[HIGH COURT OF AUSTRALIA.]

SAVINGS BANK OF SOUTH AUSTRALIA . APPELLANT; DEFENDANT,

AND

WALLMAN . . . . . RESPONDENT. PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1935.

MELBOURNE, *March* 4.

SYDNEY, *March* 25.

Rich, Starke, Dixon, Evatt and McTiernan JJ.

Banker and Customer—Crossed cheque—Cheque made out in name of and received by wrong payee—Bank account opened by payee with cheque—Amount of cheque received by bank for customer—Bank acting "in good faith and without negligence in receiving payment for a customer"—Absence of negligence by bank—Bills of Exchange Act 1909-1932 (*No.* 27 *of* 1909—*No.* 61 *of* 1932), *sec.* 88.*

The respondent had occasion to pay on behalf of some executors the sum of £350 to a beneficiary named "Eliza Ann Maria Jenkin" whose address was 49 Alpha Road, Prospect. He drew the cheque in question and enclosed it in a letter addressed to "Mrs. E. M. Jenkins, Prospect." The cheque in question was made payable as follows :—"Pay 253 E. M. Jenkins or order." The letter enclosing the cheque was delivered on the following day to Mrs. Elsie May Jenkins, who lived at 105 Main Road, North Prospect. Mrs. Elsie May Jenkins applied to the bank's branch in Prospect to open an account, and produced the cheque in dispute, saying she wished to pay it in. In reply to the branch manager she said she was the E. M. Jenkins referred to in the cheque, and at his request she obtained a certificate from a person known to the bank certifying to her signature and to his personal knowledge of her. An account

* Sec. 88 of the *Bills of Exchange Act* 1909-1932 provides: "(1) Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received payment."

was opened for her, the cheque for £350 was paid in and was presented at the bank at which it was drawn and was duly paid. Mrs. Jenkins drew out £275 on various dates, and later the respondent notified the bank that the cheque did not belong to the E. M. Jenkins who had paid it in. In an action by the respondent against the bank for the conversion of the cheque, the bank relied upon sec. 88 of the *Bills of Exchange Act* which would protect it on proof that it acted "in good faith and without negligence in receiving payment for a customer." The only question in dispute was whether the bank had acted without negligence in receiving payment of the cheque.

Held, upon the facts of this case, that the bank had acted without negligence and was not liable for the conversion of the cheque.

Decision of the Supreme Court of South Australia (Full Court) reversed.

APPEAL from the Supreme Court of South Australia.

Reginald Horton Wallman brought an action in the Local Court of Adelaide against the Savings Bank of South Australia claiming £350 and interest thereon being the amount of a cheque drawn by the plaintiff on the Commercial Banking Co. of Sydney Ltd. payable to E. M. Jenkins or order and crossed "not negotiable," which the defendant collected from the Commercial Banking Co. of Sydney Ltd., and the proceeds from which the defendant placed to the credit of one Elsie May Jenkins.

The particulars of the plaintiff's claim were, in substance, as follows:—1. The plaintiff carries on and at all material times carried on his profession under the firm name of Ingleby & Wallman at Albion House, Waymouth Street, Adelaide. 2. The defendant is a body corporate by the name and style of the Savings Bank of South Australia under and by virtue of the *Savings Bank Act* 1875 and carrying on the business of a Savings Bank in the said State. 3. At all times material to this action the plaintiff was the owner of and entitled to a certain cheque drawn by the plaintiff in the name of Ingleby & Wallman on 15th May 1933 on the Commercial Banking Co. of Sydney Ltd. for the sum of £350 payable to E. M. Jenkins or order and crossed "not negotiable." 4. At or shortly after 18th May 1933 the defendant collected payment of the said cheque from the Commercial Banking Co. of Sydney Ltd., and placed the proceeds thereof to the credit of one Elsie May Jenkins. 5. The plaintiff has suffered damage by the defendant wrongfully depriving him of the cheque the property of the plaintiff and converting the same to its own use. 6. In the alternative the plaintiff

H. C. OF A. 1935.

SAVINGS BANK OF SOUTH AUSTRALIA v. WALLMAN.

repeats the allegations in pars. 3 and 4 hereof, and claims that the defendant had and received the sum of £350 so collected by the defendant as therein mentioned for the use of the plaintiff.

The plaintiff claims from the defendant the sum of £350 for damages sustained by the plaintiff in respect of the sum of £350 so collected, or for moneys had and received by the defendant for the use of the plaintiff. And the plaintiff also claims from the defendant damages by way of interest on the sum of £350 from 18th May 1933, the date of the receipt thereof, at the rate of £6 10s. per cent per annum until judgment.

The defendant's defence was, in substance, as follows :—

1. The defendant does not admit that the plaintiff was the owner of or entitled to the cheque referred to in the particulars of claim. 2. The plaintiff is estopped from alleging that the plaintiff was the owner of or entitled to the cheque. Particulars of such estoppel are as follows :—(*a*) The plaintiff drew the cheque and crossed the same with the intention that it should be collected by a banker. (*b*) The plaintiff negligently made the cheque payable to " E. M. Jenkins " and sent the cheque through the post to Mrs. E. M. Jenkins, Prospect, in consequence whereof the cheque came into the hands of Mrs. Elsie May Jenkins of Prospect. (*c*) By reason of such negligence of the plaintiff, the defendant, being a banker and collecting the cheque for a customer, was led to believe that the cheque was the property of the customer, namely, Elsie May Jenkins, and the plaintiff should not now be permitted to assert that the plaintiff was the owner of or entitled to the cheque. 3. Elsie May Jenkins was a customer of the bank, and the defendant in good faith and without negligence received payment of the cheque for Elsie May Jenkins.

The stipendiary magistrate who heard the case said that " the transaction of the receipt of this particular cheque was an unusual one in that it was tendered in order to open an account; the words ' pay E. M. Jenkins or order ' and the crossing ' not negotiable ' should in those circumstances have made the defendant bank suspicious that the cheque might be in unauthorized hands, further inquiry should have been made before collecting and crediting the proceeds and the inquiries made were inadequate. I think the

defendant bank was therefore negligent. This amounts to a finding that sec. 88 of the *Bills of Exchange Act* 1909 does not, in the particular circumstances of this case afford a protection to the defendant bank." He accordingly gave judgment for the plaintiff for £350 together with interest thereon from the date of collection, 18th May 1933, to the date of judgment at 4 per cent.

From this decision the defendant appealed to the Full Court of South Australia (*Angas Parsons*, *Napier* and *Piper* JJ.).

The Full Court varied the judgment of the stipendiary magistrate by disallowing the amount awarded for interest, but otherwise affirmed the magistrate's decision and dismissed the appeal.

From this decision the defendant now appealed to the High Court.

Villeneuve Smith K.C. and *Ligertwood* K.C. (with them *Frisby Smith*), for the appellant. The bank is entitled to the protection afforded by sec. 88 of the *Bills of Exchange Act* (*London Bank of Australia Ltd.* v. *Kendall* (1); *Commissioners of The State Savings Bank of Victoria* v. *Permewan Wright & Co.* (2); *Gippsland and Northern Co-operative Co.* v. *English, Scottish and Australian Bank Ltd.* (3)). In considering the question of negligence, the Court should put itself in the shoes of the bank manager at the critical moment. The demeanour of the customer in opening the account was not such as to arouse suspicion in the mind of the bank manager. There was no intermediate step that could have been taken between showing an invincible title and doing what the bank did. The duty imposed upon the bank is satisfied if there is identity of the named payee with the person presenting the cheque (*E. B. Savory & Co.* v. *Lloyds Bank Ltd.* (4); *Commissioners of The State Savings Bank of Victoria* v. *Permewan Wright & Co.* (2)). The banker must take ordinary reasonable care, and that was done in this case.

[DIXON J. referred to *E. B. Savory & Co.* v. *Lloyds Bank Ltd.* (5).]

The circumstance of opening an account with a crossed cheque does no more than put the bank upon inquiry. A person opening an account is a customer (*Paget* on *Banking*, 4th ed. (1930), pp. 8-10;

(1) (1920) 28 C.L.R. 401, at p. 412.
(2) (1914) 19 C.L.R. 457, at p. 483.
(3) (1922) V.L.R. 670.
(4) (1932) 2 K.B. 122, at p. 136.
(5) (1932) 2 K.B., at p. 148.

H. C. OF A. 1935.

SAVINGS BANK OF SOUTH AUSTRALIA v. WALLMAN.

Commissioners of Taxation v. *English, Scottish and Australian Bank* (1); *London Bank of Australia Ltd.* v. *Kendall* (2)). The danger of the holder not being E. M. Jenkins was removed on production of the certificate as to the holder's identity. Upon the production of the certificate, any obligation the bank was under to inquire was satisfied. The bank has not to take care against remote possibilities. If any negligence exists, it is in receiving payment, not in opening the account (*Commissioners of Taxation* v. *English, Scottish and Australian Bank* (3)). The only two cases in the books where a bank has been charged with negligence in opening an account with a crossed cheque are *Ladbroke & Co.* v. *Todd* (4) and *Mason and others* v. *The Savings Bank of South Australia* (5).

Alderman (with him *Brazel*), for the respondent. It was the duty of the branch manager to communicate with the drawer by telephone or otherwise, and so identify the payee. Almost any statement or question the branch manager might have made would have shown that the proposed customer was not the true payee. The principles are well known and were properly applied, and two Courts have decided in favour of the respondent. The bank's regulations require identification of the payee, i.e., not merely of the name but of the fact that he is the payee. The certificate of identity was merely an identification of the signature and was not a voucher of respectability (*E. B. Savory & Co.* v. *Lloyds Bank Ltd.* (6)). The onus is on the bank to prove what is a reasonable standard for bankers to adopt, and that they adopted at least that degree of care. Whenever an account is opened with a crossed cheque it is an occasion for suspicion. Any reasonable inquiry would have disclosed a fraud. Here it would have been quite sufficient to ask the full name. At the critical time E. M. Jenkins was a customer of the bank.

Ligertwood K.C., in reply. In the circumstances of this case, once the bank had evidence that the holder of the cheque bore the

(1) (1920) A.C. 683.
(2) (1920) 28 C.L.R., at p. 412.
(3) (1920) A.C., at pp. 688, 689.
(4) (1914) 19 Com. Cas. 256; 111 L.T. 43.
(5) (1925) S.A.S.R. 198.
(6) (1932) 2 K.B., at p. 138.

same name as the designated payee of the cheque, no reasonable banker would make any further inquiry.

Cur. adv. vult.

The following written judgments were delivered :—

RICH, DIXON, EVATT AND MCTIERNAN JJ. The question for decision is whether the Savings Bank of South Australia, the appellant, is liable for the conversion of a cheque drawn by the respondent and crossed not negotiable. On 17th May 1933 a Mrs. E. M. Jenkins of Prospect applied to the bank's branch in that suburb to open an account. She produced the cheque in dispute and said that she wished to pay it in. The cheque, which was for the sum of £350, was drawn upon a trading bank and made payable as follows: "pay 253 E. M. Jenkins or order." The bank clerk asked whether she had ever had an account with the bank before. She said "No." The branch manager then examined the cheque and asked whether she was the E. M. Jenkins referred to in the cheque. She said "Yes." He told her that before an account could be opened she must be identified by someone who knew her and whom the bank knew. She named an officer of the local district council, and the manager gave her a printed form for him to sign certifying to her signature and to his personal knowledge of her. The officer she named was an inspector whom the manager knew well. He was a customer of the branch where his signature was known. In a short time she returned with a certificate duly signed by him. Her signature to which he had certified consisted of her full name, Elsie May Jenkins. An account was opened for her in that name and she endorsed the cheque "E. M. Jenkins" in writing which corresponded with the signature "Elsie May Jenkins." The deposit of £350 was entered in the pass book, and the cheque was presented at the bank upon which it was drawn and duly paid. Mrs. Jenkins drew out £275 of the money in sums of £75 and £25 on various dates commencing on 20th May and ending on 27th July 1933. In August 1933, the respondent notified the bank that the cheque did not belong to the E. M. Jenkins who had paid it in, and he claimed payment of the amount of the cheque.

H. C. OF A. 1935.

SAVINGS BANK OF SOUTH AUSTRALIA v. WALLMAN.

Rich J. Dixon J. Evatt J. McTiernan J.

The facts upon which this claim rested were peculiar. The respondent, a solicitor carrying on business in Adelaide, had occasion to pay on behalf of some executors the sum of £350 to a beneficiary named Eliza Ann Maria Jenkin whose address was 49 Alpha Road, Prospect. He drew the cheque in question on 15th May and enclosed it in a letter addressed :—"Mrs. E. M. Jenkins, Prospect." The letter explained that the payment was on account of her one-ninth share in the residue of the estate, and requested her to sign and return a receipt enclosed. The letter was delivered on the following day to Mrs. Elsie May Jenkins who lived at 105 Main North Road, Prospect. She signed the receipt and returned it to the respondent. Strangely enough she placed under her signature her correct address and her telephone number. No doubts were aroused at the respondent's office by the receipt, in spite of the address and of the fact that the name was spelt " Jenkins " and not " Jenkin."

As the cheque was marked " not negotiable," the appellant bank could obtain no better title to it than its customer possessed. Its only defence to the claim for conversion depends upon sec. 88 of the *Bills of Exchange Act* 1909-1932, which protects it on proof that it acted " in good faith and without negligence " in receiving " payment for a customer." It is conceded on the authority of *Ladbroke & Co.* v. *Todd* (1) and *Commissioners of Taxation* v. *English, Scottish and Australian Bank* (2) that Mrs. E. M. Jenkins was a customer of the bank when it received payment. But the respondent denies that the bank acted without negligence.

The action was heard in a Local Court where the magistrate held that the bank was guilty of negligence, because, in dealing with a crossed not negotiable cheque tendered in order to open an account, it ought to have obtained not only evidence that the new customer's name was the same as that of the payee, but also that the cheque was in fact her property. Upon appeal to the Supreme Court this decision was affirmed by *Angas Parsons*, *Napier* and *Piper* JJ. *Napier* J., who delivered the judgment of the Court, said :—" We think that the effect of the evidence is to show that a prudent banker, when he is asked by a stranger to open an account with a

(1) (1914) 19 Com. Cas., at p. 261 ; 111 L.T., at pp. 43, 44.
(2) (1920) A.C. 683.

crossed cheque, ought not to act upon the statements made to him, without obtaining corroboration from some reliable source of so much as is necessary to justify a conclusion as to the ownership of the cheque. The extent to which the inquiry should be pressed is a question of fact, and it must necessarily depend upon the circumstances of the particular case, whether the correspondence of the name of the customer to that of the payee, is sufficient to exonerate the banker from the charge of negligence."

We are unable to agree in the conclusion of the Supreme Court. There is, of course, no doubt that special vigilance is demanded when a new account is opened and a crossed cheque is tendered, particularly when it is marked " not negotiable." For it is evident that the purpose of opening a new account may be to obtain payment of a cheque dishonestly come by, and experience has shown that frauds are not uncommonly perpetrated in this manner. But in the present case, the customer was a woman whose identity was established by a reliable reference. She was not engaged in business. She produced a cheque of a date it would bear if it had reached her in due course of post, as was in fact the case. Her name corresponded exactly with that to which the cheque was made payable. It was only by a strange coincidence and a curious combination of mistakes that she was able to present the convincing appearance of ownership. We think it would be setting an extraordinarily high standard of diligence to hold that in these circumstances a prudent banker ought to have made still further inquiry. Indeed, it is difficult to see what course of inquiry could have been pursued fruitfully. If Mrs. E. M. Jenkins had been further questioned as to the manner in which she acquired the cheque, it would have been enough for her to produce the respondent's letter. If the branch manager had communicated with the respondent by telephone or letter, it is most unlikely that he would have chanced on any statement or question which would have disclosed to the respondent the fact that the proposing customer was not the beneficiary for whom the cheque was intended. The stringent rules which banks adopt for the guidance of their officers afford evidence of the kind of precaution which may be taken (cf. per *Lawrence* L.J., *E. B. Savory & Co.* v. *Lloyds Bank Ltd.* (1)); but it is unsafe and perhaps unfair

(1) (1932) 2 K.B., at p. 138.

H. C. OF A. 1935.

SAVINGS BANK OF SOUTH AUSTRALIA v. WALLMAN.

Rich J. Dixon J. Evatt J. McTiernan J.

to rely upon their rigour as a measure of the standard of prudence required by law. In the circumstances of the present case, however, it is quite improbable that any other precaution would have availed. Indeed, once the identity of the payee of the cheque with the customer is satisfactorily established, need for further caution disappears. We think that any prudent man acting in the grave concerns of his own or of others would upon the information before the branch manager be fully satisfied of that identity. In the Courts of justice such evidence would be acted upon without hesitation. It is true that Mrs. E. A. M. Jenkin possessed an account at the same branch of the Savings Bank, and that some time before she had paid into that account a substantial cheque drawn in her favour by the respondent. But the branch manager did not recollect the circumstance. In the multitude of accounts it cannot be negligence on the part of the servants of the bank not to call to mind the existence of a customer of similar name, or the identity of the drawer of a cheque the customer has paid in. This case differs from all others which have been decided under the provisions of sec. 88 in that the person who produced the cheque truly corresponded in name with the payee. We think that the bank established that it acted without negligence and in good faith.

The appeal must therefore be allowed. The order will be:— Appeal allowed. Discharge the order of the Supreme Court. In lieu thereof order that the judgment of the Local Court of Adelaide be set aside and that judgment be entered in the Local Court for the defendant with costs. Order that the plaintiff respondent pay the defendant appellant's costs of the appeal to the Supreme Court and of the appeal to this Court.

STARKE J. The respondent Wallman, who carries on his profession as a solicitor under the name of Ingleby & Wallman, brought an action in the Local Court at Adelaide against the appellant, the Savings Bank of South Australia, for the conversion of a cheque or to recover the proceeds of the cheque, collected by the appellant as money had and received to the use of the respondent. The cheque, which was for £350, was drawn on 15th May 1933 by Ingleby & Wallman (Trust Account) upon the Commercial Banking Co. of

Sydney Ltd., in the following form :—" Pay 253 E. M. Jenkins or order three hundred and fifty pounds." It was crossed generally, and the words " not negotiable " were added. The defence was that the appellant was a banker which in good faith and without negligence had received payment of the cheque for a customer, and by force of sec. 88 of the *Bills of Exchange Act* 1909-1932 incurred no liability to the respondent by reason only of having received payment. It was conceded during the argument that the appellant was a banker and that it had acted in good faith and had received payment of the cheque for a customer (*Commissioners of The State Savings Bank of Victoria* v. *Permewan Wright & Co.* (1); *Ladbroke & Co.* v. *Todd* (2); *Commissioners of Taxation* v. *English, Scottish and Australian Bank* (3)). It was also conceded that the " not negotiable " crossing had no bearing upon the matter involved in this case (*Commissioners of The State Savings Bank of Victoria* v. *Permewan Wright & Co.* (4); *Crumplin* v. *London Joint Stock Bank Ltd.* (5)). The sole question submitted for our consideration is whether the Savings Bank had received payment of the cheque without negligence.

The words " without negligence " in sec. 88 of the *Bills of Exchange Act* mean " without want of reasonable care in reference to the interests of the true owner." The question is really one of fact in all the circumstances of the particular case (*Commissioners of Taxation* v. *English, Scottish and Australian Bank* (3); *Commercial Bank of Australia Ltd.* v. *Flannagan* (6)). In the present case it appears that Eliza Ann Maria Jenkin resided in Alpha Road, Prospect, South Australia, and she seems to have been referred to both as Mrs. Jenkin and as Mrs. Jenkins. She was entitled to a one-ninth share in the residue of the estate of E. M. Day deceased. The respondent acted as the solicitor for the executors of that estate. He drew the cheque for £350 for the purpose of paying to Mrs. E. A. M. Jenkin part of her share in the residuary estate already mentioned. But it was made payable, as already stated, to E. M.

(1) (1914) 19 C.L.R. 457.
(2) (1914) 19 Com. Cas. 256; 111 L.T. 43.
(3) (1920) A.C. 683.
(4) (1914) 19 C.L.R., at p. 478.
(5) (1913) 19 Com. Cas. 69, at pp. 76, 77.
(6) (1932) 47 C.L.R. 461, at p. 467.

H. C. OF A. 1935.

SAVINGS BANK OF SOUTH AUSTRALIA v. WALLMAN.

Starke J.

Jenkins. It was posted on 15th May 1933 to Mrs. E. M. Jenkins, Prospect. It so happened that Mrs. Elsie May Jenkins, who was not Mrs. E. A. M. Jenkin, also resided at Prospect, and the letter with the cheque enclosed was delivered to her in the ordinary course of post. She forwarded a receipt for the cheque, which I suppose had been prepared in the respondent's office, "on account of my one-ninth share in residue of the estate of Eleanor Mary Day." It was dated 16th May 1933 and signed as follows :—

"E. M. Jenkins Mrs. E. M. Jenkins
16.5.33 105 Main Nt Rd.
Phone 2109. Prospect."

The receipt did not excite any suspicion in the respondent's office, and was filed in due course. Elsie May Jenkins took the cheque to the Savings Bank, where she had no account, and applied to open an account with it. She was accompanied by another woman, but nothing in their demeanour or appearance gave rise to any suspicion. Mrs. Jenkins, however, was unknown to the bank officers, and, in prudence and following their office instructions, they inquired if she were the E. M. Jenkins referred to in the cheque and the rightful owner. She said "Yes." The manager of the branch said: "Before an account can be opened with the bank it will be necessary for you to be identified by someone who is personally known to you and also to the bank." She said: "I know Mr. Roy Bennett, an officer of the district council." The manager replied: "All right." Bennett was an old customer of the bank, and had been known to the manager of the Prospect Branch for some twenty years. The manager gave Mrs. E. M. Jenkins a form for the purpose of obtaining Bennett's certification. She went away, and returned in ten minutes or so with the cheque, and the certificate signed by Bennett. A specimen of the signature of Mrs. E. M. Jenkins was upon the document, and Bennett certified "that the above signature was signed in my presence by Elsie May Jenkins, who is personally known to me." The manager then required Mrs. Jenkins to indorse the cheque, which she did in his presence, "E. M. Jenkins." The manager compared the indorsement with the specimen signature, and was satisfied that they were written by the same person. A

deposit account was then opened, but the deposit book handed to Elsie May Jenkins stated that the cheque was not available until collected. It was presented by the bank for collection, paid on 18th May 1933, and between 20th May and 27th July 1933 the depositor withdrew and was paid sums amounting in all to £275, but no further payments have been made.

The burden is, no doubt, upon the appellant to establish that it received payment of the cheque for a customer without negligence, having regard to the interests of the true owner. It is a statutory duty, and the price paid by bankers for protection under sec. 88. Despite the opinion to the contrary in the Courts below, the bank has, in my opinion, established that it received payment of the cheque for a customer without negligence. It was not dealing with a stale cheque, or with a cheque which on its face excited any suspicion. The cheque was in the possession of a person whose name was E. M. Jenkins. The fact that her name was really E. M. Jenkins was certified by an old and reputable customer of the bank. It was a reasonable conclusion from these facts that the person in possession of the cheque was the payee. But it is said that a prudent banker ought to have made further inquiries into the transaction, and, in particular, from the drawer of the cheque. It is unlikely, in the curious circumstances of this case, that anything would have resulted from such inquiries. But that fact cannot, in my opinion, excuse the bank if a reasonable and prudent banker ought to have made such inquiries (*E. B. Savory & Co.* v. *Lloyds Bank Ltd.* (1)). This is the crux of the case. If a banker exercises " the same care and forethought in the interest of the true owner with regard to cheques paid in by the customer as a reasonable business man would bring to bear on similar affairs of his own," then the banker has discharged his duty, and is protected by sec. 88 of the *Bills of Exchange Act*. It may be that some bankers, in an excess of caution, would have made further inquiries in the present case, but in my opinion any prudent banker or business man would have acted on the information before the bank, and might reasonably have concluded, without any further inquiry, that Mrs. E. M. Jenkins was the payee named in the cheque. The bank, in my opinion, discharged the duty cast

(1) (1932) 2 K.B., at p. 148.

H. C. OF A. 1935.

SAVINGS BANK OF SOUTH AUSTRALIA v. WALLMAN.

Starke J.

upon it by the section; and it appears to me that it was want of care on the part of the respondent and not any negligence on the part of the bank that made possible the fraud committed by Mrs. Jenkins.

The appeal should be allowed.

Appeal allowed. Discharge the order of the Supreme Court. In lieu thereof order that the judgment of the Local Court of Adelaide be set aside and that judgment be entered in the Local Court for the defendant with costs. Order that the plaintiff-respondent pay the defendant-appellant's costs of the appeal to the Supreme Court and of the appeal to this Court.

Solicitors for the appellant, *Baker, McEwin, Ligertwood & Millhouse.*

Solicitors for the respondent, *Alderman, Reid & Brazel.*

H. D. W.