

The principle is that a bill, cheque or note is given and taken in payment as cash, rather than merely granting the creditor the right to litigate a counterclaim (see, for example, *Jackson v. Murphy* [1887] 4 T.L.R. 92 and *Warwick v. Nairn* [1855] 10 Exch. 762, in which Pollock CB remarked that 'payment by bill of exchange is to be taken as payment of cash', as stated in *James Lamont & Co. Ltd. v Hyland Ltd* [1950] KB 585 at 591). -

'In such cases, although it is not easy to wholly reconcile the authorities, a rule more favourable to the plaintiff has generally prevailed. The court has treated the execution of a bill of exchange as either analogous to a payment of cash or as an independent contract within the wider contract in pursuance of which it was executed, and not dependent on the due performance of the latter.')

Denning M.R. affirmed the decision in *Brown Shipley & Co. Ltd. v. Alicia Hosiery Ltd.* (1966) 1 Lloyd's Rep. 668, at 669, when he ruled that, for many years, the courts in this country had treated bills of exchange as cash. In *James Lamont & Co. Ltd. v. Hyland Ltd.* [1950] KB 585, the court declared that, in an action between the immediate parties to a bill of exchange, judgment should ordinarily be given upon that bill as if it were cash, and it should not be held up by a counterclaim asserted by the defendant, even if it relates to the specific subject matter of the contract. In this case, the counterclaim relates to a completely different contract to that which initiated the bill of exchange.

In *Sibora SNC v SIP (Industrial Products) Ltd*, Sachs LJ stated the need for certainty in the law of merchant shipping:

'Any erosion of the certainties relating to the application of the Law Merchant to bills of exchange by our courts is likely to work to the detriment of this country, which depends on international trade to a significant degree. For generations, one of these certainties has been that, save in exceptional circumstances, the bona fide holder of a bill of exchange for value is entitled, upon its maturity, to treat it as cash. In an action upon it, the court will not regard any set-off, legal or equitable, or any counterclaim arising from the transaction that resulted in the bill of exchange, or any other way, as a defence or grounds for a stay of execution. This rule of practice thus effectively states that payment should be made on the bill of exchange first and claims pursued later.'

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

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 subsequently accepted the debtor's promissory note, they could not obtain a receiving order during the currency of the note; the note must be treated as payment until it is dishonoured.

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

For example, if a bill is endorsed on account of a debt and dishonoured, and the holder fails to notify the endorser of the dishonour, they cannot sue the endorser for the debt any more than they can sue on the bill. Similarly, if a creditor takes a cheque from their debtor's agent and unreasonably delays in presenting it, thereby altering their debtor's position, it was held that, as against the debtor, the cheque must be treated as absolute payment.

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, sections 62 and 89.' If the holder of a bill of exchange or a promissory note unconditionally renounces their rights in writing or delivers the instrument to the liable party, the acceptor's or promisor's obligations are discharged, even if no consideration is received. This is an exception to the rule that a unilateral discharge of a debt requires consideration.'

2. This confirms not only that HMRC accepts promissory notes, but also that it observes the Bills of Exchange Act 1882 as law.

a. A Lord Denning judgment states that, once tendered, a bill of exchange must be treated as cash.

The principle is that a bill, cheque or note is given and taken in payment as cash and not merely as 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 Lord Denning M.R.'s judgment in *Fielding & Platt Ltd v Selim Najjar* [1969] 1 W.L.R. 357, 361; [1969] 2 All E.R. 150, 152 CA).

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

[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 other than 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. It is generally discharged by 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, to extinguish some prior claim of the donee. *Lord Chichester v Coventry* (1867) LR 2HN 71 at 95. Satisfaction may occur when:

a) a covenant to settle property is followed by a settlement or gift by will in favour of the person entitled under the covenant;

b) a testamentary disposition is followed during the testator's lifetime by a gift or settlement in favour of the devisee or legatee; or

c) 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 of a personal obligation by a different performance or substitute consideration instead of strict performance.

Unless the requirements of the Judicature Act 1876 (Queensland) S5.11 are met, payment of a sum of money will not constitute satisfaction of a larger sum owed; however, payment in any other form will, for example, even by cheque or bill of exchange.

The Constitution provides that a creditor's written acknowledgement, or that of any person authorised in writing by the creditor, of having received part of their 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, stated that '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. in *British Russian Gazette and Trade Outlook Limited v Associated Newspapers Limited* [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 that verifies proven evidence.

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

Court of Appeal, Wellington, New Zealand, re matters heard on 4, 5 and 17 December 1986, presided over by: Cooke P, McMullin and Somers JJ. In particular, it states the following:

On line 40, it is held that: 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.

New Zealand courts have no discretion to allow a wider range of defences to claims on bills of exchange. I am not aware of any proven evidence to the contrary, nor has any such evidence been presented by the bank, its agents, assigns and/or nominees, whether real or imaginary.

[1] "(1987) 1 NZLR 9, 14 International Ore & Fertilizer Corporation vs. East Coast Fertiliser Co Ltd.": 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: 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, or to allow a counterclaim for unliquidated damages to frustrate a plaintiff's right to recover on a bill (seep 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.

A defendant will be granted permission to defend a bill of indictment if they can demonstrate that they have a fair case, that there is an issue that should be tried, or

that there are reasonable grounds for setting up a defence, or that there is a fair probability that they have a bona fide defence.

If the facts are adequately ascertained and the court is confident that the issue turns on pure questions of law or interpretation, it should be prepared to determine difficult legal questions arising from a bill of indictment on adequate argument (see p. 16, line 34).

The case of Begley Industries Ltd v Cramp [1978] 1 NZLR 527 was applied.

The cases of 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 were considered.

Although the point was arguable, the stipulation that InterOre was to provide Lloyd's certificates of cleanliness could well affect the basis 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 would have been entitled to reject the cargo.

Had East Coast rightly rejected the cargo, the case would have become 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).