

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Hedges
v. Alexander, from the Supreme Court of the
Island of Ceylon; delivered March 1st, 1883.*

Present:

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR ARTHUR HOBHOUSE.

THIS was an action brought by Major General William Alexander against George Anthony Morris Hedges, to recover the sum of 1,500*l.* and interest due upon a bond dated the 9th July 1879. The Defendant set up as a defence that, although he had executed the bond, he had not received any consideration for it. Issue was joined, and a question was raised as to the person upon whom the burden of proof rested; but still evidence was given, and their Lordships must deal with the evidence as they find it.

It appears that as far back as February 1879, Messrs. Price, Boustead, and Co., who were, not the sole agents, but agents for the Defendant, and between whom and the Defendant there was a running account, wrote a letter stating that they had "a further sum of 1,500*l.* available for investment on primary mortgage over a good estate, with the usual conditions, and bearing 7 per cent. interest, payable in London. The bond in this case to be drawn in favour of Colonel William Ryrie Alexander." That letter certainly seems to imply that they had got the money in their hands, or, if they had not got the money actually in their hands, that they had

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an arrangement with the Plaintiff which they thought tantamount to having the money in their hands, and as furnishing such a security to them as enabled them to authorise the Plaintiff, who was their agent in Ceylon, to enter into a binding contract to invest that amount. The Defendant says in his evidence, "I found an investment for that money, some time in May. I was willing to take the money myself, on the mortgage of one of my estates. Accordingly, document B"—that is the bond—"was drawn up by my notary, Mr. Loos, in July 1879."

By that bond the Defendant stipulated that he would pay the sum of 1,500*l.* in London, with interest at the rate of 7 per cent., and mortgaged a certain coffee estate as a security for the amount. Afterwards, in his cross-examination, he says, "As it was stated in Price and Boustead's letter that they had General Alexander's money,"—that is, the money and not merely a security for the money,—"I believe they had it." That is evidence that the Defendant was acting under the belief that Price, Boustead, and Co. had got the money of the Plaintiff in their hands for the purpose of investing it, and is sufficient evidence against him *prima facie* that Price, Boustead, and Co. had it. It is not necessary to say that that evidence could not be controverted. It was not controverted, and the Defendant offered no evidence to show that Price, Boustead, and Co. had not got the money in their hands; on the contrary, he successfully opposed an application on behalf of the Plaintiff for a commission to examine the members of that firm. Then he says, "I advised them that I would take the loan myself. I also advised them that I would draw on them for the money."

Accordingly on the 23rd of May 1870 he drew a bill at three months, which would not fall due until August 26th in the same year. It is as

follows: "At three months after sight pay to the order of ourselves the sum of one thousand pounds sterling, and place the same to the debit of Colonel Wm. Ryrie Alexander, per telegram of 8th May 1879." That telegram is not forthcoming; but it must be assumed that it was a telegram which explained the reasons of Defendant for authorising Price, Boustead, and Co. to debit the amount to General Alexander. Price, Boustead, and Co. accepted the bill upon that authority, and bound themselves to pay to the Defendant's order the amount of the bill. After that bill had been accepted the Plaintiff could not have withdrawn from Price, Boustead, and Co. the money which he had placed in their hands for investment.

It could not have been intended that the money was to be advanced by Colonel Alexander to the Defendant by driblets, and that part of the money was to be advanced on the 26th August and part on the 5th October,—yet it appears that the Defendant on the 2nd July 1879 drew another bill upon Price, Boustead, and Co. at three months after sight for 500*l.*, payable to the order of the Defendant, to be debited in like manner to General Alexander, the Plaintiff. That bill would not become due until the 5th of October. It appears to their Lordships that the Defendant, by drawing the bills and authorising Price, Boustead, and Co. to debit the Plaintiff, in effect took the investment on his own account, and authorised Price, Boustead, and Co. to hold the money in their hands on his account.

Afterwards, viz., on the 9th of July, the Defendant signed the bond in which he stated that he was indebted to General Alexander in the sum of 1,500*l.* sterling, for money borrowed and received. The bond was signed, sealed, and delivered, and duly attested by a notary, and it was afterwards duly registered in

the proper public registry office. After this it is impossible for the Defendant to say that the money was not held by Price, Boustead, and Co., as his agents, on his account, and that he did not receive full value for the bond. Their Lordships will therefore humbly advise Her Majesty to affirm the judgment of the Supreme Court, and dismiss this Appeal. The Appellant must pay the costs of this Appeal.