

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Bank of Africa, Limited, v. the Colonial Government, from the Supreme Court of the Cape of Good Hope; delivered 7th February 1888.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

This is an appeal from a judgement of the Supreme Court of the Colony of the Cape of Good Hope, on a special case in an action between the Colonial Government and the Bank of Africa (Limited). The case stated that the Bank of Africa is a joint stock bank carrying on business in the Colony as bankers, and issuing bank notes; that the bank has its head office at Port Elizabeth, and has several branch offices, viz., at Cape Town, Kimberley, Aliwal North, Cradock, East London, Graham's Town, King William's Town, Queen's Town, and Beaufort West; of these offices only the head office at Port Elizabeth and the offices at Cape Town and Kimberley issue or have at any time issued their own notes, Kimberley having ceased to issue its own notes since the 30th of June 1886. Since the month of June 1880 the head office and the Cape Town and Kimberley branches have each

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made separate returns of their note circulation for the purposes of the Colonial Act, No. 6 of 1864; in making such returns the head office and the two branches have treated all notes of the bank in the possession of any of its offices upon the last day of any given month as not being in circulation or outstanding on that day, and have excluded all such notes from the returns: that on comparing the amounts published by each branch bank under the provisions of Act 19 of 1865 of the notes of such bank in circulation on any particular day with the returns made by such branch bank under the provisions of Act 6 of 1864 to the Treasury, it is found that the amounts do not agree, and that the amounts of the notes in circulation according to the statements made under Act 19 of 1865 are considerably in excess of the amounts of the notes in circulation according to the returns made under Act 6 of 1864; that the Kimberley branch has been in the habit of re-issuing to the public notes of the said bank other than notes originally issued by itself. That the Plaintiff contended that each of the three offices issuing notes—the head office, the Cape Town office, and the Kimberley office—should have included in its returns,—(a) all notes issued by it and in possession of either of the other two of the said three offices, (b) all notes issued by it and in the possession of any other office of the bank in the Colony upon the last day of each month for which any such return was made, and that duty should have been paid upon all such notes accordingly, in terms of the Act 6 of 1864; that the Defendant disputed this contention, and said that all the returns had been duly made in manner provided by the Act; that it was agreed between the parties that if the Court should by its judgement declare the contention of the Plaintiff to be correct, wholly or in part,

the Defendant should amend all of the returns which had been made by the bank since the 1st of January 1882 in accordance with such judgement, and should pay to the Plaintiff such additional duty under the Act as might upon the amended returns appear to be payable in excess of the duty already paid, with the costs of the suit; and that if the Defendant's contention should be declared to be correct, judgement should be recorded to that effect, and the Plaintiff should pay the costs of the suit.

On the 17th of December 1886 the Supreme Court granted judgement in terms of the Plaintiff's contention, with costs.

The Act 6 of 1864 of the Legislature of the Cape of Good Hope recites that the privilege enjoyed by the joint stock banks of the Colony of issuing bank notes is one in regard to which a duty regulated by the average amount of such notes kept in circulation by each bank may justly be imposed, and the material sections upon the matter in contention are the 1st, 2nd, 3rd, and 9th. The 4th section imposes a duty of 1*l.* 10*s.* per cent. upon the average issues of each year ending on the 31st of December, such average issues to be ascertained by adding together the amounts set forth in the several monthly returns for the year and then dividing the result by twelve.

Sections 1, 2, 3, and 9 are as follows:—

“I. Every joint stock bank trading as bankers in this Colony and issuing bank notes shall be bound and obliged to transmit to the Treasurer General of this Colony monthly returns of the amount of bank notes in circulation by such bank: Provided that for the purposes of this Act the term ‘bank notes’ shall not include bank post bills.

“II. The first return to be made by every such bank under this Act shall state the amount of the bank notes of such bank outstanding on

the last day of September 1864, and every succeeding return shall state the amount of such notes outstanding on the last day of each succeeding month.

“III. Every such return shall in attestation of its correctness be signed by not less than two directors, and also by the cashier of the bank or person acting as such cashier, and shall be in substance as follows :—

“ Bank.

“ We, the undersigned, do hereby certify that the bank notes of this bank outstanding on the 186 amounted to £ .”

Then follows a form of certificate for notes described in the 10th section, about which there is now no question.

A bank note in circulation ordinarily means a note which is passing from hand to hand as a negotiable instrument representing a certain value. When it is returned to the bank from which it was issued it ceases to circulate. There is no longer any person entitled to require payment from the bank. It may be cancelled or re-issued at the option of the bank. The word “outstanding” used in the 2nd section is still more significant than “in circulation,” and points to an engagement or liability of the bank. In principle the bank and its branches are one bank. The qualifications of this rule are stated in *Prince v. The Oriental Bank*, 3, App. Cases, 325, and do not apply to this case. When a bank note is received at a branch office the effect is the same as if it were received at the head office. The argument for the Defendants was mainly founded on the assumption that the branches were intended by the Act to be treated as independent banks. But it does not appear to their Lordships that they are so treated. In the reasons give by the Chief Justice, the judgement of the Supreme Court is founded upon the notes

having been represented under the Act 19 of 1865 as being in circulation, and on Section 9 of Act 6 of 1864. Act 19 of 1865 was passed for a different purpose, and cannot, in their Lordships' opinion, be used to show what is the meaning of the Act of 1864.

Section 9 of that Act is as follows:—"As often as any joint stock company carrying on business as bankers in this Colony, whether their chief seat of business shall be in this Colony or elsewhere, shall have in this Colony a head office and one or more branch banks also in this Colony, the monthly returns mentioned in the first section of this Act shall be made as follows:—

- "1. If the branch bank shall issue its own notes, namely, notes purporting to be issued by or at the place of business of such branch bank, then the returns aforesaid shall be made by such branch bank direct, precisely as if such bank were an independent and unconnected bank and not a branch.
- "2. No such last-mentioned branch bank shall, in calculating its bank notes outstanding, be at liberty to deduct from its circulation any bank notes of its head office or of any other branch of the same which such branch bank may happen to have on hand.
- "3. In like manner, no head office of any bank having one or more branches shall, in calculating its bank notes outstanding, be at liberty to deduct from its circulation any notes of any of its branches which notes such head office may happen to have on hand.
- "4. Should there be at any time in this Colony a bank having a head office and one or more branch banks, which branch bank or banks shall not issue any such notes as

are in the first subdivision of this section described, then the returns aforesaid shall not be made by or from the branch bank or banks, but by or from the head office, and shall include the whole outstanding circulation of the said bank, including all its branches."

The beginning of the section shows that it is intended by it to direct how the monthly returns mentioned in the first section are to be made, and the effect of it is that the head office, and each branch that issues its own notes, is to make a return showing the state of its own issue. The head office would issue notes through the agency of the branches, and would make the return of the notes thus in circulation. Their Lordships cannot agree with the Chief Justice of the Supreme Court, that the object of the fourth sub-section was to enlarge the basis of the returns. They are of opinion that the Defendant's contention ought to have been declared to be correct and judgement recorded for the Bank of Africa, and that the Plaintiff should pay the costs of the suit. They will so humbly advise Her Majesty, and that the judgement of the Supreme Court be reversed.

The Respondent will pay the costs of this appeal.

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