RECENT ENGLISH DECISIONS.

High Court of Justice, Queen's Bench Division.

LONDON AND COUNTY BANK v. GROOME.

The rule of law applicable to overdue bills and notes does not apply to checks, and therefore the mere fact that the holder receives a check eight days after date does not render his title subject to any equities or matter attaching to the check which might amount to a defence as between the drawer and payee.

It is a question for the jury whether the check was taken under circumstances which ought to have excited suspicion, and the fact that it was eight days overdue is evidence in deciding the question.

Down v. *Halling*, 4 B. & C. 330, explained.

FURTHER consideration.

This was an action to recover 98*l*., the amount due upon a check drawn by the defendant in favor of one Moss, or bearer, and handed by him to one George Colls, who handed it, eight days after date, to his bankers, the plaintiffs, for value.

The check being dishonored, the action was brought before FIELD, J., and a special jury. A verdict for the full amount was entered for the plaintiffs, and the learned judge reserved the case for further consideration upon the question whether the plaintiffs having taken the check eight days overdue took it at their peril with all the equities attaching to it as between the defendant and Colls. The facts are sufficiently set out in the judgment.

Matthews, Q. C. (*J. Paget* with him), for the plaintiffs.

Rose Innes, for the defendant.

The opinion of the court was delivered by

FIELD, J.—This is an action brought to recover 98*l*., the amount of a check of which the plaintiffs were bearers. It was dated the 21st of August 1880, and it directed the National Bank to pay that sum to A. Moss or bearer; and the statement of claim alleged presentation for payment, non-payment, and due notice of dishonor. The defendant by his statement of defence denied notice of dishonor, and alleged that the defendant, on the 20th of August, handed the check to George Colls under such circumstances as, if proved, and if the latter had been the plaintiffs, might have furnished a good answer to his claim. The statement of defence further alleged that Colls, in fraud, delivered the check to the plaintiffs, who had notice

of the premises. As a separate defence, the defendant further alleged the same circumstances, and that the plaintiffs were the agents of Colls, and had given no consideration, and held the same subject to the equities existing between Colls and the defendant. As a further defence, the defendant said that the check was presented for payment by Colls, and dishonored, and the plaintiffs, at the expiration of eight days, took the same with notice and subject to the equities. At the trial, the paintiffs proved that Colls was a customer, having an account at one of their branches, and that he had on the 29th of August (eight days after the date) paid in the check to the credit of his account, and that they had given him consideration for the same. The defendant cross-examined the plaintiffs' witnesses, but did not elicit from them any circumstances tending to show any notice or absence of *bona fides* on the plaintiffs' part, or anything which tended to show that the payment of the check by Colls into his account was made under any circumstances which ought to have excited the suspicion of the plaintiffs, as reasonable men of business, that the check was at all tainted with fraud, except the circumstance that the delivery to them was made eight days after the date of the check.

The plaintiffs' counsel contented himself with proving a *prima facie* case; and at the close of it Mr. *Talfourd Salter* said that he had not affirmative evidence to prove any notice to the plaintiffs, and did not wish to address the jury on the question as to the consideration given by the plaintiffs, or the presentation by Colls alleged in the 5th paragraph; but he submitted that, inasmuch as the 5th paragraph alleged that the plaintiffs had taken the check eight days after its date, I was bound to rule that this circumstance alone was sufficient to entitle him to the benefit of the well-established rule of law as applicable to overdue bills of exchange and promissory notes, that those who take them take them at their peril, and stand in no better position than those from whom they take them as to any equities between the latter and the acceptor, or maker, attaching to the instrument; and for his authority on this point he cited the case of *Down* v. *Halling*. Mr. *Matthews*, for the plaintiffs, denied the existence of any such rule of law, and relied upon the case of *Rothschild* v. *Corney*. I, for the purposes of the day, ruled against Mr. *Salter*, and directed a verdict for the plaintiffs, reserving, however, for further consideration the question whether the mere circumstance that the plaintiffs took the check eight days

after its date was enough by itself, as a matter of law, to place the plaintiffs in the position of takers at their peril, so as to entitle the defendant to treat them as if they were in the position of Colls, and liable to have their title to sue defeated by any matter attaching to the check which would have amounted to an answer against Colls.

The case was afterwards argued before me on further consideration, when all the authorities on both sides were ably and fully brought before me, and having considered them, I see no reason to alter the view which I took at the trial. That the holder of an overdue bill or note, payable at a fixed date of course appearing upon it, is in the position suggested, is established beyond all doubt, and the reason of the rule is that, inasmuch as these instruments are usually current during the period before they become payable, and their negotiation after that period is out of the usual and ordinary course of dealing, that circumstance is sufficient of itself to excite so much suspicion that, as a rule of law, the endorsee must take it on the credit of, and can stand in no better position than, the endorser: *Brown* v. *Davies*. But with regard to checks, no such rule has been laid down, the case of *Down* v. *Halling*, as I shall show presently, not amounting, I think, to any such decision, and there is one case in which that proposition has been denied or doubted.

In *Rothschild* v. *Corney*, the action was brought by the maker of the check to recover the amount from the defendants. The check was dated the 19th of January. It had been obtained from the plaintiffs by the fraud of Brady; and Brady, on the 24th (five days after date), handed it to the defendants, who cashed it *bona fide*, and afterwards presented it and received the amount from the plaintiffs' bank. At the trial the learned judge directed the jury that if they thought the circumstances of the case were such as ought to have excited the suspicion of a prudent man, and that the defendants had not acted with reasonable caution, they should find a verdict for the plaintiffs, otherwise for the defendants. A rule was then obtained for a new trial, on the ground that the judge ought to have directed the jury that the checks were overdue, and so the defendants took them at their peril, and could have no better title than Brady; but after argument, in which *Down* v. *Halling* was cited, the rule was discharged, Lord Chief Justice TENTERDEN saying that it could not be laid down as a matter of law that a party taking a check after any fixed time from its date must do so at his

peril. Mr. Justice LITTLEDALE observed that, although the rule of law was so as to bills of exchange and promissory notes, it could not be applied to checks.

In *Serrell* v. *Derbyshire Railway Company*, the check was dated the 13th of August, and was not presented until the 6th of October, and the case of *Down* v. *Halling* was cited by Mr. Justice CRESSWELL for the proposition of Mr. Justice HOLROYD in it that the defendants having taken the check more than five days after date took it at their peril, and Mr. Serjeant *Byles*, *arguendo*, said that *Down* v. *Halling* was not consistent with *Rothschild* v. *Corney*. Mr. Justice MAULE held that no such strict law existed that a check must, as against the maker under such circumstances, be presented promptly, but that when a reasonable time had passed a check stands on the same footing as a bill of exchange, and holding the check in that particular case might probably be considered in the nature of an overdue bill, and fraud being shown in its inception, the *onus* was thrown upon the plaintiff of showing how he got it. Of course, even with regard to checks, there is no doubt that in the ordinary course of business they are intended almost as cash for early, if not prompt, payment; and it is well-known law that, as between the maker and payee, although there is no absolute duty to present a check promptly, that duty so much exists that exact rules have been laid down beyond what period the payee may not delay presentation if he wishes to avoid the consequences of any damage caused to the maker by the insolvency of the drawee, or other injuries falling upon his shoulders. Having regard to this duty, I have come to the conclusion that, looking to the peculiar circumstances of *Down* v. *Halling*, and the mode in which the matter was there treated, there is no such conflict between that case and the case of *Rothschild* v. *Corney*, as has been supposed.

In *Down* v. *Halling*, the plaintiff sought to recover the amount of a check for 50*l*., dated the 16th of November 1824; he did not show how that check got out of his hands, but on the evening of the 22d a woman unknown to the defendant bought at his shop goods worth 5*l*., and tendered the check in payment, he paying her the difference; he presented the check on the following day and received the amount. No evidence having been given by the plaintiff accounting for its having got out of his hands, the defendant claimed a nonsuit on that ground; but Lord TENTERDEN told the jury to find for the plaintiff if they thought that the defendant

had taken the check under circumstances which ought to have excited the suspicion of a reasonable man; and further (on the authority of *Gill* v. *Cubitt*, 3 B. & C. 466, which has since been overruled) asked whether the defendant, although not acting fraudulently, had acted negligently in taking the check; and upon those directions the jury found a verdict for the plaintiff; and upon a rule having been moved for a new trial on the ground of misdirection, the court supported the direction as to negligence, upon the authority of *Gill* v. *Cubitt;* and as to the rule, Mr. Justice BAYLEY is reported to have said, generally, that if a check is taken after it is due, the party taking it can have no better title than the person from whom he took it; and it is in this passage that he is supposed to lay that proposition down as a rule of law. It must be remembered, however, that Lord TENTERDEN was also a party to the decision in *Rothschild* v. *Corney*, and could not have intended to hold in that case contrarily to the so recent decision of *Down* v. *Halling*; and if the language of Mr. Justice HOLROYD is looked at when he says that five days ought to have excited the defendant's suspicion, and that in the earlier case a reasonable time had elapsed, I think the true result of that case is that the court decided it rather upon its own peculiar facts than as intending to lay down any strict rule of law.

In *Serrell* v. *Derbyshire Railway Company*, Mr. Justice MAULE says perhaps the two cases may be reconciled; and, if my view of the character of the decision in *Down* v. *Halling* is right, I have been able to come to the same conclusion:

I should, therefore, under ordinary circumstances, have contented myself with giving judgment for the plaintiffs; but I think, assuming this to be the true view of *Down* v. *Halling*, it follows, from that case, as well as from the other cases, that the true question for the jury being whether the check in the present case was taken by the plaintiffs under such circumstances as ought to have excited their suspicion, and the lapse of eight days being a circumstance undoubtedly, though not conclusive, to be taken into consideration by them in considering that question, I ought to have left that question to the jury. I should, indeed, have done so if I had thought that Mr. *Talfourd Salter* had wished it. From what passed, however, at the argument, I think there may have been some misunderstanding on my part in the matter. It is undoubtedly true that that question was not left to the jury; and the defend-