
(1895) 10 MAD CK 0004
In the Madras High Court

Kunhan Mayan and Others

APPELLANT

Vs

The Bank of Madras

RESPONDENT

Date of Decision : 25-10-1895

Acts Referred:

Contract Act, 1872 — Section 171

Citation : (1896) ILR (Mad) 234

Hon'ble Judges : Shephard, J;Best, J

Bench : Division Bench

Judgement

Shephard, J.—The real question to be decided in this appeal is whether, under the circumstances, the defendant had a general lien on the

jewels and was at liberty to retain them until the other debt owing by the plaintiff Kunhan Mayan was paid off. I see no reason to differ from the

Subordinate Judge in his opinion on the evidence given with reference to the second issue, but the alleged fact of notice having been given to the

agent that the jewels belonged to other persons is not, in my opinion, material, for it is not said that Kunhan Mayan was acting otherwise than with

their consent in pledging the jewels. Indeed, the evidence in the case of one pledge is to the effect that the real owner was actually present and

took part in the transaction; in another case, the husband of the alleged owner is said to have been present. Under these circumstances and seeing

that the bank agent was, as the discharged cash-keeper admits, careful to deal with the plaintiff Kunhan Mayan only, I do not think the right of the

bank in respect of the pledge would be in any way prejudiced by the agent's knowledge, if it had existed. The question as to the bank's general

lien is important, because, by his letter of the 22nd August 1893, the agent declined to give up the jewels until the other liabilities of the plaintiff

were discharged. In this letter, referring to the plaintiff's letter of the previous day, the agent in effect told the plaintiff that he would not take the money offered on the terms indicated in the plaintiff's letter. If, therefore, the plaintiff was right in insisting on those terms, he was entitled, to say that, there was, on the part of the bank, a waiver of his actual tender of the money. The rule of law with regard to general liens is clearly laid down in the 171st Section of the Contract Act. Bankers have such a lien on things bailed with them unless there is a contract to the contrary. It was for the plaintiff in this case to prove the existence of such a contract. It was argued that the plaintiff had discharged that burden of proof by showing that a fresh deposit of jewels was made as each loan was advanced. Each loan, with the pledge of jewels accompanying it, must, it was said, be taken as a separate transaction so that the bank could not retain the jewels pledged to secure one of the loans as security for any other of the three loans. The evidence before us as to the relations between the plaintiff and the bank is meagre. All we know is that besides these three loans there were other loans by the bank to the plaintiff, a list of which with interest was made up to the 31st May 1893. On the 28th June, a deed of hypothecation was given as security. The bank books were not produced, but perhaps it may be inferred that the loans on jewels and the other loans were not entered in one account. This circumstance, however, is not inconsistent with the bank's claim to a general lien. The evidence of the cash-keeper, which is extremely brief, shows that he at least thought there was nothing special about the plaintiff's loans, and that therefore the jewels might be retained until all debts were paid off. It being incumbent on the plaintiff to show that the bank had agreed to give up the general lien to which by law a bank is prima facie entitled, I must say that in my opinion the plaintiff has failed in his proof. There was, it may be observed, no proper issue on the question, and no attempt made to prove a special contract, except by the evidence of the witnesses which was discredited by the Judge. Holding that the bank was entitled to retain the jewels until the other debts owed by the plaintiff were paid off, I think the suit ought to have been dismissed. I would accordingly reverse the decree and dismiss the suit with all costs.

Best, J.

2. Plaintiff appeals against so much of the decree as directs payment of (1) interest subsequent to 21st August 1893 (date of the letter D), and (2)

defendant's costs of the suit, while defendant has taken objection u/s 561 of the CPC to the disallowance of his claim to a general lien on the jewels pledged.

3. Plaintiffs' case is that the amount due on the pledge of the plaintiff jewels was first tendered on 30th June 1893 and again the tender was repeated

in writing on 21st August following, by letter D, to which was received the reply E from the defendant bank's agent, saying that the jewels could

not be given up "until full value for same has been received, unless you first discharge your other liabilities to the bank.

4. The question, therefore, is, had the defendant a lien on the jewels for debts of the first plaintiff other than those for which they were pledged?

5. The law on the point is contained in Section 1711 of the Contract Act, which says that bankers may "in the absence of a contract to the

contrary, retain as a security for a general balance of account, any goods bailed to them." The burden of proving "a contract to the contrary" is, in

the present case, clearly on the plaintiffs, who allege that at the times of deposit of the jewels the then agent was informed that the jewels belonged

to second and third plaintiffs and should be returned to them on their paying the moneys due on the particular pledge. The Subordinate Judge's

finding as to this special agreement, which is against the plaintiffs, is in accordance with the evidence. Mr. Black, the then agent, denies that there

was any such agreement, or that he was informed that the jewels belonged to the second and third plaintiffs. The only witnesses who give evidence

to the contrary are the first plaintiff and his first witness Achuden, a dismissed cash-keeper of the bank, who, however, admits that it was "against

the rules of the bank" to advance money on the pledge of jewels known not to belong to the pledger.

6. Agreeing with the Subordinate Judge in his findings as to the facts, I would dismiss the appeal. But on these same findings the conditional decree

in favour of plaintiffs cannot be supported. The suit should have been dismissed in its entirety.

7. The respondent's objection must, therefore, be allowed and the suit dismissed with costs throughout.

1.

Section 171: Bankers, factors, wharfingers, attorneys of a High Court and policy brokers

may, in the absence of a contract to the contrary, retain as a

General lien of bankers, security for a general balance of account, any goods bailed to

factors, wharfingers, attor- them; but no other persons have a right to retain, as a security

neys, and policy brokers. for such balance, goods bailed to them, unless there is an

express contract to that effect.