

(1912) 10 PRI CK 0002

In the Privy Council

Bank of Bombay

APPELLANT

Vs

Nandlal Thackerseydas

RESPONDENT

Date of Decision : 31-10-1912

Acts Referred:

Citation : 17 IndCas 663

Hon'ble Judges : Macnaghten, Atkinson, Shaw, JJ.

Judgement

Macnaghten, J. 1. This is an appeal from an order and decree of the High Court of Bombay in its appellate jurisdiction, reversing the order and decree of Beaman, J., who tried the case originally. The trial Judge dismissed the suit without costs as against the first defendants, the Bank of Bombay, who are the present appellants. The Court of appeal, consisting of Scott, C.J., and Batchelor, J., made a decree in favour of the plaintiff with costs. 2. The plaintiff, a merchant in Bombay, by his plaint which was filed so far back as November 1904, claimed delivery of 399 bales of cotton which had been entrusted to the second defendant Lakhmidas as muccadum or warehouseman and, as the plaintiff alleged, improperly pledged by him to the Bank. In the alternative, the plaintiff claimed payment of the value of the bales in question, and in the event of it being held that he was not entitled to any such relief as aforesaid, then he asked that his rights should be ascertained and declared suggesting that the securities deposited by Lakhmidas with the Bank should be marshalled in his favour. 3. The case was not brought to a hearing until January 1909. For this delay, both parties seem to have been equally to blame. Various irrelevant issues were raised and various irrelevant defences were set up, and there were interlocutory, applications protracted and all apparently futile. Both parties seem to have been in the dark as to the real facts of the case which were not elucidated until the suit was at hearing though apparently the plaintiff might have discovered the facts from Lakhmidas' books which were accessible to him, and the Bank ought to have been able to produce an accurate record of their dealings with their customers. 4. There were 21 issues originally settled. In the course of the hearing, an additional issue was proposed by the learned Counsel

for the Bank, and allowed without opposition on the part of the plaintiff. It was in the following terms: "Whether the Bank has been guilty of any conversion in respect of the goods in suit?" Upon that issue, the case ultimately turned. 5. The material facts, as ascertained during the trial, may be stated shortly. 6. Lakhmidas, though now insolvent and under sentence of imprisonment for criminal breach of trust, was in good credit in the early part of 1903 and then carrying on business in Bombay both as a cotton merchant on an extensive scale and also as a muccadam or warehouseman. He was financed by the Bank, and in the habit of pledging cotton with the Bank to secure his account for cash advances and cash credits, and in the habit of withdrawing parcels of cotton so pledged when and as he disposed of them in the course of his business, leaving, of course, an amount sufficient to cover his liability to the Bank or else substituting other cotton for the cotton so withdrawn. 7. At that time, the Managers of the Bank had no reason to suppose that Lakhmidas was carrying on any business but that of a cotton merchant. They were assured that he had given up the business of a muccadam, which at one time was carried on by his firm, though, undoubtedly, a man in their employ, whose duty it was to obtain information for the Bank with regard to their customers, was aware that Lakhmidas was carrying on the business of a warehouseman as well as that of a cotton merchant. This man seems to have been in partnership with Lakhmidas or in collusion with him. 8. In February 1903, the plaintiff, as purchaser of the bales in question in, this suit, or in some other manner interested therein, took delivery of them and entrusted them to Lakhmidas as warehouseman, Lakhmidas immediately pledged them with the Bank. For a time they were deposited in the open air Jettha at Colaba, which is said to have been leased by him in the name and on behalf of the Bank. 9. About the end of April or early in May 1903, on the approach of the monsoon, all the cotton in the possession of Lakhmidas at Colaba was removed by him into godowns leased by the Bank and placed there in the Bank's custody. 10. In June and July 1903, all the bales of cotton in suit, with the exception of two (as to which there is no question now), having been sold by Lakhmidas were withdrawn from the Bank's godowns and passed out to Lakhmidas or to his order. 11. No claim to this cotton was made by the plaintiff against the Bank before it passed out of the hands of the Bank. The Bank had no notice or reason to suspect that it belonged to any one but Lakhmidas, or that anyone but Lakhmidas had any right or title thereto or any interest therein. The fact that the cotton was returned to Lakhmidas, or parted with to his order, was established during the cross-examination of Lakhmidas, called as a witness by the plaintiff, and proved by inspection of his books. 12. The plaintiff strongly objected to any evidence being given as to this fact, inasmuch as it had not been pleaded by the Bank as a defence to the suit. But the learned Judge held, and, in the opinion of their Lordships, held rightly, that the fact could not be excluded having regard to the claim to (sic) securities set up by the plaintiff. 13. (sic) the evidence on this head was properly (sic) it seems to their Lordships that (sic) admissible for all purposes. 14. (sic) think that the fact that (sic) with the cotton deposited (sic) the order of the person (sic) deposited without notice of (sic)

other person affords a (sic) the suit. 15. (sic) agree in the finding of (sic) that the Bank acted (sic)--a finding which (sic) been questioned on (sic) Court. Nor indeed (sic) would have been any imputation on the conduct of the Bank if the Managers of the Bank had known that Lakhmidas was a muccadum as well as a cotton merchant, though, of course, for their own protection they would have been careful in dealing with him if they dealt with him at all had they known that he carried on both businesses. No one is bound to suspect dishonesty in a person of good credit and reputation with whom he is dealing: merely because that person occupies a position which would enable him to act dishonestly if he were a rogue. 16. Taking the view which their Lordships do of this case, it is unnecessary for them to express any opinion on the construction of Section 178 of the Indian Contract Act, 1872. 17. Having regard to the loose manner in which the business of the Bank was conducted, and the way in which the suit was defended, their Lordships are of opinion that the appellants are not entitled to any costs. 18. Their Lordships will, therefore, humbly advise His Majesty that the order appealed from should be discharged without costs--any costs already paid being re-paid, and the order of Beaman, J., should be restored. 19. There will be no costs of the appeal.