

The document discusses bills of exchange and promissory notes under UK law. It references a case that established bills of exchange must be treated as cash, and a Lord Denning judgment that also supported this position. It further discusses the concepts of accord and satisfaction under UK law.

(‘The principle is that a bill, cheque or note is given and taken in payment as so much cash, and not as merely given a right of action for the creditor to litigate a counterclaim’ (see *Jackson v Murphy* [1887] 4

T.L.R. 92

Warwick v Nairn (1855) 10 Exch 762 where Pollock CB remarked:

‘The payment by a bill of exchange is to be taken as the payment of so much cash’

....stated in *James Lamont & Co. Ltd. v. Hyland Ltd* [1950] KB 585, at 591, as follows:-

“In such cases, although it is not easy wholly to reconcile the authorities, a rule more favourable to

the plaintiff has in general prevailed, the court treating the execution of a bill of exchange either as

analogous to a payment of cash, or amounting to an independent contract within the wider contract

in pursuance of which it was executed and not dependent as regards its enforcement on due

performance of the latter.”

....The decision was affirmed by Denning M.R in *Brown Shipley & Co. Ltd. v. Alicia Hosier, Ltd.*

[1966] 1 Lloyd's Rep. 668, at 669 when he ruled:

For many years the courts in this country have treated bills of exchange as cash. In *James Lamont &*

Co. Ltd. v. Hyland Ltd [1950] KB 585, this court declared that where there is an action between the

immediate parties to a bill of exchange, then in the ordinary way judgment should be given upon that

bill of exchange as for cash and it is not to be held up by virtue of some counterclaim which the

defendant may assert, even, as in that case, a counterclaim relating to the specific subject-matter of

the contract. Here the counterclaim is in relation to a different contract altogether from that which

initiated the bill of exchange.”

Sibora SNC v SIP (Industrial Products) Ltd (Opcit per Sachs L J at 278-279) concerning the need for

certainty in the Law Merchant:

‘Any erosion of the certainties of the Application by our Courts of the Law Merchant relating to bills of

exchange is likely to work to the detriment of this country, which depends on International Trade to a

degree that needs no emphasis. For some generations one of those certainties has been that the bona fide holder for value of a bill of exchange is entitled, save in truly exceptional circumstances, on its maturity to have treated as cash, so that in an action upon it the Court will refuse to regard either as a Defense or as grounds for a stay of execution any set-off, legal or equitable, or any counter claim, whether arising on the particular transaction upon which the bills of exchange came into existence, or, a fortiori, arising in any other way. This rule of practice is thus, in effect, pay upon on the bill of exchange first and pursue claims later.'

'Without the drawer's signature an instrument in all other respects complete as a bill, and signed even by the acceptor, is not a bill of exchange,' *Stoessiger v. South Eastern Railway Company* - as to inchoate instruments and the power of filling them in, see sect. 20.

And in *Ex parte Matthew* (1884), 12 Q. B. D. 506, C. A., it was held that when a judgment creditor had issued a bankruptcy notice, but afterwards took the debtor's promissory note, he could not, during the currency of the note, obtain a receiving order ; for the note, till dishonoured, must be treated as payment.

If a bill or note be taken by a creditor as conditional payment, and he is guilty of laches in respect of it, the bill or note is then treated as absolute payment, and as between debtor and creditor the debt is discharged.

Thus, if a bill be indorsed on account of a debt and dishonoured, and the holder omits to give notice of dishonour to the indorser, he cannot sue him for the debt any more than on the bill ; and where a creditor took the cheque of his debtor's agent, and was an unreasonable time in presenting it, whereby his debtor's position was altered, it was held, that, as against the debtor, the cheque must be treated as absolute payment.

<http://admiralty.net.au/>

UK

1. The HMRC guidance manual (online) contains the following words 'Where an IOU is involved, you should note the effect of the Bills of Exchange Act 1882/S62 and S89. If the holder of a bill of exchange or of a promissory note either unconditionally renounces their rights in writing, or delivers the instrument to the person liable, this discharges the obligations of the acceptor or promisor, even though no consideration is received. So this is an exception to the rule that

a unilateral discharge of a debt requires some form of consideration.'

2. This not only confirms that promissory notes are accepted by HMRC but also that HMRC observes the Bills of Exchange Act 1882 as law.

a Lord Denning judgment that says a bill of exchange once tendered has to be treated as cash . . .

'The principle is that a bill, cheque or note is given and taken in payment as so much cash, and not as merely given a right of action for the creditor to litigate a counterclaim' (see *Jackson v Murphy* [1887] 4 T.L.R. 92).

"We have repeatedly said in this court that a bill of exchange or a promissory note is to be treated as cash.

It is to be honoured unless there is some good reason to the contrary" (see per Lord Denning M.R. in *Fielding & Platt Ltd v Selim Najjar*

[1969] 1 W.L.R. 357 at 361; [1969] 2 All E.R. 150 at 152, CA)

[1] "bill of exchange" : A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.

[1] "accord and satisfaction" : A contract of compromise where the bargained-for consideration is an actual release of a cause of action.

Butler v Fairclough (1917) 23 CLR 78; [1917] VLR 175

"Accord and satisfaction is the purchase of a release from an obligation whether arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged.

The satisfaction is the consideration which makes the agreement operative" 1. Generally the discharge of a personal obligation of a different

performance, or some other substantive consideration, rather than by strict performance. 2.

The gift of a thing with the intention that it be taken either wholly

or partly in extinguishment of some prior claim of the donee: *Lord Chichester v Coventry*

(1867) LR 2HN 71 at 95. Satisfaction may occur when a covenant to

settle property is followed by a settlement or gift by will in favour of the person entitled

beneficially under the covenant, a testamentary disposition is followed

during the testator's lifetime by a gift or settlement in favour of the devisee or legatee, or a

legacy is given to a creditor. 3. The presumption in some older cases

that an inter vivos payment or settlement discharges an ordinary debt. Butterworth's

Concise Australian Legal Dictionary

satisfaction 1. The discharge by a different performance, or some other substitute consideration, of a personal obligation, instead of strict performance.

Unless the requirements of the Judicature Act 1876 Queensland S5.11, are complied with, payment of a sum of money will not operate as

satisfaction of a larger sum owing; but payment in any other form, for example, even by cheque or bill of exchange, will. The Constitution,

provides that an acknowledgment in writing by a creditor, or by any person authorised by him or her in writing in that behalf, of the receipt of a

part of his or her debt in satisfaction of the whole debt shall operate as a discharge of the debt.

A Bill of Exchange is regarded as and treated as cash (Jackson V Murphy [1887] 4 T.L.R. 92) and

Lord Denning M.R. in Fielding & Platt Ltd V Selin Najjar [1969] 2 All E.R. 150 at 152, CA)

“Accord and satisfaction is the purchase of a release from an obligation whether arising under

contract or tort by means of any valuable consideration, not being the actual performance of the

obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative” (per Scrutton L.J., British

Russian Gazette and Trade Outlook Limited v Associated Newspapers Ltd [1933] 2 KB 616, 643-

644). See H B F Dalgety Ltd v Morton [1987] 1 NZLR 411 [SATISFACTION]

I am not aware of any documentation currently before the Court, where as proven evidence, it verifies that :

(1987) 1 NZLR 9, 14 International Ore & Fertilizer Corporation vs. East Coast Fertiliser Co Ltd. [1] does not say :

Court of Appeal, Wellington, New Zealand. re matters heard on 4, 5, 17 December 1986

presided over by: Cooke P, McMullin and Somers JJ in particular where it states:

on line 40 Held: 1 The fundamental principles of English law governing bills of exchange apply in New Zealand and should be fully recognised by New Zealand Courts in the interests of international trade and New Zealand's participation therein. Those principles are: (a) Even between the immediate parties bills of exchange are to be treated as the equivalent of cash.....

1 Lloyd's Rep 271 applied.

2 New Zealand Courts have no discretion to let in a wider range of defences

to claims on bills of exchange, ...

and . . . I sincerely know of no proven evidence to the contrary, neither has it verifiably been presented by

the Bank ~ real or imaginary, nor its fraudulent agents, assigns and / or nominees.

[1] “(1987) 1 NZLR 9, 14 International Ore & Fertilizer Corporation vs. East Coast Fertiliser Co Ltd.” :

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1 Lloyd's Rep 271 applied.

2 New Zealand Courts have no discretion to let in a wider range of defences to claims on bills of exchange, or to allow a counterclaim

for unliquidated damages to frustrate a plaintiff's right to recover on a bill (see 15 line 42).

Observations of Judge in Court below

disapproved.

Reid Development Co Ltd v Rhodes [1980] 1 NZLR 704 and Finch Motors Ltd v Quin [1980] 2 NZLR 513 approved.

Union Bank of Australia v Williams (1892) 11 NZLR 65 and L D Nathan & Co Ltd v Vista Travel Ltd [1973] 1 NZLR 233 doubted.

3 A defendant will be given leave to defend a bill writ where he shows that he has a fair case, that there is an issue which ought to be tried, or that there are reasonable grounds for setting up a defence or even a fair probability that he has a bona fide defence.

4 If the facts are adequately ascertained and the Court can be confident that the issue turns on pure questions of law or interpretation, the Court should be prepared to determine, on adequate argument, even difficult legal questions arising upon a bill writ (see p 16 line 34).

Begley Industries Ltd v Cramp [1978] 1 NZLR 527 applied.

R Lucas & Son (Nelson Mail) Ltd v O'Brien [1978] 2 NZLR 289, Webster v Auckland Harbour Board [1983] NZLR 646 and Re Alwinco Products Ltd [1985] 1 NZLR 710 considered.

5 Although the point was arguable, the stipulation that InterOre was to provide Lloyd's certificates of cleanliness could well go to the root of the contract. In the absence of such certificates and in the event of serious damage to the cargo caused by uncleanness in the holds, East Coast could have been entitled to reject the cargo. If East Coast had rightly rejected the cargo, the case became one of total failure of consideration within the principle affording a defence to a claim on a bill of exchange (see p 19 line 3).