

[HIGH COURT OF AUSTRALIA.]

RUSE . . . . . APPELLANT;  
PLAINTIFF,

AND

THE BANK OF AUSTRALASIA . . . . . RESPONDENT.  
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF  
WESTERN AUSTRALIA.

*Agreement—Money paid under—Advance by bank—Security for overdraft.*

A bank agreed to advance money to a syndicate formed for the purpose of taking over the assets of a company in liquidation and of carrying on its business. Each member of the syndicate was to lodge with the bank security or cash to a certain amount. R., one of the syndicate, did so by lodging title deeds and a cheque the proceeds of which were paid to the bank. The syndicate purchased the assets of the company, but the money agreed to be advanced by the bank was not drawn on. The syndicate, with the consent of the bank, sold their assets to a new company, and the proceeds of the cheque were credited to this company by the bank—the transaction being treated by the company, without objection from R., as a debt between it and him, and on the money interest was regularly paid to him by the company. The company went into liquidation.

*Held*, that R. had no rights in respect of the proceeds of the cheque which he could enforce against the bank.

Decision of the Supreme Court of Western Australia (*McMillan C.J.*) affirmed.

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PERTH,  
Oct. 16.  
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Barton,  
Gavan Duffy  
and Rich JJ.

APPEAL from the Supreme Court of Western Australia.

About 1st March 1912 the Bank of Australasia agreed to advance to one Wilkie, who was acting as agent for a syndicate of which Walter Ruse and several others were the members, the sum of £20,000, by way of overdraft, to enable them to buy the assets of



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Hannan's Brewery Co. Ltd., which was then in liquidation, and to carry on the business of brewers; and it was agreed that each member of the syndicate was to lodge security or cash to a fixed amount in support of the advance. Under this arrangement Ruse was required to deposit £2,500, and on 29th March he did so, by lodging the title deeds of certain property valued at £1,200 and a cheque for £1,300 drawn by his wife on another bank, which was presented, and was paid to the Bank of Australasia. On 21st March the syndicate bought the assets of the company, but the money agreed to be advanced to the syndicate was not drawn on. In April the syndicate, with the consent of the Bank, agreed to form a new company to carry on the brewery, instead of conducting it as a partnership. They sold the assets to the new company, called Hannan's Co-operative Brewery Ltd. The Bank agreed to advance to the new company £20,000, by overdraft, to enable it to pay off certain liabilities and to carry on the business; and a mortgage debenture and bill of sale were executed by such company, and the members of the syndicate gave a joint and several guarantee, to secure repayment of the advance. A further advance was subsequently made on the same terms. No securities or cash were required to be lodged in support of the guarantees. The proceeds of the cheque for £1,300 were placed by the Bank to the credit of the new company. Ruse became aware of this six or seven months afterwards, but he raised no objection. He collected interest on the amount from that company on six or seven occasions. He also signed, as chairman of the company, its balance-sheets, which showed that the £1,300 was treated by the company as money owing by it. The company went into liquidation, and Ruse brought an action against the Bank of Australasia in the Supreme Court (*Burnside J.*) to recover the £1,300. Judgment was entered for the defendant and the plaintiff appealed to the High Court, which ordered a new trial: *Ruse v. Bank of Australasia* (1). The new trial was had before *McMillan C.J.*, and judgment was again entered for the Bank.

The plaintiff now appealed to the High Court from the judgment last mentioned.



*Draper* K.C. (with him *Stone*), for the appellant. The evidence was practically the same on both trials. The defendant called no evidence on either trial.

*Pilkington* K.C. (with him *Boulton*), for the respondent.

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BARTON J. I had not the advantage of being a member of the Bench which heard the first appeal, but I will read a statement prepared by my brother *Rich*, who was one of the majority of the Court which then directed a new trial:—"When the appeal came before this Court last year an order was made that the case be remitted to the Supreme Court for a new trial, with power to the Judge to allow amendment of the pleadings. The ground upon which this order was based was that the majority of the Court considered that, although no such case was pleaded, on the facts the plaintiff might be entitled as guarantor to a refund of the whole or part of the £1,300 claimed, and to enable the plaintiff to make such a case a new trial was ordered and leave to amend the pleadings granted. The plaintiff has amended his pleadings, but has made no case on the basis of the High Court's order."

In these circumstances we are all of opinion that the appeal ought to be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant, *Stone & Burt*.

Solicitor for the respondent, *C. B. Cox*.

N. McT.