IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal under and in terms of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 read with Chapter LVIII of the Civil Procedure Code.

SC/CHC/Appeal No:
12/2021

High Court Case No:
HC/Civil/315/2015/MR

Carbon Products Lanka (Pvt) Ltd.
Dunkannawa,
Nattandiya.
PLAINTIFF

Vs.

Commercial Bank of Ceylon PLC
No. 21, Bristol Street,
Colombo 01.
DEFENDANT

AND NOW BETWEEN

Carbon Products Lanka (Pvt) Ltd.
Dunkannawa,
Nattandiya.
PLAINTIFF-APPELLANT

Vs.

Commercial Bank of Ceylon PLC
No. 21, Bristol Street,
Colombo 01.
DEFENDANT-RESPONDENT

Before	**:** S. Thurairaja P.C., J.
	: K. Priyantha Fernando, J.
	: Sampath B. Abayakoon, J.
Counsel	**:** G. Alagaratnam, P.C. with Luwie Ganeshanathasan for the Plaintiff-Appellant instructed by Ms. Ishara Gunawardena.
	: Chandaka Jayasundera, P.C. for the Defendant-Respondent.
Argued on	**:** 15-09-2025
Written Submissions	**:** 29-07-2025 (By the Defendant-Respondent)
	: 20-03-2025 (By the Plaintiff-Appellant)
Decided on	**:** 30-01-2026

Sampath B. Abayakoon, J.

This is an appeal preferred by the plaintiff-appellant (hereinafter referred to as the plaintiff) on being aggrieved of the judgment pronounced on 05-03-2020 by the learned Judge of the Commercial High Court of Western Province holden in Colombo. From the impugned judgment, the action instituted by the plaintiff was dismissed for the reasons as set out in the judgment.

This is a matter where the plaintiff instituted proceedings before the Commercial High Court pleading that one of its employees prepared several forged cheques and presented the said cheques to the defendant-respondent

bank (hereinafter referred to as the defendant) for payment. It was alleged that the defendant, in violation of its obligations and responsibilities as a commercial bank, had acted negligently and/or without due care, and thereby, had wrongfully made payment on the said cheques.

On the said basis, the plaintiff has claimed Rs. 13,062,866/-, the amount paid out by the bank based on the said fraudulent cheques, as damages, together with legal interest thereon and other reliefs as prayed for in the plaint.

In his judgment, the learned Judge of the High Court held that it is not the defendant who should be held liable, but the plaintiff, since the said cheques have been honoured by the bank due to the negligent and careless actions of the plaintiff. It has been determined that it was due to the actions of the plaintiff the fraud admitted by the plaintiff has been committed by one of its employees, which cannot be attributed as a failure of the required duty of care by the defendant.

At paragraph 18 of the petition of appeal, the plaintiff has averred several grounds of appeal, among other grounds the plaintiff may urge at the hearing of the appeal.

The said grounds of appeal pleaded read as follows,

> (a) Did the Learned High Court Judge err in law when determining that the decision of the Supreme Court in ***Bank of Ceylon Vs. Kolonnawa Urban Council*** is not binding precedent?
>
> (b) Did the Learned High Court Judge err in law by determining that ***London Joint Stock Bank Ltd v. Macmillan and another*** reflects the applicable law in Sri Lanka in terms of Bankers liability for payment on forged cheques?
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> (c) Did the Learned High Court Judge err in incorrectly applying the judgment of ***London Joint Stock Bank Ltd v. Macmillan and another*** to the facts and circumstances of the present case?

(d) Is the Judgment of the Learned High Court Judge contrary to law as it completely disregards the provisions of Section 24 of the **Bills of Exchange Ordinance** [No. 25 of 1927] as amended?

(e) Did the Learned High Court Judge err in fact and law by concluding that Plaintiff Company was negligent in handling the cheques and that the Plaintiff has not exercised the due care expected by the bank from a customer?

(f) Did the Learned High Court Judge err in fact and law by concluding that the forged signatures in the cheques cannot be verified with the naked eye without going through a process of scientific experiment?

At the hearing of the appeal, this Court heard the submissions of the learned President's Counsel who represented the plaintiff and the learned President's Counsel who represented the defendant as to their respective stands. This Court also had the benefit of considering the written submissions tendered by the parties in determining this appeal.

The learned President's Counsel who represented the plaintiff focused his arguments mainly on the provisions as set out in section 24 of the Bills of Exchange Ordinance, and the case decided by the Supreme Court in **Bank of Ceylon Vs. Kolonnawa Urban Council 51 NLR 73** where this Court has considered the banker's liability on forged cheques in terms of section 24 of the Bills of Exchange Ordinance.

The learned President's Counsel was critical of the learned High Court Judge's heavy reliance on the Privy Council Judgment in **London Joint Stock Bank Limited Vs. Macmillan and Another (1918/1919) AER 33** in order to conclude that the plaintiff is not entitled for any relief.

It was the position of the learned President's Counsel who represented the defendant that the evidence led before the trial Court has clearly provided that the incident has occurred due to the utter negligence of the plaintiff in

handling and writing the cheques belonging to it, allowing it to be misused in the manner it has been done over a period of time.

It was his position that there cannot be any liability upon the defendant to credit the plaintiff's account with the money it had already paid to a 3rd party based on the cheques issued by the plaintiff company.

Having considered the factual matrix of the matter as revealed by way of evidence before the trial Court, and the arguments advanced before this Court by the learned President's Counsel, I will now consider the appeal preferred as to whether it has merit that necessitates the intervention of this Court.

The learned President's Counsel for the plaintiff relied on section 24 of the Bills of Exchange Ordinance as the main source of his argument to submit that it was the defendant bank that should be held liable for honouring the forged cheques presented to the bank.

The relevant section 24 reads as follows:

> **24. Subject to the provisions of this Ordinance, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:**
>
> **Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.**

In the case of **Bank of Ceylon Vs. Kolonnawa Urban Council (supra)** relied on by the learned President's Counsel, it was held that:

> A banker who pays out money on a cheque bearing the forged signature of a customer cannot charge the amount so paid out to the account of the customer, unless facts or circumstances exist which in law preclude or estop the customer from pleading that his signature was forged.
>
> Where a banker sets up the genuineness of a signature which is alleged by the customer to be forged, the burden of proof is on the banker.
>
> > *"As between a bank and its customer there is no implied agreement by the latter to take precautions, in the general course of carrying on his business, against the forgeries on the part of his servants. Such estoppels will arise if, after knowledge of a forgery, the customer does anything to mislead the bank and the position of the bank is thereby prejudiced."*

The evidence led in this action shows that the defendant bank has honoured 58 cheques purportedly issued by the plaintiff company over a period of two and a half years. As correctly observed by the learned Judge of the High Court in his judgment, the said cheques have been issued using the cheque books issued to the plaintiff company by the defendant bank, and at least one of the signatures of the two authorized signatories was genuine in all the questioned cheques. The evidence has revealed that the authorized signatories for the signing of cheques during the relevant period have been the Accountant and the Managing Director of the company.

The said Accountant has given evidence in this case, but not the Managing Director, who is said to be the other authorized signatory of the relevant cheques.

According to the averments of the plaint as well as the evidence led before the Court, the plaintiff is a company engaged in the manufacture of Coconut Shell Steam Activated Carbon for export. It has sourced raw materials for the

manufacturing process through various suppliers. The witness called for the plaintiff has claimed that being a small-scale company, it was important for them to retain their supplier base by promptly settling their claims, if otherwise, they would move away and supply products to other competitor companies who engage in the same trade.

It has been the position of the witness that, towards achieving efficiency in settling claims, when one of the authorized signatories had to leave the company, he used to sign several blank cheques and hand them over to the Assistant Accountant to prepare the necessary vouchers in relation to the supplier's claims and get the signature of the other authorized signatory who is present in the company and issue the completed cheque to the relevant supplier.

It appears that this has been the process adopted by the company during the relevant period. This suggests that apart from the questionable 58 cheques, many other genuine cheques may have also been issued to the actual suppliers; otherwise, the company would not have been able to obtain raw materials continuously.

This also shows that if the company was careful in its affairs, maintained their books properly and in a timely manner, within the first month of the occurrence of this type of fraud, it would have been discovered since the raw materials actually obtained for a month would be much lesser than the value of the payments made to such material. It appears that the plaintiff company has not only been negligent and acted without due care, but has also been an accessory to the fraud allegedly committed by its Assistant Accountant, by sleeping over it and by allowing such conduct to continue over a prolonged period of time. If the plaintiff was a small-scale operator as claimed, this is even more so as there would be no reason for the plaintiff to not discover the fraud, which the plaintiff company attributes to the person whom they allowed to manipulate the system.

A bank issues a cheque book for a customer enabling him to engage in his day-to-day banking transactions using the money available in such person's account without resorting to cash transactions. Once a cheque is issued by a customer, any sum mentioned in such a cheque should bear the value as mentioned in such cheque and it operates as a negotiable instrument for the transactions entered between the parties.

If a bank dishonours such a cheque wrongfully, the bank is liable to compensate its customer for any losses he may incur as a result of the said dishonour.

It was held in the case of **Hatton National Bank Vs. Thilakaratne (2001) 3 SLR 295** that;

> "*Wrongful dishonour of the customer's cheque makes the bank liable to compensate the customer on contractual obligations as well as for injury for his credit worthiness. A return of a cheque would cause injury to the drawers' reputation.*"

When it comes to the facts of the matter under consideration, the evidence led before the trial Court has clearly established that the allegedly forged signature of one of the authorized signatories and the other signature which was the genuine signature, when taken together, cannot be observed as a forgery to the naked eye. It may not be possible even if the banker compares the signatures together with the specimen signatures available in the mandate given to the bank by the plaintiff. The evidence of the Examiner of Questioned Documents provides that the forgery has been identified only after a scientific examination under laboratory conditions, which is an advantage not available in the normal banking industry.

It is in such a context the conduct of a customer who takes charge of a cheque book becomes immensely relevant. A customer must take absolute care as to the security of such a cheque book, and when issuing cheques, the same vigilance and security should be maintained so that a cheque belonging to him or her is not subjected to forgery or manipulation.

I am of the view that if a fraud or misuse happens due to the said customer's own actions or lack of due care, it is he who should bear the consequences as an accessory to such a fraud, and not the banker who honoured such a cheque in good faith and in its ordinary course of business.

I find that the provisions of section 60 of the Bills of Exchange Ordinance should also be considered relevant in considering the protection afforded to a banker in such a situation.

Section 60 of the Bills of Exchange Ordinance reads as follows:

> **60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.**

Although it was argued by the learned President's Counsel on behalf of the plaintiff that the learned trial Judge went on to rely on the judgment in **London Joint Stock Bank Ltd Vs. Macmillan and Another (supra)** without giving due regard to section 24 of the Bills of Exchange Ordinance, which is a statutory provision without ambiguity, and had decided to disregard the judgment of the Supreme Court in **Bank of Ceylon Vs. Kolonnawa Urban Council (supra)** having been misled as to the relevant provisions of law, I find no basis to agree.

I find that even though the learned trial Judge has determined that the Supreme Court has not considered the principles laid down in **Macmillan**, in fact, section 24 also provides for situations where a bank can deny liability to make good the loss incurred to a customer as a result of a forgery occurred when a transaction of this nature takes place.

I am of the view that the principles laid down in the **Macmillan** case are still applicable in our banking law as well, and the statutory provisions contained in section 24 of the Bills of Exchange Ordinance would not alter the said principles.

In the case of earlier mentioned **London Joint Stock Bank Ltd Vs. Macmillan and Another (supra)**, the House of Lords held that the bank was entitled to debit the account of a customer the full amount of the cheque it encashed under the circumstances relevant to that case.

It was observed by Lord Finlay LC:

> "*It is beyond dispute that the customer is bound to exercise reasonable care in drawing the cheque to prevent the banker being misled. If he draws the cheque in a manner which facilitates the fraud, he is guilty of a breach of duty as between himself and the banker, and he will be responsible to the banker for any loss sustained by the banker as a natural and direct consequence of this breach of duty.*
>
> *The duty which a customer owes to a bank is to draw the cheques with reasonable care to prevent forgery, and if owing to neglect of this duty, forgery takes place, the customer is liable for the loss. If a customer signs a cheque in blank and leaves it to an agent to fill up, he is bound by the instrument filled up by the agent."*

The case of **Ceylon Commercial Bank Vs. Ceylon Tobacco Co Ltd (2010) 2 SLR 62** is a case where the Court of Appeal considered a situation where the appellant bank debited the respondent customer's current account upon presentation of 8 cheques that contained forged signatures of the authorized signatories.

Although both the District Court and the Court of Appeal held against the bank, I find it relevant to quote from **Abdul Salam, J.** which I find have much persuasive value.

> "*In the circumstances as has been contended on behalf of Ceylon Tobacco Company Ltd, the plaintiff-respondent in this appeal it cannot be possibly be held to have been guilty of negligence which directly led the defendant-appellant bank to pay the purported cheques marked as P1 to P8 or which would estop the plaintiff-respondent's claim against the defendant-appellant in this case.*
>
> *On a consideration of the totality of the evidence led at the trial, I am inclined to think that the plaintiff (Ceylon Tobacco Company Ltd) has done everything within its power to prevent the payment of any cheques reported to have gone missing and therefore cannot be said to have acted negligently or in a manner unbecoming of a customer of a bank or adopted the conduct which would estop it from claiming the recovery of the funds paid out of its account upon presentation of the impugned cheques.*"

The facts in the matter under appeal are in total contrast to the facts of the above considered case. The plaintiff company knowing very well that the authorized signatories cannot sign blank cheques had allowed others to use the practice to commit fraud over a long period of time. It had failed or not bothered to discover it and to take appropriate preventive action. I find that it was only because of the plaintiff's gross negligence and lack of care as to its affairs this situation has befallen upon the plaintiff company.

I am of the view that the learned trial Judge was correct in looking at the facts and the circumstances, and interpreting the relevant law correctly in refusing the reliefs prayed for by the plaintiff.

Accordingly, I answer the grounds of appeal (a), (b), (c), (e) and (f) of paragraph 18 of the petition in the negative.

In answering the ground of appeal (d), I hold that the judgment of the learned trial Judge was not contrary to the provisions of section 24 of the Bills of Exchange Ordinance.

The appeal is dismissed.

There will be no costs of the appeal.

Judge of the Supreme Court

S. Thurairaja P.C., J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court