

(1893) 06 PRI CK 0001

In the Privy Council

Delhi and London Bank, Limited

APPELLANT

Vs

A. Oldham and others

RESPONDENT

Date of Decision : 17-06-1893

Acts Referred:

Citation : (1893) 21 ILRPC 60

Hon'ble Judges : Watson, R. Couch, G Denman, JJ.

Judgement

George Denman, J. 1. This was an appeal from a decision of the: Judicial Commissioner of Oudh, affirming a decree of the District Judge of Lucknow, whereby a suit was dismissed on the ground that A, Lawson, who had signed and verified the plaint, was not a person duly authorized to do those acts or either of them. 2. The plaint was filed on the 2nd May 1889, and by it the appellants sought to recover from the respondents Rs. 21,275, said to be due to them on a promissory note. 3. The plaint was signed as follows: "(Signed) A. Lawson, Acting Manager,, Delhi and London Bank, Limited, Lucknow." 4. The verification was in these words, "I, Plaintiff above named, do hereby declare that what is hereby stated is true to my knowledge and belief. (Signed) A, Lawson, Acting Manager, Delhi and London Bank, Limited, Lucknow." 5. On the 20th September 1889, the respondent Hodges petitioned the District Judge that the plaint might be rejected or returned for amendment on several grounds not now material, and (in paragraphs 1 and 2 of his petition) on the grounds (1) that A. Lawson was not a, principal officer, but a mere cashier of the Bank, and not otherwise authorized to sign and verify the plaint; (2) that acting as manager during a temporary illness, or otherwise, of an acting manager or manager, would not without a special power empower A. Lawson to sign and verify the plaint. 6. There was no dispute about the facts. It was admitted that the plaintiff Bank was a Corporation within Section 435 of the Code of Civil Procedure. 7. That section, so far as it is applicable to the case, is in these words: "In suits by a Corporation...the plaint may be subscribed and verified on behalf of the Corporation...by any Director, Secretary or other principal officer of the Corporation...who is able to depose to the facts of the case." 8. The plaintiff

Bank had its head office in London, with branch offices at several places in India, including Lucknow. At Lucknow before the 23rd November 1887, one Langdon was manager at the branch Bank at that place, and had been so from July 1884. He acted under a power-of-attorney under the seal of the Company which, in addition to words empowering him to establish an agency for "carrying on the business of the said Company as bankers," contained, amongst other words, enumerating several of the most obvious duties usually discharged by the manager of a branch bank, a power to "ask, demand and receive and (if necessary) sue for and recover from whomsoever it may concern, all debts and sums of money, goods, property and effects whatsoever, which are or shall be due owing or belonging to the said Banking Company on account thereof at...Lucknow." Then followed express words authorizing Langdon to commence and prosecute actions and suits in respect of any matter relating to the concerns of the Company at Lucknow. It also contained a power to Langdon to substitute and appoint any person to act under or in the place of him in all or any of the matters aforesaid, "the said Banking Company hereby agreeing to ratify and confirm whatsoever the said Langdon or his substitute shall lawfully do or cause to be done in or about the premises by virtue of these presents." 9. On the 23rd November 1887, Langdon executed a power-of-attorney, by which, after reciting several of the powers contained in the power of the 23rd July 1884, it was witnessed that Langdon thereby appointed Lawson, "Accountant to the said Banking Company in Lucknow, to be the attorney of the said Banking Company in Lucknow," amongst other things, to ask, demand and receive all debts, etc." (as in the power to Langdon), but this document omitted the words and, if necessary, to sue for and recover" and the other express power to sue. It however contained these words, "And generally to act in and about the premises in the same manner, and as fully and effectually as the said Banking Company, or the said Langdon might or could do, and as the said Alexander Lawson might or could have done if he had been appointed the attorney of the said Banking Company in and by the said deed poll or power-of-attorney in the stead of the said Langdon." 10. The decisions now appealed from proceed upon the ground that the omission of the express power to sue in the later document was fatal to the validity of the proceeding, as showing that Lawson was not a person "duly authorized to sign and verify the plaint" within the meaning of Section 51 of the Code of Civil Procedure. 11. That section, after enacting that the plaint is to be signed by the plaintiff and his pleader, if any, and verified by the plaintiff or some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, provides "That if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf." 12. Their Lordships are of opinion that Section 51 of the Code, which regulates proceedings taken by or on behalf of ordinary plaintiffs, does not apply to such a case as the present, but that this case must be decided with reference only to Section 435, which expressly applies to Corporations, and that the sole question is whether Lawson when he signed and verified the plaint was one of the persons described in Section 435 by the words

"other principal officer of the Corporation." 13. If he was, their Lordships see no reason whatever to doubt that he was within that section a person who was "able to depose to the facts of the case." 14. Lawson's position at the time of the action being brought, viz., on the 2nd May 1889, appears to have been this. He was acting under the power-of-attorney of the 23rd November 1887, being accountant to the Company in Lucknow. Langdon, the manager, was away in Cashmere; Banks, whose position is not explained, but who appears to have been a leading officer of the Bank in Lucknow, was ill with small-pox; Lawson, having the large powers expressly conferred upon him by the power-of-attorney of November 1887, was apparently in sole authority; at all events he was conducting the chief banking business of the branch in Lucknow. In the absence of any evidence that any one else was at the time in question doing any act of management, their Lordships think it fair to presume that he was the person of all others best able to depose to the facts of the case, the action being in respect of transactions depending upon documents which would necessarily be accessible to him at the time. 15. In these circumstances their Lordships are of opinion that Lawson was then, as he described himself, acting manager of the Bank at Lucknow, and that as such he was a "principal officer of the Corporation" entitled to subscribe and verify the plaint within the meaning of Section 435 of the Code, and that the suit was properly instituted. They will therefore humbly advise Her Majesty that the decrees of the lower Courts dismissing the suit be reversed, and the suit be remanded to the Court of the District Judge to be re-admitted, and that the respondent R.N. Hodges be ordered to pay the appellant's costs in both Courts from the date of his objection to the plaint and the costs of this appeal.