsed by the plaintiffs to, and discounted by, their bankers, the defendants.

The material statements in the special case are fully set out, and the respective arguments for the plaintiffs and the defendants are sufficiently indicated and enlarged upon, in the elaborate judgment of the court set out *in extenso infra*.

Quain, Q. C. (Levers with him) for the plaintiffs, cited *Chambers v. Miller*, 11 W. R. 236, 13 C. B. N. S. 125; *Warwick v. Rogers*, 5 M. & G. 340; *Thompson v. Gills*, 2 B. & C. 452; and *Gillard v. Wise*, 5 B. & C. 134.

W. Williams, for the defendant, cited *Aiken v. Short*, 4 W. R. 645, 1 H. & N. 210; *Chambers v. Miller* (*ubi sup.*); and *Warwick v. Rogers* (*ubi sup.*).

July 6.—The judgment of the court\* was delivered by

BLACKBURN, J.—In this case the plaintiffs were drawers of a bill of exchange, accepted payable at Lambton & Co., bankers, Newcastle the bill had been discounted by the Newcastle branch of the Bank of England, and the question raised is whether the Bank of England are entitled to debit the plaintiffs with the amount as being a dishonoured bill; and upon that again depends the further question, whether what took place at Newcastle amounted to payment of the bill by Lambton & Co. to the defendants, or was merely an expression of an intention to pay the bill, revocable and revoked. Bankers in London, for the sake of economy of cash payments, have established a clearing-house, the details of the practice of which (so far at least as was material to the point then in question) are stated in the special verdict in *Warwick v. Rogers* (*ubi sup.*). The number of bankers and the quantity of business in Newcastle are far less than in London, and apparently are not sufficient to make it worth while to have such an elaborate arrangement, but many of the objects of the clearing-house are effected by an arrangement (described in the special case) by which all the Newcastle bankers have accounts at the branch Bank of England there, and use it as the means of making all payments between each other.

The case is not very lucidly stated, and there was some controversy between the counsel at the bar as to what it really meant.

It is stated in paragraph 6 that the bankers send all cheques of which they are holders, drawn upon other bankers, to the Bank of England for collection; and the statement in the case then proceeds thus: "These cheques are presented by the said branch Bank of England about two o'clock upon the drawee, the total amount ascertained, and a cheque upon the branch Bank of England given by the drawees for the amount, which is then placed to the debit of their account with the Bank of England."

We infer, though it is not stated, that cheques which the Bank of England hold in their own right are treated in the same way; and also, from what is afterwards stated, that bills initialed in the manner stated afterwards, and the credit notes on the exchange account afterwards mentioned are treated in the same way, and that the "total amount that is ascertained" includes the cheques on that banker (designated in the case as the drawee) which the Bank of England holds as collector for the other bankers, the cheques on him which it holds in its own right, the bills initialed by them, and the credit notes given by him, and that the cheque on the Bank of England which is then given is for the aggregate amount of these four sums, and not merely for the amount of the cheques given to the Bank of England by other bankers for collection; but this, though a material part of the case, is not clearly expressed, and was controverted.

The case then proceeds, in paragraph 7, to state, as follows: "Any one of the bankers, not being the Bank of England, who has a bill made

\* Cockburn, C.J., Blackburn, Mellor and Lush, JJ