(1923) 11 AHC CK 0001

In the Allahabad High Court

A.C. Mukerji APPELLANT

Vs

The Municipal Board RESPONDENT

Date of Decision : 28-11-1923

Acts Referred:

Citation : (1923) 11 AHC CK 0001

Judgement

1. The suit out of which this appeal arises was instituted by the Municipal Board of Benares against five defendants, the sons of one Jogesh Chander Banerji, deceased, a man who had been for many years in the service of the said Municipal Board as Head Accountant. The plaint was signed and verified by Rai Bahadur A.C. Mukerji as Executive Officer of the Board. In the written statement filed by the defendants certain pleas were taken which involved the suggestion that, if any liability did attach to the late Jogesh Chander Banerji, that liability was at least shared by certain superior officials in the employment of the Municipal Board, and more particularly by its Executive Officer. Upon this A.C. Mukerji addressed to the Chairman of the Municipal Board a letter, dated August 27, 1922, which is to be found at page 199 of our record. He referred to the allegations made in the written statement of the defendants as allegations against himself, and asked the Board to place him in such a position that "I may appear before the Court to answer any charge that may be levelled against me." The Municipal Board thereupon relieved A.C. Mukerji of his duties as Executive Officer, appointing one Hari Prasad Paladhi in his place, and through this gentleman as officiating Executive Officer they filed an amended plaint, in which A.C. Mukerji was impleaded as defendant No. 6, and allegations were made putting forward a cause of action against him along with the defendants originally impleaded.

2. The suit was instituted in the Court of the Subordinate Judge of Benares, but the District Judge took it on to his own file and tried it out himself. He has decreed the Board''s claim for a large sum of money jointly and severally against all the defendants. The appeal is by Rai Bahadur A.C. Mukerji only, and it may be convenient hereafter to refer to him simply as "the appellant."

3. In view of this fact, and taking into consideration the pleadings raised by the memorandum of appeal, we are entitled to treat certain facts found by the Trial Court as no longer in controversy.

4. The claim is on account of money belonging to the plaintiff Board embezzled during the period commencing with the 14th of October 1911 and ending on the 17th of December 1919. These defalcations were committed by the late Jogesh Chander Banerji, whom we may conveniently refer to hereafter by the name of Jogesh Babu, ordinarily applied to to him by the witnesses. The said Jogesh Babu went on leave about the date of the last defalcation, and he died on January 12th, 1920. The embezzlements alleged against him in this suit reached a total of Rs. 65,065-13-7. They were all taken from a single item of Municipal revenue; and it will be convenient to explain at once the nature of this item of revenue and the manner in which the defalcations were committed.

5. The City of Benares is visited by pilgrims in large numbers from all parts of India. This influx of visitors naturally entails on the Municipal Board of Benares a good deal of expenditure in various directions. It was, therefore, considered just that the Board should be permitted to raise a substantial portion of its income by means of a visitors'' tax. This was first imposed in the year 1909. It was realised by means of a small charge superadded by the Railway Companies concerned to the price of every ticket issued to their stations at Benares. There are two Railway administrations concerned, namely, the Oudh and Rohilkhand Railway with its head office at Lucknow, and the Bengal and North-Western Railway with its head office at Gorakhpur. It was incumbent on the Railway administrations be keep proper accounts of the money collected by them as an extra charge on tickets issued to Benares and to remit that money from time to time to the credit of the Municipal Board. The two Railway Companies necessarily adopted different methods for remitting money. There are branches of what is now the Imperial Bank of India, and used to be Bank of Bengal, both at Lucknow and at Benares. The Oudh and Rohilkhand Railway, therefore, was in a position to make its remittances by cheque, and did so. The Bengal and North-Western Railway made the requisite payments either by hand or through the post. When convenient, a servant of the Railway, described as Railway pay clerk, attended in person at the Office of the Municipal Board and paid in the money under the prescribed form of tender and subject to all the procedure which would govern a payment made to the Board by any private individual. The procedure adopted when money was sent through the post needs to be explained in detail. If, for instance, a sum of Rs. 744-12-8 had to be remitted, the bulk of the money, that is to say, Rs. 740 would be sent in the shape of Government currency notes by registered letter, the small balance of Rs. 4-12-8 being remitted by money order. It would seem that the currency notes were sometimes sent entire by registered post, insured, and sometimes the first halves of the notes were sent by registered letter, the second halves following after receipt of the first had been acknowledged. With regard to the currency notes thus received through the post the proper form of procedure was for a Municipal clerk, usually the Head Accountant, to draw up in

duplicate a form of tender such as would have been used if the payment had been made by a private individual in person. These forms of tender are known as chalans, and one of the chalans drawn up in connection with each payment would remain in the Municipal Office for record, while the other, having been signed by an official empowered to sign receipts on behalf of the Board, would be returned to the Railway administration and would serve as a formal receipt for payment made. Every chalan was required to have endorsed upon it a serial number, to be reproduced in the daily cash book maintained at the Board''s office, which would serve as a means for identifying the particular payment and checking the entry in the cash book by comparison with the file of chalans. There was also maintained a register in which the chalans were entered by their numbers, presumably with particulars sufficient to identify them. The defalcations committed by Jogesh Babu were practically confined to the misappropriation of money remitted by the Bengal and North-Western Railway through the post in the manner above described, There was one defalcation in connection with a cheque received from the Oudh and Rohilkhand Railway, to which we shall refer again later. There was no embezzlement of any money tendered in person at the Board''s Office by a Railway pay clerk from the Bengal and North-Western Railway. The above remark may appear to need some qualification with reference to a sum of one anna, which appears in the schedule appended to the record as having been embezzled out of a remittance of over Rs. 1,100 made by a Railway pay clerk on the 25th of July, 1912 : but as a matter of fact there is no claim in respect of this item of one anna, and what probably happened was nothing more than a slight clerical error in the accounts. With regard to the embezzlements of money sent through the post office, we propose to examine these presently in considerable detail; but we may explain at once that the modus operandi was, broadly speaking, simplicity itself. Having got the currency notes, and as a general rule the small sum remitted by money order as well, into his hands, Jogesh Babu prepared chalans in the usual form, but assigned to the said chalans wholly fictitious numbers and never recorded them in the register of chalans at all. He sent a receipt for the money to the Railway Company over his own signature on the duplicate form of chalan, but now and then on a special receipt form sent by the Railway Company itself along with their remittance. He then pocketed the money, making no entry whatsoever in the daily cash book, or in any other Municipal account of its having been received. The Railway filed their receipt and entered the money in their accounts as payments duly made and acknowledged. The auditors who examined the accounts of the Municipal Board were quite helpless against this form of fraud. The chalans drawn up by Jogesh Babu had been made away with and were not traceable in any register, and there was no hint to be discovered in the daily cash book, or anywhere else, of such payments having ever been made. In so far as the above remarks are subject to any qualification with regard to particular items, this will be duly noted presently; but in general outline the above is a correct statement of the nature of the frauds perpetrated on the plaintiff Board.

6. We have now to consider the nature of the claim preferred by the Municipal Board as against the appellant A.C. Mukerji, with whom alone we are now concerned. The case against him was preferred in the alternative. In the first place, it was alleged that the appellant had knowingly participated in the frauds committed by Jogesh Babu and had presumably shared with him the proceeds of those frauds. In the second place, the case against him is that, if he was not a participant in the frauds committed by Jogesh Babu and cognizant from the first of that gentleman''s operations, then he had so facilitated those operations, by negligence in the discharge of his duties and disregard of rules laid down for his guidance, as to make him civilly liable for the consequences of his own negligence and misconduct. The learned District Judge has found that the appellant was from the first cognizant of Jogesh Babu''s proceedings and a participator in his acts of embezzlement. He has rightly remarked that, on this view of the case, the question raised in the alternative as to the appellant''s liability on the ground of nelglience does not really arise; but he has recorded his opinion that, if he had not held the appellant liable on the ground of active participation in the fraud, he would certainly have found him liable on the ground of negligence. It seems to us that the points for our determination in appeal can best be stated in the form of three issues.

(1) Is the Trial Court right in its finding that the defalcations alleged in the plaint were the result of a conspiracy between the appellant A.C. Mukerji and the late Jogesh Chander Banerji, and that the appellant was throughout cognizant of and a participant in the embezzlements committed? (2) If this first issue be found in favour of the appellant, then were those embezzlements the result of such negligence and breach of duty on his part as to make him liable to account to the Municipal Board for the money? (3) If this second issue be found in the affirmative, then is the appellant liable for the whole of the money proved to have been embezzled or for some part only of the same, and if so for what part?

7. The whole case has been argued out before us in a thoroughly competent manner by the learned Counsel engaged on both sides, and in dealing with the mass of evidence on the record, we have enjoyed one advantage over the learned District Judge. There will be found appended to our record certain schedules, in which the information available from the record itself recording all remittances made by the two Railway companies on account of visitors'' tax, and all the embezzlements'' committed by Jogesh Babu, are set forth in detail and classified in various ways. There is no information in these schedules which was not before the learned District Judge, and we do not suggest that any particular fact set forth in the schedules was not present to his mind; but it has been undoubtedly a great advantage to us to have the history of the case under our eyes in this particular form. We think it quite possible that the learned District Judge himself might have modified the conclusions at which he arrived, if he had been able to review the entire case in the manner in which we have done.

8. It will perhaps be convenient for us to state at once in concise form the

conclusions we have arrived at on the three issues. Our reasons for these conclusions will be sufficiently indicated in the comments we propose to make on the evidence in the course of our view of the same.

9. On issue No. 1 our finding is that it is not proved that the appellant A.C. Mukerji was a participant in, or cognizant of any one of the acts of embezzlement committed by Jogesh Chandar Benerji.

10. Issue No. 2. The appellant was negligent in the discharge of his duties and did contravene rules laid down for his guidance, which rules must in our opinion be treated for the purposes of this case as instructions'' given by a principal to an agent. By reason of this negligence and breach of duty, the appellant is, in our opinion, liable to account to the plaintiff for a number of embezzlements, in respect of which it can be held with certainty that the loss of the plaintiff''s money is traceable to negligence or breach of duty on his part.

11. We reserve our precise finding on the third issue as this can only be arrived at in the course of a detailed discussion of the evidence. We may, however, dispose at once of a question of law raised in respect of the second issue. It was of course conceded that, in so far as the action against the appellant was founded upon fraud, the suit was well within limitation; but it was contended that, if once the question of fraud be found in favour of the appellant, then any claim against him based upon misconduct, or alleged breach of duty is doubly barred, both under Article 2 of the Indian Limitation Act, and also by the special provisions of Section 326 of the Municipalities Act, No. 2 of 1916. We find no force in either contention. This branch of the suit is, in our opinion, governed by Article 90 of the Schedule to the Indian Limitation Act, and there is no need even to invoke the provisions of Section 18 of that Act in order to make the suit within time. We very much doubt whether the provisions of Section 326 of the Muncipalities Act apply at all to a suit by a Muncipal Board against one of its own servants. But, in any case, any plea as to want of notice was in our opinion definitely and conclusively waived by Mr. Mukerji''s letter of the 27th August, 1922, already referred to. It has been sought in argument to represent that letter as meaning nothing more than that the writer desired to be put in the witness box and examined on oath; but this is futile. When that letter was written the appellant''s position on the record was virtually that of plaintiff. He could have gone into the witness box in that capacity, and would indeed have been obliged to do so at some stage or other of the hearing. We agree with the learned District Judge that the only possible interpretation of the appellant''s letter is to treat it as a request to be impleaded as defendant in the suit.

12. The first point we have to make is that the visitors'' tax was introduced after the appellant''s appointment as Secretary of the Municipal Board, that is to say, it was a new thing in his time. The arguments addressed to us, as to his having merely followed a vicious system already in existence at the time when he entered upon his duties, can only be accepted with some reservation when they are applied to this matter of the visitors'' tax. Not only was the tax a new one,

but it was of a peculiar character. The work of collection was being done by the two Railway Companies, who would necessarily have to maintain proper accounts of their own. The income was of such a nature as to preclude the possibility of maintaining a demand register, which is always a powerful check upon the dishonesty of subordinate officials. One would have expected an officer holding the responsible position of Secretary of the Municipal Board to have been vigilant in a matter of this sort, and to have set himself, not merely to keep a watchful eye over the account as regards this source of income, but even to devise, if possible, additional safeguards. The most obvious of these would of course have been to ask the Railway Companies to submit quarterly returns, showing at least the total sums which they respectively claimed to have paid into the Municipal Board under this head in the course of the quarter. To us, who are wise after the event, this seems so simple and obvious a precaution that it is difficult to understand why it was never suggested either by the Secretary himself, or by any chairman, or other member of the Municipal Board. The responsibility for the omission must, we think, be shared between the appellant and his employers. We mention the matter chiefly as showing how easy it is to be wise after the event. It may serve as a warning against pressing too far against the appellant any argument based upon the suggestion that it appears incredible that ho should have honestly neglected some particular precaution.

* * * * * 13. From the 5th of January, 1914 we enter upon the record of a series of embezzlements extending right down to the 3rd October of that year. It is a record which has caused us serious difficulty and misgiving, before we could arrive at a conclusion favourable to the appellant on the issue of fraudulent conspiracy. It does on the face of it seem most extraordinary that for a period of 9 full months, the appellant should have continued honestly blind to the fact that the daily cash book, signed by him day after day as a correct record of the Municipal Board''s receipts, contained no mention of any remittance from the Bengal and North-Western Railway on account of visitors'' tax. It is a little in his favour that the first embezzlement of this series, perpetrated on the 5th of January, 1914, was in respect of a registered cover of which delivery was taken by Jogesh Babu, and the same consideration applies to the last two remittances of the 30th of July and 31st of August, 1914 respectively. There were, however, six remittances between January and July, in every one of which the registered cover containing the currency notes came into the appellant''s own hands.

14. We have had to consider very seriously, in connection with part of the evidence, whether the learned District Judge is not right in saying that the decree of negligence involved in the appellant''s signing the daily cash book throughout these months, while these embezzlements were going on, is so gross as to be scarcely believable. We can certainly understand why the Trial Court has refused to credit the appellant with having honestly neglected his duties to such an extent and has preferred to draw an unfavourable inference against his honesty. We may go so far as to say that the appellant could scarcely be said to have a valid ground of complaint, if an inference unfavourable to his honesty

were founded upon this series of transactions alone. It is only upon a careful review of the case as a whole that we have declined to draw such an inference ourselves. We feel that allowance must be made for the deadening effects of routine and for the confidence which an official gradually and inevitably acquires in a subordinate who has for years been working with apparent honesty under his own immediate orders. We must lay stress once more in this connection on the comments already made upon previous details in the evidence which have satisfied us that Jogesh Babu was taking precautions against possible detection by the appellant. There are some indications, slight no doubt, but in our opinion not without significance, that even during these months of the year 1914 Jogesh Babu was not free from anxiety on this head. On the 11th of August, 1914, that is to say, towards the close of this critical period of 8 months, we find him making an entry in the cash book by which a substantial remittance of almost Rs. 2,000, which had come to hand on account of visitors'' tax from the Oudh and Rohilkhand Railway, was misclassified as a receipt from the Bengal and North-Western Railway. It does look as if the man was beginning to wonder how much longer the Secretary could continue to pass without notice the fact that no remittances from this railway were appearing in the cash book. Moreover, we find that on the 3rd of October, 1914, when a sum of Rs. 859-7-7 came to hand from the Bengal and North Western Railway through the post office, and both registered cover and money order actually reached the Secretary, as evidenced by his signatures on the postal acknowledgments, Jogesh Babu refrained from touching this amount and duly credited it in tin cash book. We are not entitled to indulge in mere speculation; but Jogesh Babu so rarely refrained from embezzling the Bengal and North-Western Railway Company''s remittance through the post that there was probably some special reason why he left this one untouched. One is inclined to suspect that, in passing the registered cover on to his subordinates, the Secretary may have made some casual remark about the arrival of a substantial remittance from that Company, which convinced the Head Accountant that it would be too dangerous to touch that particular sum of money. It is also perhaps a point, though a small one, in the appellant''s favour, that the very next embezzlement, perpetrated on the 5th of November, 1914 of a sum more substantial than Jogesh Babu had ever yet misappropriated at one time, was committed while the appellant was absent on leave and H.P. Paladhi was once more in charge of his office.

15. The next point of interest which occurs to us is that a remittance of Rs. 640-3-0, received through the post office on the 2nd of December, 1914, was duly credited, and the reason for this is apparent from the fact that the registered cover had somehow come into the hands of H.P. Paladhi, and Jogesh Babu was afraid to touch the money. We do not propose to go in the same detail through the transactions in the year 1915. The embezzlements continued steadily; but their series was broken at various intervals by remittances which came to hand through the Railway pay clerk and were duly credited. In the case of every embezzlement committed during this year, the registered cover

containing the currency notes came into the hands of Jogesh Babu. In two instances the money order for the trifling balance was acknowledged by the appellant, but we hesitate to draw the further inference that this circumstance ought to have put him on his guard as to the arrival of a substantial remittance. We note incidently that one of the embezzlements during this year was again committed during the appellant''s absence on leave, while H.P. Paladhi was in charge of his office, Passing on to the year 1916, we note, first of all, that there were embezzlements during the month of January, in respect of which again it is not proved that the registered cover, or any other positive intimation of the arrival of the money, ever reached the appellant''s hands. On the 21st of February, 1916, and again on the 28th March, 1916, substantial remittances through the post office reached the appellant''s hands and were duly credited in the daily cash book. We think the reason why Jogesh Babu refrained from stealing this money is indicated by the learned District Judge, in a passage in his judgment where he points out that during the financial year 1915-1916 the receipts on account of visitors'' tax credited in the Municipal accounts failed to reach the amount of the budget estimate. We infer that during February and March, 1916 Jogesh Babu was getting nervous as to the extent of this deficit, and preferred to moderate his operations rather than run the risk of setting on foot enquiries as to the reason for the deficit. Later on in the same year there was an embezzlement which calls for particular notice. On the 26th June 1916 a sum of Rs. 906-13-0 came to hand through the post office in the usual way. The registered letter was acknowledged by the Appellant himself and Jogesh Babu felt it necessary to enter this amount in the cash book. He subsequently crossed out that entry, attesting the erasure by his own signature, and embezzled the money. The cash book for that day was attested as a correct record of the day''s receipts by the appellant''s signature. If that signature was appended after the erasure, it would be difficult indeed to avoid the inference that by this time, at any rate, the appellant was in fraudulent collusion with Jogesh Babu. We cannot help noting in this connection that we could wish that the appellant had been subjected while in the witness box to a more searching and systematic cross-examination. On any possible theory it is difficult to understand how he came to sign the cash book for this 26th of June, 1916. The theory contended for in argument on his behalf is that erasure was made after the accounts for the day had been signed by the appellant, and we are prepared to accept this theory; but we do so with a thorough realization of what its acceptance involves. The total at the end of the day represents the sum of the items recorded, after deducting the item of Rs. 906-13-0. When this book was placed before the Secretary for his signature the total shown at the end of the day was less than the sum of the various entries by this precise amount of Rs. 906-13-0. There was only one other large item on the page, and that was the payment on account of octroi which bulks largely in each day''s receipts. It so happens that the sum of these two items alone, namely, the octroi receipt plus Rs. 906-13-0 on account of visitors'' tax, considerably exceeds the total for the day. This means that the appellant has understated the case against himself when he admitted that he never added up the total in the daily cash book before affixing his signature, which certified the whole account as correct. It is to be noted that our record of the appellant''s deposition at p. 48 contains misrepresentation: the critical passage should not run "I myself checked the totals" but I myself did not check the totals." If he had made it a practice even to run his eye in the most casual manner down the page, it seems to us that he must have detected the glaring deficiency in this day''s apparent total for the 26th of June 1916, to which we have drawn attention. A month later, that is, on the 25th of July 1916, Jogesh Babu reverted to his older tactics and simply embezzled a sum of Rs. 1,049-13-4, without leaving any trace of it in the day''s accounts, even though the registered cover containing the notes had passed through the Secretary''s hands. Whether he was getting nervous as to the risk of continuing this procedure or whatever the reason may have been, we find that his next two embezzlements, of the 25th of October 1916, and of the 22nd of November 1916, were effected by entering the remittance in the daily cash book and crossing it out after the Secretary''s signature had been obtained. In connection with the second of these two embezzlements there is a curious feature. The sum remitted by the Bengal and North Western Railway on that day was 951-6-3, and it almost looks as if Jogesh Babu was getting afraid that he was presuming too far on the appellant''s slackness. At the beginning of that month, consequent on the passing of the new Act for the regulation of the Municipalities in these Provinces, the post of Secretary had been abolished and the appellant A.C. Mukerji had been appointed the first Executive Officer of the Benares Municipal Board under the new Act. So far as concerns the matters now under consideration, and particularly with reference to the keeping up of the daily cash book the duties and responsibilities of the Executive Officer were the same as those previously incumbent on the Secretary, but it is just possible Jogesh Babu may have been afraid of the appellant''s bringing some new sense of responsibility to the performance of the duties of the more dignified post of Executive Officer. At any rate, the appearance of the cash book suggests that ho had intended to keep his hands off this sum of Rs. 951-6-3. On the same day, however, an Oudh and Rohilkhand Railway cheque came in for Rs. 2,110-15-10. Jogesh Babu took advantage of this fact to alter the entry he had already made of the remittance from the Bengal and North-Western Railway, substituting for it a record of the Oudh and Rohilkhand Railway''s remittance by cheque and working out a daily total loaded with the difference between Rs. 2,110-15-10 and Rs. 951-6-3, that is to say, in excess of the actuals as they stood when the Secretary''s signature was taken by a sum of Rs. 1,159-9-7. This fraud remained undetected because of the scant attention paid by the appellant to the entries in the daily cash book and because, apparently, he never thought of taking that important register occasionally into his hands and turning back the pages to see that everything remained in order.

16. We pass on to the year 1917, and note that the first remittance that came to hand through the post in that year was duly credited. So also was a remittance of the 26th of June, 1917. Between these dates there had been four

embezzlements the registered cover having only come into the appellant''s hands in connection with the last of these four. In the month of August 1917 a similar remittance, in which the registered cover had been received by the appellant, was duly credited; but Jogesh Babu embezzled the next two as they came to hand during the months of September and October, presuming on the fact that appellant would not be placed on his guard, although in one instance the registered cover containing the entire remittance of currency notes, and in the other the registered letter containing the first halves of the notes, had come into his hands. It does look, however, as if Jogesh Babu continued to be afraid of presuming too far on the appellant''s negligence, for in November 1917 and March 1918 we find him crediting the Municipal Board with the entire amount of two remittances received through the post office, which might conceivably have been embezzeled had he chosen boldly to adopt the procedure followed by him in other instances. Between January and October 1918 there were only two embezzlements committed--on the 28th of January and 30th of March of that year--and in the month of October a substantial remittance was duly credited. The reason for this seems to be that there had been some re-arrangement of duties in the office. One Raghunath Prasad was acting as Head Accountant, and receipt issued to the Railway Company was signed by M.A. Khair. We note that in the month of June 1918 the post of Secretary to the Municipal Board was once more called into existence. We gather that the Secretary thus appointed was not intended to supersede the Executive Officer, but rather to serve as a sort of head assistant, relieving the Executive Officer of a portion of the clerical work. The important point, in our opinion, in connection with this case is that the Executive Officer continued to be responsible for the correctness of the entries in the daily cash book down to the 24th of November 1919, when those duties were made over to the Secretary. From that date the appellant ceased to be directly or personally responsible for the cash book. The record of embezzlements from February 7, 1919 down to the date above mentioned calls for no particular comment. The embezzlements continued, and we have taken separate note of those instances in which the appellant is affected with personal knowledge of the fact of the arrival of the remittance by the appearance of his signature in acknowledgment of registered cover received from the post office. In connection with one item of Rs. 683-13-2, received on the 10th of March 1919, Jogesh Babu seems to have reverted to the procedure which we have noticed as only occasionally followed by him. He entered the entry as correct. We do not pursue this detailed enquiry beyond the 24th of November 1919, for the reason which we have already indicated.

17. In the course of this review of the evidence, we think we have sufficiently indicated our reasons for finding in favour of the appellant on the issue of fraudulent conspiracy, or wilful connivance in the frauds perpetrated by Jogesh Babu. We are satisfied, on the whole, that active participation in these frauds, or even guilty knowledge of the same, is not brought home to the appellant by that evidence. There is certainly no one proved fact in the case on which the Court

can lay its hand and say that this could not have occurred as it did if the appellant had not been in collusion with Jogesh Babu. There are, on the contrary, a number of circumstances which suggest that Jogesh Babu was afraid of detection by the appellant and was taking precautions against such detection. We may note also that there is an entire absence from this record of the sort of evidence which one frequently finds in cases of embezzlement, and which one would expect to find in a case like the present in which the sums embezzled were so considerable. We refer to evidence tending to suggest that the appellant was living beyond his means, or was otherwise accumulating resources in money or in any species of property, not to be accounted for by his ostensible sources of income. Nor when the appellant, was in the witness box, was there any cross-examination directed towards making good any such point against him.

18. Coming to the issue of negligence, it seems to us that we have alreadly given abundant reasons for imputing to the appellant negligence of a very serious character. We need not go over the ground which is sufficiently covered by the judgment under appeal in order to lay stress upon the various rules and regulations by which the appellant was bound. The cardinal point to our minds is his responsibility for the entries in the daily cash book. It was certainly never intended that the signature of the Secretary, and later that of the Executive Officer, appearing at the close of each day''s receipt entries in this cash book, should be a mere formality. The Municipal Board relied upon those responsible officers exercising a real and effective supervision over the preparation of this most important register. This fact was emphasised in the rules and regulations laid down for the guidance of these officials, and as against the appellant in this particular case we regard those rules as being of the nature of instructions issued by a principal to his agent as to the manner in which the said agent was to discharge the duties assigned to him. Where it can be shown that a loss sustained by the principal is directly traceable to disregard on the part of the agent of directions issued to him regarding the conduct of business, even though such disregard may have been due to nothing worse than negligence, or over-confidence in the honesty of others, such misconduct on the part of an agent is clearly actionable. That the appellant is liable to account to the Municipal Board for at least a substantial part of the money embezzled by Jogesh Babu, while the latter was working under the direct supervision of the appellant, we hold to be quite beyond doubt.

19. The precise assessment of that responsibility in respect of every item in the Schedule before us is a matter of some delicacy. On behalf of the respondent it was argued that, even on the basis of negligence alone, the appellant was liable for the entire amount of Jogesh Babu''s defalcations. We could only accede to this contention on one or other of two alternative views. The first would be that, if the appellant had strictly observed the rules laid down for regulating his discharge of his duties, the frauds committed by Jogesh Babu would have been wholly impossible, or would have been immediately detected. The alternative would be to hold the appellant liable for all defalcations committed after some

specified date, on the ground that, but for gross and actionable negligence on his part, the detection of the frauds which were going on must have taken place at least by the date so specified. There is a good deal to be said for both these contentions and retire especially for the latter; but on the whole they fall short of satisfying us. Looking more particularly at the cautious manner in which Jogesh Babu embarked upon his career of fraud, we are not prepared to say that due diligence on the part of the appellant would have precluded him from making the attempt, or would have resulted in his immediate detection. With reference to the second contention, our real difficulty would be to fix any one definite date from which it could be given effect. We are gravely conscious of the responsibility which attaches to us in determining this issue, in view of the large number of Government officials, employees of railways, of corporations, of business concerns of all sorts, on whom it has been laid, frequently as a part only of multifarious duties to bear the responsibility of checking and certifying to the correctness of accounts, the actual maintenance of which is necessarily on the shoulders of lower paid subordinates. We can certainly commit ourselves to no conclusions which would reduce the responsibility of such superior Government servants or other officials, to a mere farce. On the other hand, we feel that a too stringent insistence upon their responsibility in the matter of the observance of all rules and regulations laid down for their guidance might result in making it practically impossible for some of them to carry on the work laid upon their shoulders. In the present case our decision is actually influenced to a considerable extent by the knowledge we have of the multifarious nature of the duties laid upon the appellant as Secretary and afterwards as Executive Officer of the Municipal Board. We have decided to hold him liable in respect of those items only where the evidence affects him with personal notice of the arrival of a remittance, the embezzlement of which he failed to prevent, or where, in our opinion the embezzlement would have been prevented by the most ordinary and casual scrutiny of the entries in the daily cash book before he appended the signature by which he certified to their correctness. On this basis we have drawn up the following schedule, which shows the appellant as liable for the total sum of Rs. 21,439-4-7, shown at the foot of the same.

20. In the result, therefore, we modify the decree of the Court below as follows: that the decree will stand in its entirety, including the order for costs, as against the defendants other than Rai Bahadur A.C. Mukerji. As against this defendant the decree will provide that he is jointly and severally liable along with the other defendants for the sum decreed, up to a limit of Rs. 21,439-4-7 and that he will bear his own costs in the Trial Court.

