

(1963) 10 MAD CK 0027
In the Madras High Court
Case No : C.S. No. 53 of 1961

N. Mohamed Hussain Sahib

APPELLANT

Vs

The Chartered Bank, Madras and Another

RESPONDENT

Date of Decision : 16-10-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 16, Order 18 Rule 3, Order 26 Rule 3, 35
Contract Act, 1872 — Section 171, 73
Presidency Towns Insolvency Act, 1909 — Section 52(2)
Transfer of Property Act, 1882 — Section 79

Citation : AIR 1965 Mad 266 : (1964) ILR (Mad) 1012

Hon'ble Judges : Sadasivam, J

Bench : Single Bench

Judgement

(1) Suit in forma pauperis to recover rupees twelve lakhs as damages from the first defendant with future interest and costs.

(2) The plaintiff was a leading merchant in hides and skins in Madras with an average annual turnover of nearly rupees fifty lakhs. He possessed a

very valuable, well-mechanised tannery at Vaniyambadi, and he had built up a reputation for his goods both in India and outside. He was a

customer of the first defendant and he had an overdraft account with the Bank. The plaintiff had ₹ 13, 599-8s to his credit in the Head Office of

the first defendant Bank in London and he requested the first defendant to get the amount from the Head Office. The amount was admittedly

transferred to the branch office of the Chartered Bank at Karachi by the first defendant on the instructions of the plaintiff. The plaintiff's case is that

he trusted the integrity and business skill of the first defendant and constituted it as his agent with reference to his dealings with the said moneys and

that the first defendant failed in the discharge of its duty in omitting to get the money transferred to Madras in spite of his several instructions from

1949 onwards. The plaintiff's complaint is that he was not even informed till the middle of 1958 about the transfer of the amount in the Karachi

branch to Fixed Deposit and that neither the pass book and cheque book, nor the receipts for the subsequent Fixed Deposits were given to him.

The further complaint of the plaintiff is that though the first defendant took a letter from him on 20-6-1958 undertaking to get the transfer of the

moneys from the Karachi branch immediately, it wilfully neglected to perform its duty and did not even intimate to him about the availability of the

aforesaid moneys at Karachi on 19-5-1959 till it sent the letter on 4-7-1959. The main case of the plaintiff is that in 1955 the first defendant

agreed to give an overdraft for his business to the extent of Rs. 2,50,000 on 26-11-1956 on the security of the existing and future stock-in-trade

of hides and skins and machinery, and that in breach of the said agreements the first defendant capriciously dishonoured cheques drawn by the

plaintiff towards the end of 1957 and early in 1958. The plaintiff's case is that on account of the said acts his customers filed suits and obtained

attachments before judgment and he was finally adjudicated insolvent in I. P. No. 28 of 1959. Though the plaintiff originally claimed seventy five

lakhs of rupees as damages for the loss suffered by him in his business, position, credit and reputation, he subsequently amended the plaint by

confining his claim for damages to rupees twelve lakhs for his reputation credit and social position above.

(3) The first defendant has traversed every one of the allegations in the plaint and its case is that it did not act as the agent of the plaintiff in respect

of the amount transferred to the Karachi branch of the bank, that it merely obliged the plaintiff to open a current account was converted into a fixed

deposit account only at the request of the plaintiff. Madras branch was made only in June 1958 and that there were difficulties in obtaining such

transfer of the amount. The first defendant's case is that after the end of 1955 the plaintiff was allowed overdraft facility to the extent of Rs.

3,50,000 solely on the security of stocks held by the plaintiff in Madras and Vaniyambadi, that on 29-12-1955 security of immovable properties

by deposit of title deeds was given by the plaintiff only in order to persuade the Bank to refrain from taking action for the recovery of the overdraft

amount on account of the Income Tax enquiry, that on 26-11-1956 the overdraft facility was reduced to Rupees 2,50,000 as admitted by the

plaintiff in his letters and that the cheques were dishonoured as the plaintiff exceeded denied that the insolvency or loss sustained by the plaintiff

was due to any wrongful act on its part. The first defendant therefore repudiated the claim for damages and claimed that the suit should be

dismissed with compensatory costs.

(4) The Official Assignee at Madras representing the estate of the plaintiff is the second defendant in the suit and his only contention is that if and

when a decree, for any amount is passed in favour of the plaintiff against the first defendant, the same will vest in him as the after acquired property

of the plaintiff-insolvent for the benefit of his general body of creditors. On the pleadings in the suit, the following issues were framed:

1. Was the opening of the current account with the Chartered Bank, Karachi from and out of the funds received by the 1st defendant from their

head office at the instance of the plaintiff?

2. Did the plaintiff give any instruction to the 1st defendant to get back the money to Madras from Karachi in the year 1948-49 or only in June

1958?

3. Is the 1st defendant guilty of negligence in not repatriating the amount before July 1959?

4. Was the 1st defendant constituted an agent of the plaintiff to repatriate the moneys of the plaintiff from Pakistan?

5. Did the 1st defendant take all reasonable steps to get the money from Pakistan pursuant to the instructions of the plaintiff.

6. Were the funds at Karachi under the 1st defendant's order and control at any material time?

7. In any event, was repatriation or transfer of funds from Pakistan to Madras impossible at all material times?

8. Was the transfer of the funds in Karachi from the current account to fixed deposit account made on the plaintiff's instructions and was the

renewal of the fixed deposit made from time to time on plaintiff's instructions?

9. Was the letter dated 20-6-1958 given by the plaintiff to the dictation of the 1st defendant or was it given under the circumstances alleged in para

14 of the written statement?

10. Did the 1st defendant agree in 1955 to provide overdraft facility to the plaintiff to the extent of 3-1/2 lakhs on the security of the plaintiff's

immovable property and a further overdraft facility on 2-1/2 lakhs from 26-11-1956 on the security of the plaintiff's existing and future stock-in-trade?

11. Was the dishonouring of the plaintiff's cheques by the 1st defendant on account of the plaintiff's transgressing his overdraft limit?

12. Was the 1st defendant under any legal obligation to take into account the funds in Karachi, while disposing of the cheques drawn by the plaintiff?

13. Could the funds with the Chartered Bank, Karachi be deemed to be at any time available to the plaintiff at Madras as claimed in paragraph 19 of the plaint?

14. Was the putting up of the board by the 1st defendant that it was a mortgagee in possession tantamount to its taking possession of the tannery and if so, was it unlawful?

15. Was the bankruptcy of the plaintiff caused by the acts of omission or commission on the part of the 1st defendant and if so were they calculated to cause injury to the plaintiff's personal credit and reputation?

16. Is the plaintiff entitled to claim any damages on account of mental agony, and suffering of the social position, credit and reputation and if so

what is the quantum of such damages? In any event, is the claim of damages for Rs. 75,00,000 excessive?

17. Is the plaintiff as an undischarged insolvent not entitled to maintain the suit?

18. Could the plaint claim or any part thereof, if decreed to the insolvent's estate represented by the 2nd defendant, enure to the benefit of the insolvent's estate represented by the 2nd defendant?

19. Is the 1st defendant entitled to compensatory costs u/s 35 C.P.C.?

20. To what relief are the parties entitled?

(5) Mr. C. L. Pryce, who was employed in the first defendant-bank as an accountant, was examined before the Master in February 1962. The

learned Advocate for the plaintiff contended at the commencement of the trial that as the first defendant had adduced evidence by examining Mr.

Pryce de bene esse, it should complete adducing evidence, before the plaintiff

can be called upon to adduce evidence. It is clear from Order XXVI Rule 3 of the Original Side Rules that where a commission is issued for the examination of a witness, De bene Esse, the Court shall adopt the procedure prescribed for the examination of a witness on commission under the Code. Order XVIII of the CPC provides for the hearing of the suit and examination of witnesses. Under Order XVIII Rule 16 C.P.C., where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court, may, upon the application of any party or of the witness, at any time after the institution of the suit, taken the evidence of such witness in the manner provided in that order. Thus examination of a witness De Bene Esse or on commission cannot affect the question of right to begin the case. Even in Criminal Cases, an accused person could examine on commission a witness, who is about to leave the jurisdiction of the Court. It would be an astounding proposition of law to contend in such cases that the accused should lead the evidence before the prosecution proves its case. It should be booted that he plaintiff would be entitled to insist upon Mr. Pryce being examined as a witness furring the trial of the suit if he happened to return form England and happen to stay at Madras at the time in spite of the fact that he was already examined De Bene Esse. Hence, the question of admitting the evidence given by Mr. Pryce before the Master could arise only when the first defendant adduces oral evidence and wants to mark the evidence given by Pryce as its evidence. I informed the learned Advocate for the plaintiff that it was open to him to adduce evidence on those issues in respect of which the burden of proof lies on him and to reserve his evidence on the other issues in respect of which the burden of proof lies on the other side. (The learned Advocate for the plaintiff took time to consider the same, but finally adduced evidence on all the issues and did not exercise his right under O. 18 Rules 3 C.P.C. to reserve any evidence.)

(6) The plaintiff's case as disclosed in paragraphs 12 and 13 of his plaint is that "in 1955 the first defendant agreed to give an overdraft for the plaintiff's business to the extent of Rs. 3-1/2 lakhs on the security of the plaintiff's immovable properties and in pursuance of the said agreement the title deeds of immovable properties of the plaintiff were deposited with the

first defendant and that subsequently on 26-11-1956 the first defendant agreed to give a further overdraft of Rs. 2-1/2 lakhs on the security of the plaintiff's existing and future stock-in-trade, and consisting of hides and skins and machinery" and that "late in 1957 and early in 1958 the first defendant in breach of its said agreements with the plaintiff on the dishonouring account without any notice to the plaintiff.

The plaintiff has put forward the same case in his suit notice Ex. D84, Ex D148 gives the particulars for the cheques drawn by the plaintiff and returned unpaid during the period August 1957 to April 1958. The first cheque dated 23-8-1957 was returned on the ground that he cheque was post-dated and hence it need not be considered. The only other cheque issued in 1957 is one dated 18-10-1957 for Rs. 5,500 and the reason for its return is that effects wee not cleared. The remaining cheques were dishonoured during the period January to April 1958 either on the ground that effects wee not cleared or on the ground that the amount of the cheques exceeded the arranged limit, which according to the first defendant was only Rs. 2-1/2 lakhs at that time. Hence the important question for consideration is the limit for the agreed overdraft in October 1957 and in January to April 1958.

It is the common case of both the plaintiff and the first defendant that there was no change in the limit of the overdraft during the period 1957-58.

Though the plaintiff stated in a halting manner at the commencement of his evidence that as he had given costly machinery also as security, he

"thought" or "believed" that he had two separate overdrafts, one for Rs. 3,50,000 on the security of his immovable property and another for Rs.

2,50,000 on the security of his stock-in-trade and machinery. He definitely asserted even during the commencement of the cross-examination, that

he had overdraft facility for Rs. 6,00,000 as pleaded in the plaint. The learned Advocate for the plaintiff mainly argued the case only on the footing

that the overdraft was for Rs. 3,50,000.

(7) The plaintiff admitted that he never maintained any record to show his overdraft limit from time to time and that he relied only on the records of

he Bank. It is clear from the evidence of both the defence witnesses that up to the end of 1956 the local Manager of the defendant-Bank could

grant overdraft on his own initiative without reference to the Head Office at

London up to ten thousand pounds, that it about Rs. 1,33,000 and that subsequently the beginning of 1957 his discretionary powers were increased to a limit of 25,000 pounds that is about Rs. 3,33,000. The plaintiff pleaded ignorance about these facts. But it is impossible to place any reliance on his evidence. In Ex. D3 dated 13-11-1953 he has requested the defendant Bank to write to the Head Office for permission to increase the overdraft limit from Rs. 1 lakh to Rs. 2-1/2 lakhs. The explanation of the plaintiff that because he was asked to write such a letter, he wrote in that manner is hardly convincing.

(8-19) Though it is necessary to consider the limit of the overdraft granted to the plaintiff only during the relevant period, namely, October 1957

and January to April 1958, the parties have adduced documentary and oral evidence about the limit of the overdraft during the previous years and

exhibited the correspondence relating to the same in order to support their respective contentions.

(20) There is no force in the contention of the learned Advocate for the plaintiff that Exs. D4 to D6 got barred and hence there could not be any

renewals of the same by Exs. D26 to D28. The overdraft account of the plaintiff's firm with the first defendant was a continuous one and the

promissory note, the letter of continuity and the letter of hypothecation are taken only to secure the same. As the period of Exs. D4 to D6 expired

the first defendant Bank had to take Exs. D26 to D28, and there is no need for them to write to the plaintiff to renew the documents, or for the

plaintiff to write any such letter as Ex. P10. The Security Register Ex. D151 series shows that Exs. D4 to D6 were filed with old records. The date

stock lists up to 7-12-1956, and, thereafter the date of hypothecation has been changed into 26-11-1956 in the place of 25-11-1953. The change

has not been made in the stock list D. 152-W for November 1956 evidently as the said stock list should have been prepared earlier. The limit

shown also do not show that there was any further overdraft of Rs. 2,50,000, apart from the earlier overdraft of Rs. 2,50,000. I have already

referred to the document Ex. D. 25 dated 14-11-1956 sent by the Head Office at London to the first defendant-Bank in reply to Ex. D24. It

shows that the plaintiff had only two overdrafts at that time, the main overdraft of Rs. 2,50,000 to remain in force till 15-11-1957, and the

additional overdraft of Rs. 50,000 to remain in force till 15-5-1957. It is inconceivable that the first defendant Bank would have granted a further overdraft of Rs. 2,50,000 within 12 days of the letter Ex. D25. This clearly shows that Exs. D26 and D28 could have been taken only in respect of the main overdraft at Rs. 2,50,000 mentioned in Ex. D25. I have already pointed out that D.W. 2 Vergheese was not cross-examined with reference to Ex. D25. If really the plaintiff applied to a further overdraft of Rs. 2,50,000 in addition to the overdraft of Rs. 3,50,000 already given to him, as pleaded by him, the first defendant-Bank could not have dealt with it as if it would not have been within its local limit and it would have had to address the Head Office for a "further overdraft" of Rs. 2,50,000 alleged to have been claimed by the plaintiff under the original of Ex. P10 and 26-11-1956. D.W. 1 Pryce deposed that Exs. D26 to D28 were taken in renewal of the earlier documents Exs. D4 to D6. In cross-examination he stated that as three years had expired after the execution of the documents in 1953, fresh documents were taken. It was not suggested to him that the documents taken in 1953 were kept outstanding even after Exs. D26 and D28 were taken. I have already referred to the evidence of D.W. 2 Vergheese that Exs. D26 and D28. In chief-examination the plaintiff gave evidence vaguely that he believed or thought that the overdraft for Rs. 2,50,000 was separate from the one for Rupees 3,50,000. It is impossible to accept the evidence of the plaintiff that Exs. D4 to D6 and that both the set of documents subsisted together along with Exs. D10 to Ex. D12 as separate transactions to cover the total overdraft of Rs. 6,00,000.

(21) The contention of the learned advocate for the plaintiff is that the equitable mortgage created by deposit of title deeds evidenced by Ex. D19 was an independent, self-contained, an irrevocable transaction brought about as security for an overdraft of Rs. 3,50,000, that the combined effect of the transaction taken along with the overdraft of Rs. 2,50,000 secured under Exs. D4 to D6 dated 25-11-1953 and the overdraft of Rs. 1,00,000 secured under Exs. D10 to D12 dated 13-8-1955 is to create an irrevocable agreement between the plaintiff and the first defendant for an overdraft of Rs. 3,50,000 and that the plaintiff subsequently got another overdraft of Rs. 2,50,000 under Exs. D26 to D28 open 26-11-1956.

A customer can have only one overdraft account with a Bank. When the plaintiff was cross-examined about it, he prevaricated and stated that

there is no harm I having two overdrafts at the same time, but subsequently admitted that there must be one overdraft for Rs. 6,00,000. I have

already referred to the circumstances under which the plaintiff deposited his documents of title as security for his overdraft account. It is mentioned

in Ex. D19 that the security was for an overdraft in the Bank's account in the name of the plaintiff's company to a maximum extent of Rs. 3,50,000. In

Ex. D20 dated 30-12-1955 the plaintiff has admitted the fact that he deposited his title deeds on the previous day by way of equitable mortgage in

consideration of the first defendant Bank continuing the overdraft facilities in his favour for such time and on such condition as it thought fit. In Ex.

D19 the words "an overdraft" in the Bank's books in the name of the plaintiff's company would refer only to the plaintiff's overdrawings. If the said

words referred to any single overdraft, it is difficult to understand how it could refer to both the overdrafts of Rs. 2,50,000 and Rs. 1,00,000. The

fact that the security by deposit of title deeds has been taken for Rs. 3,50,000 does not mean that the limit of the overdraft should necessarily

extend to Rs. 3,50,000. The security could operate only to the extent of the overdrawings and the limit of the extent of the overdrawings would

depend upon the agreement between the parties. As the overdraft limits extended to Rs. 3,50,000 in January 1956, the first defendant Bank has

mentioned in Ex. D21 that they have granted overdraft facilities to the extent of Rs. 3,50,000 against hypothecation of stocks and that they have

also taken immovable properties as collateral security. Even in Ex. D104 dated 20-12-1958 the first defendant Bank has informed the Special

Deputy Tahsildar for collection of commercial tax arrears that the mortgage by deposit of title deeds effected by the plaintiff was to secure the due

repayment or Moines due on the overdraft account of the plaintiff's company up to a maximum of Rs. 3,50,000. It does not mean that the limit of

the overdraft granted under Exs. D4 to D6 on 25-11-1953 was renewed on 26-11-1956 under Exs. D26 to D28 and how the overdraft of Rs.

1,00,000 granted under Exs. D10 to D12 on 13-8-1955 came to an end on 15-5-1957.

(22-32) The conduct of the plaintiff clearly shows that the case put forward by him could not be true. (His Lordship went through the evidence and

proceeded.)

(33) The learned Advocate for the plaintiff contended that he combined effect of Exs. D4 to D6, D10 to D12 and D19 was that the first defendant

Bank was bound to grant overdraft facilities to the extent of Rs. 3,50,000 and that they could not reduce it. It is necessary to consider the nature

and the incidence of overdraft transactions in which securities have been taken of granting overdrafts. In *Cunliffe Brooks and Co. v, Blackburn*

Benefit Society, (1884) 9 AC 857 it is pointed out that in all banking accounts, the bankers, so long as the balance of the amount is in favour of the

customer, are bound to pay cheques properly drawn, and are justified, without any enquiry as to the purpose for which those cheques were

drawn, in paying them. out that they are under no obligation to honour cheques which exceeded the amount of the balance or in other words to let

the customer to overdraw. It is clear from paragraph 425 at page 227 of *Halbury's Laws of England III Edition volume 2*, that in the absence of

agreement express or implied from a course business as banker is not bound to let his customer overdraw. It is stated in *Corpus Uris Secundum*

(Vol. 9) at page 687 in para 342 that where a contract of parties so provides the bank will be bound to honour its customers overdraft. But the

Bank will not be so bound unless there is a compromise or agreement express or implied to that effect. In the foot note to this statement there is a

reference to the decision in *Dolan v. Danbury State*, 223 N. W. 400 where it was held that an instrument whereby customer delivered notes to

safeguard bank against overdraft did not bind bank to grant customer overdraft to amount of notes. There is also a reference to another decision in

the footnote to the effect that an agreement between banks whereby collateral deposited with second bank should be security if it paid any over

draft drawn by first did not obligate second overdraft drawn by first did not obligate second bank to pay overdrafts. This the fact that the plaintiff

has executed letters of hypothecation or deposited his title deeds by way of securities not sufficient to justify the contention that the first defendant

was found to grant overdraft of the amount for which the securities were given by way of hypothecation of goods or immovable properties. The

extent to which he first defendant should give overdraft facilities to the firm of the plaintiff would depend upon the agreement between them. It is

true that if the first defendant Bank unilaterally reduced the overdraft facility, it is bound to give notice of the same to the plaintiff. In *Rouse v.*

Bradford Banking Co. Ltd. 1894 AC 586 it is pointed out that it may be that an overdraft does not prevent the Bank who have agreed to give it

from at any time giving notice that it is no longer to continue and that they must be paid their money. But if the bankers agreed to give overdraft,

they cannot refuse to honour cheques within the limit of that overdraft which is drawn and put in circulation before notice to the customer that the

limit is withdrawn. Clause 1 of the letters of hypothecation Exs. D6, D12, and D28 executed by the plaintiff clearly provides that the first defendant

Bank was not bound to grant or continue any facility or accommodation except as it considers fit in its absolute discretion.

(34) The learned advocate for the plaintiff relied on the decision *Subba Rao v. Devu Shetti*, ILR 18 Mad 126 where it was held that a mortgagor

had an option u/s 39 of the Contract Act to cancel the contract of mortgage owing to the mortgagee's conduct in advancing only part of the

mortgagee amount, barely, Rs. 300 out of Rs. 800 and that he mortgagee was not entitled to treat the original mortgagee as mortgagee in force for

Rs. 300 instead of the entire mortgagee amount of Rs. 800. This view has been criticised in Mulla's Transfer of Property Act Fourth Edition at

page 343 as it ignored what Farran, C. J. in *Tatia v. Babaji*, ILR 22 Bom 176 calls ""the radical distinction between a perfected conveyance and at

contract"". The decision in ILR 18 Mad 126 would be binding on me If the mortgage in the present suit is also for a specific sum as in that case. But

is clearly distinguishable as the equitable mortgage created by the plaintiff's firm in favour of the first defendant Bank was intended to secure the

overdraft advances up to a limit of Rupees 3,50,000. It is clear from section 79 of the Transfer of Property Act that a mortgage may be taken to

secure a current account between the parties to secure a current account between the parties up to a limited extent. In case of such a running

security where only part of the mortgage money is advanced, the mortgage is good security for the part advanced.

(35) D.W. 1 Pryce admitted in his evidence that the Bank has not written to the plaintiff when his overdraft facilities had been curtailed, but he

stated that the plaintiff used to come frequently to the Bank that the Bank used to inform the plaintiff about his overdraft limit and that the plaintiff as

fully aware of the same. He referred to clause 10 of the loan application on Ex. D68 sent by the plaintiff to the Madras Industrial Investment

Corporation Limited where the plaintiff has mentioned that his overdrawing I the account stood at about Rs. 2,50,000. It is true that it might refer

to overdrawing and not to overdraft him. D.W. 2 Vergheese deposed that before the limit sheets are prepared the manager of the Bank used to

discuss with the customer about the overdraft facility and that the limit sheet comes into existence only after the overdraft limit is agreed. He also

stated that the customer will always remember the arrangement entered into with the Bank regarding his overdraft limit.

It is true the plaintiff pleaded ignorance about the curtailment of the overdraft facilities. But the plaintiff himself admitted that he did not have any

records to show his overdraft limits from time to time and that he relied on the Bank and also noted what was mentioned in the monthly statements.

If by the monthly statements he meant the stock lists submitted by him, they do not show the overdraft limit but only the dates of the letters of

hypothecation. There can be no doubt that the plaintiff would have relied only on the information given by the Bank from the limit sheets, even if its

is assumed that he did not actually know his overdraft limits. I have already dealt with Ex. D69 which clearly shows that the plaintiff knew that his

overdraft limit was only Rs. 2,50,000 during the crucial period.

(36) Thus on a consideration of the entire evidence, I find on issue 10 that the first defendant did not agree to give two independent overdrafts of

Rs. 3,50,000 on the security of the plaintiff's immovable property in 1955, and Rs. 2,50,000 on the security of the plaintiff's existing and future

stock-in-trade on 26-11-1956, as pleaded by the plaintiff and on issue 11 that the dishonour of the plaintiff's cheques by the first defendant was

on account of the plaintiff's transgressing his overdraft limit of Rs. 2,50,000 during the relevant period in 1957-58.

(37) The only other ground on which the plaintiff claims that his cheques should not have been dishonoured is that he had funds in the branch of the

Chartered Bank at Karachi which was under the control of the first defendant Bank.

The plaintiff had a sum of ₹13599-8-0 to his credit in the Head Office of the Chartered Bank in London. On 11-2-48 he wrote the letter to the

first defendant to cable to its London Office to remit the said sum of \$13599-8-0 by T. T. to the credit of his current account. The first defendant

Bank wired to the Head Office to remit the sum by T. T. as instructed by the plaintiff and debited the plaintiff's account with the cost of the

telegram as evidenced by the letter Ex. D47 dated 13-2-1948 sent to the plaintiff. Even on 14-2-1948 agent of the first defendant Bank sent the

letter Ex. D48 by Air Mail to the agent of the Karachi branch to open an account in the name of the plaintiff with the sum of Rs. 1,80,980-13-0.

The letter show that the first defendant had sent a telegram to the Karachi branch to the same effect. It is mentioned in that letter that opening form

and specimen signature card were sent along with that letter. At one stage of the arguments the learned advocate for the plaintiff went to the extent

of stating that these were only paper transactions. It is clear from the communication Ex. D112 dated 28-4-1959 sent by the first defendant to the

Karachi branch in connection with the funds that on 12-2-1948 the Head Office at the beneficiary's request tele-transferred to the first defendant

the sum of ₹13,559-8-0 favouring the plaintiff's firm and that on beneficiary's instructions the amount was immediately tele-transferred to the

Karachi branch without entry in his account for credit of a new account to be opened in that branch. Thus the amount was received by the first

defendant Bank by tele-transfer and was transferred without being entered in the accounts of the plaintiff to the Karachi branch by tele-transfer on

the instructions of the plaintiff.

There is therefore no substance in the averment in paragraph 4 of the plaint that the amount received in Madras was not credited by the first

defendant to the plaintiff's account in his pass book. When the plaintiff was specifically questioned whether immediately after the money was

brought to Madras, he desired that it should be sent immediately to Karachi, the plaintiff prevaricated and answered that in the year 1948 the

goods were available in Karachi at a cheaper rate. The Karachi plaintiff on 19-12-1948 advising him about a current account having been opened

in his name with the sum of Rs. 1,80,980-13-0 received telegraphically from the Madras office. On the same day the Karachi branch sent the

communication Ex. D50 to the agent of the first defendant Bank regarding the opening of a current account in the name of the plaintiff's firm,

enclosing a current account opening form and specimen signature card for being completed by the plaintiff.

The learned Advocate for the plaintiff commented on the fact that the Karachi branch had opened a current account in the name of the plaintiff's

company without even obtaining an application in the current account opening form or the specimen signature card duly signed by the plaintiff. But I

fail to see how it could affect the truth or validity of the current account opened in the name of the plaintiff's firm in the Karachi branch in the

instructions of the plaintiff. Ex. D-51 shows that the first defendant Bank forwarded the current account opening form and the specimen signature

card received by it from the Karachi branch to the plaintiff. Ex. D-52 shows that the plaintiff returned the current account opening form and the

specimen signature card after duly filling them up to the first defendant for being forwarded to the Karachi branch. The agent of the first defendant

Bank in his turn sent them to the Karachi branch as evidenced by Ex. D-53.

(38) The plaintiff's case is that he wanted to purchase hides and skins in Karachi and hence got his amount in the London Head Office transferred

to Karachi branch through the agency of the first defendant Bank. In paragraph 5 of his plaint the plaintiff has pleaded that he consulted the first

defendant and was advised to open an account at Karachi. In his chief examination the plaintiff deposed that he consulted the then manager, Mr.

Wallace and that Mr. Wallace told him that there was a sum of ₹13,000 to his credit in London and that the amount could be transferred to

Karachi to enable him to start business at Karachi. It may be that the plaintiff consulted the then Manager, Mr. Wallace about the transfer of his

funds from the Head Office at London to the branch office at plaintiff about it. It is however, clear from the documents referred to by me that the

opening of the current account in the Chartered Bank, Karachi, was from and out of the funds received by the first defendant from its Head Office

at the instance of the plaintiff and I find accordingly on issue 1

(39) The plaintiff's case is that he gave instructions to the first defendant to get back the money from Karachi to Madras from 1948 onwards, and

that the first defendant failed to do so. On the other hand, the case of the first defendant is that it was only on 14th June 1958 the plaintiff made a

request for the first time in his letter Ex. D-45 to bring the amount from Karachi

branch to the Madras branch and to appropriate the same against his overdraft account. The letter Ex. D-45 written by the plaintiff clearly supports the case of the first defendant, and I have already given my reasons for not accepting the plaintiff's case that he sent Ex. D-45 when he was out of his senses. The plaintiff deposed that two or four months after the money was transferred to Karachi, he dropped the idea of doing any business there and asked the first defendant both orally and in writing to get the amount retransferred. It is clear from his evidence that he made no attempts to do any business in March between 1948 and 1951. He has not produced any record to show that he made any written request to the first defendant to get the amount re-transferred from Karachi to Madras during the period 1948-1951.

(40-48) The earliest document which he has produced containing a request for re-transfer of the amount from Karachi to Madras is Ex. P-6, which is a copy of a letter alleged to have been sent by him to the Bank on 20-3-1952. The entry Ex. P-6(a) in the delivery book has been marked as the acknowledgement by the first defendant Bank for having received the original of Ex. P-6. It was suggested to P.W. 1 that Ex. P-6 (a) is really an acknowledgement for the letter Ex. D-197, dated 19-3-1952 delivered to the first defendant bank on 20-3-1952. The plaintiff denied the suggestion, but he was not able to point out any entry in the delivery book acknowledging Ex. D-197. The document Ex. P-6 was not put to D.W. 1 Pryce and the explanation is that it remained with Hamid. In Ex. P-6 the plaintiff has stated that he wanted the Karachi amount to be brought back in order to close down his overdraft his overdraft account with the first defendant Bank. But his subsequent correspondence, and particularly Ex. D-156, dated 3-2-1953, show that he wanted to continue his overdraft account with the first defendant Bank. Ex. P-7 is alleged to be a copy of another letter sent by the plaintiff to the first defendant on 30-6-1953 and the plaintiff's evidence is that it was acknowledged by the first defendant as per Ex. P-7 (a). Even the letter was not put to D.W. 1 Pryce when he was cross-examined. It was suggested to P.W. 1 that Ex. P-7 is an acknowledgement in respect of shipping documents negotiated on 30th June 1953 as evidenced by the entry Ex. D-198(a) in all the Ledger Ex. D-198. Admittedly the plaintiff did not get any reply for Ex. P-6 or Ex. P-7 in

any subsequent correspondence, including Ex. D-45 and the suit notice Ex. D-84. The next letter produced in this case in which the plaintiff is alleged to have made a request for getting the money from Karachi is Ex. P-8 and I have already dealt with it, and found that it is not a true document. Ex. P-11 is a copy of the letter alleged to have been sent by the plaintiff on 14-7-1957 to Mr. Blackwood, Manager of the first defendant bank. This document was marked subject to proof and the plaintiff proved it by the entry Ex. P-11(a). But the records of the Bank do not show that any such letter was actually received by it. This letter was not attacked by the first defendant during arguments. In this letter the plaintiff has complained about the first defendant having turned down his request for an accommodation of Rs. 50,000 and suggested that arrangements could be made to get back the money from Karachi. It is clear from the evidence of D.W. 2 Vergheese that such request should normally be made to the branch where the money is kept. The request contained in Ex. P-11 cannot be treated as a mandate to the first defendant Bank to bring the money from Karachi. Ex. P-3 is also a similar letter to Mr. Blackwood, dated 9-3-1958. It merely refers to the fact of the plaintiff having made repeated requests to bring back the money from Karachi and to reduce his overdraft account. (His Lordship further discussed the evidence and continued.) The facts stated above clearly show that the first defendant took all reasonable steps to get the money from Pakistan pursuant to the instructions of the plaintiff in Exs. D-45 and D-86 and that it was not guilty of negligence in not repatriating the amount before July 1959, and I find accordingly on issues 3 and 5.

(49) The plaintiff has pleaded in paragraph 8 of his plaint that he trusted the integrity and business skill of the first defendant, when he constituted it as his agent with reference to his dealings with his moneys in Karachi and that the first defendant failed in the discharge of its duty to him in omitting to get the moneys transferred to Madras at the time when the exchange was favourable to him. There can be no doubt that the first defendant Bank acted on behalf of the plaintiff in getting the moneys of the plaintiff from London to Madras, and sending the same to the Karachi branch and opening a current account there in the name of the plaintiff's company. though it was suggested to the plaintiff that the first defendant Bank did the

above acts only as a matter of friendly obligation and not as agent, it was not disputed by Sri K. Rajah Iyer appearing for the first defendant that the first defendant did act as the agent of the plaintiff in getting moneys from London and sending the same to Karachi and opening a current account in the name of the plaintiff's company at Karachi. But as stated by D.W. 2, Verghese, once the money was sent to Karachi and the current account was opened, the transaction was over so far as the first defendant Bank was concerned. It is true the first defendant Bank subsequently got the amount of the plaintiff in the current account at Karachi transferred to the fixed deposit account and had it renewed from time to time and finally took steps towards the overdraft account and appropriate the same were all done on the instructions given by the plaintiff from time to time. The facts of this case do not justify the argument of the learned Advocate for the plaintiff that the first defendant Bank was generally constituted as the Agent of the plaintiff with reference to all his dealing with the Karachi fund. There was, therefore, no obligation on the part of the first defendant Bank, in the absence of any instruction from the plaintiff, to get back the Karachi fund to Madras, when India devalued its currency in 1949 merely on the ground that by its doing so the plaintiff would have gained nearly Rs. 80,000 as alleged by him. The plaintiff authorised the first defendant Bank by his letters Exs. D-45 and D-86 to repatriate the Karachi fund of the plaintiff from Pakistan and set it off towards the overdraft account and the first defendant Bank carried out the same as already found by me. Even if the first defendant Bank did the said acts as the agent of the plaintiff, it had its own interest in doing so. I find accordingly on issue 4.

(50) The plaintiff's case is that the Karachi funds were under the order and control of the first defendant Bank. Till 28th April 1954 the plaintiff could have directly dealt with his funds at Karachi as the same were kept in the current account in his name. The only ground put forward by the plaintiff to show that he had no control over the funds during that period was that he was not furnished with a pass book and cheque book by the Karachi branch, but he could have applied for them and got them if he really wanted them but he made no attempt to do so. The Karachi branch has been directed by the last paragraph in Ex. D-54 to keep the fixed deposit receipt in safe custody on behalf of the plaintiff's company and to

make a careful note that any instructions regarding the delivery or disposal of the same must be conveyed to it through the Chartered Bank, Madras.

D.W. 1, Pryce has given evidence that the said directions were given on the instructions of the plaintiff and I have already given my reasons for

accepting his evidence. He admitted that subject to exchange regulations, the Karachi fund were at the disposal of the first defendant Bank. But he

denied the suggestion that the money was non-existent far as the plaintiff was concerned. D.W. 2, Vergheese admitted that the exchange control

between India and Pakistan came only in 1951 and that prior to 1951 there was no bar to a person having money in Pakistan from bringing it over

here, or sending money from here to Pakistan. He deposed that prior to 1951 if a customer wanted the Madras branch to bring his money lying in

Karachi it would have asked him to write to the Karachi office and get it. I have already found that the plaintiff made no such request for getting the

Karachi funds till June 1958. D.W. 1, Pryce admitted in his evidence that if the exchange control at Karachi had allowed the plaintiff's money to

be taken out of Karachi and the exchange control in India permitted it to be credited to the plaintiff's account, and the transactions were carried

out by the first defendant Bank, the amount would have been automatically put into the over draft account of the plaintiff and would have gone in

reduction of his overdraft. But D.W. 1, Pryce stated that the Bank could do all these acts only with the permission of the plaintiff, these acts only

with the permission of the plaintiff, and in fact it did not so subsequently on the authority of Ex. D-45 given by the plaintiff and proved its claim only

for the balance before the Official Assignee. In his last answer in re-examination D.W. 1 Pryce made it clear that when he was in the service of the

Bank, there was no question of the plaintiff being in difficulties, that the Bank was content with the securities of the stock-in-trade and the tannery

properties of the plaintiff and was not bothered about the money in Karachi and that there was no mention anywhere of the funds being held in

Karachi until such time as the plaintiff asked the Bank to transfer the money to Madras. D.W. 1 Pryce deposed that he became aware to him in

1954 and consulted him about transferring his money from the current account to fixed deposit.

D.W. 2, Vergheese deposed that transfer of the funds of the plaintiff from the Had Office at London to the Karachi branch was an ordinary

transaction in the usual course of business, that thousands of such transactions take place everyday and that when once the account has been

finalised it would be completely forgotten.

The learned Advocate for the plaintiff referred to a passage about credit agencies at page 289 of Banking Law and Practice in India by M. L.

Tannan, Tenth Edition, and urged that it is the usual practice of the Banks to make detailed enquiries about the credit of a customer and that the

first defendant Bank could not have lost sight of the funds held by the plaintiff in Karachi branch. But it is clear from the same page that in India

such credit agencies have not yet come into existence. Further the first defendant Bank allowed overdraft on the ample securities of the goods and

immovable properties of the plaintiff, and there was no necessity for it to rely on the Karachi funds till the financial condition of the plaintiff became

shaky. D.W. 1, Pryce denied the suggestion that the plaintiff divested himself of the ownership of the Karachi money by giving the alleged

instructions contained in Ex. D-45. D.W. 2, Vergheese has pertinently pointed out that if legal proceedings had been taken against the Bank in

Karachi, the instructions contained in Ex. D-45 could not have been pleaded by the Karachi branch as a defence. The fact that the plaintiff

continued to have control over the funds at Karachi is evident from the threat made by him in Ex. D-69 that he would stop the transfer of the

funds from Karachi if the first defendant Bank persisted in its unlawful actions.

(51) The learned Advocate, for the plaintiff contended that the first defendant Bank kept the Karachi fund as a secret in order to make it always

available for appropriation towards plaintiff's overdraft account and hence it did not want to allow the plaintiff to deal with it. The evidence of D.W.

1, Pryce is that it was the plaintiff who wanted to keep the amount in Karachi as a secret. I have already referred to it and given reasons for

accepting the evidence of D.W. 1, Pryce. D.W. 1 Pryce admitted that it is the duty of the banker to report to the Reserve Bank about the

existence of a foreign exchange immediately after it comes to know that the object of a citizen holding the said foreign exchange had failed. He

admitted that the plaintiff intended to use the funds in Karachi for purchase of

hides and skins, but he stated that he did not know whether that object failed. It should be noted that the plaintiff did not require the permission of the foreign exchange controller to take the money to Karachi in 1948 for the object of purchasing hides and skins and it is on account of this fact moneys to Karachi without obtaining the permission of any exchange control authorities. The evidence of D.W. 1, Pryce is that it is only in 1954, he became aware of the Karachi funds when the plaintiff came and gave instructions for the transfer of the funds to fixed deposit. He stated that it is not the duty of the first defendant Bank to report to the Reserve Bank about the foreign exchange kept by the plaintiff in Karachi. The extent of a banker's obligation to secrecy is clearly stated in paragraph, 445 at page 245 of Halsbury's Laws of England, Second Volume III Edition, in the following words:

It is an implied term of the contract between a banker and his customer that the banker will not divulge to third persons without the consent of the customer, express or implied, either the state of the customer's account or any of his transaction with the bank, or any information relating to the customer acquired through the keeping of his accounts, unless the banker is compelled to do so by order of a Court or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interest requires it.

It is pointed out in Paget's Law of Banking, Sixth Edition at page 131 that the duty to maintain secrecy is a legal one,. The law on this matter has been most clearly and comprehensively laid down by Court of Appeal in *Tournier v. National Provincial and Union Bank of England, Ltd.*, 1924 1 KB 461. The qualifications of the contractual duty of secrecy implied in the relation of banker and customer have been classified in that decision under four heads, namely (a) where the disclosure is under compulsion bylaw, (b) where there is a duty to the public to disclosure, (c) where the interests of banker require disclosure, and (d) where the disclosure is made by express or implied consent of the customer. There is no duty on the part of the foreign exchange authority about the Karachi funds kept by the plaintiff. Hence there is no point in the adverse suggestions made by the plaintiff to D.W. 1, Pryce and D.W. 2, Vergheese, hat the first defendant Bank kept the Karachi funds as a secret in order to make it available for

appropriation towards the plaintiff's overdraft account.

(52) It is necessary in this connection to consider the effect of clause 15 of the letters of hypothecation Exs. D-6, D-12, and D-28 which runs as

follows:

The security shall operate as a b hypothecation and shall be and remain a continuing security for all my/our indebtedness and liabilities either alone

or jointly with any other person or persons on any account whatsoever and for the ultimate balance due to you at your Head Office or at any of

your branches in respect thereof notwithstanding that by payments made from time to time my/our account with you may at any time be increased,

reduced or brought into credit"".

D.W. 1, Pryce admitted in cross-examination that the security is given for the ultimate balance that may be due from National Mohammed Hussain

Sahib and Co. to the Chartered Bank at the Head Office, or any of its branches, in respect of all its dealings and that the hypothecation is the

security for the ultimate balance due from the constituent taking into account the debits and credits in all the branches. But as pointed out by D.W.

2, Vergheese, the letters of hypothecation were all in favour of the first defendant Bank. This is clear from the fact that the letters of hypothecation

have been addressed to the Chartered Bank at Madras and the plaintiff's firm has given the security over his goods only to act as an overdraft from

the first defendant Bank. The D.W. 2 Vergheese is correct in stating that the hypothecation is primarily to satisfy the overdraft account of the

plaintiff with the first defendant Bank and that clause 15 of the letters of hypothecation is only an additional provision to meet the claims of the

Head Office or other branches of the Chartered Bank after meeting the claims of the first defendant Bank. In the first part of clause 15 the p

plaintiff's firm has agreed that the security shall operate as a hypothecation and shall remain a continuing security for all its indebtedness and

liabilities on any account. In the second part of clause 15 the security is made available for the ultimate balance due at the Head Office or any of

the branches in respect of all the dealings. Primarily the letters of hypothecation were given only as security for the overdraft account of the

plaintiff's company with the first defendant Bank.

(53) In Thomson's Dictionary of Banking, 10th Edition by Jones at page 642 it is

stated that the term "ultimate balance" is usually used in forms of guarantee and that where a security is drafted to cover the ultimate balance, it covers the final sum owing arrived at by combining all accounts. In Paget's "Law of Banking" Sixth Edition, at page 529, it is stated that the term "ultimate balance" primarily means the sum finally owing, combining all accounts. Even if the contention of the learned Advocate for the plaintiff there under the terms of the letters of hypothecation the first defendant Bank could enforce the hypothecation only for realising the ultimate balance due to all the branches of the Chartered Bank is accepted, it would only lead to the result that if the first defendant Bank wanted to enforce the hypothecation could do so only for realising the amount overdrawn by the plaintiff in the current account after giving credit for the Karachi funds. In fact, before the first defendant Bank proved its claim before the Official Assignee as a secured creditor, it gave credit for the Karachi funds and claimed only the balance of the over drawings. Clause 15 of the letters of hypothecation cannot compel the first defendant Bank to honour the cheques of the plaintiff's company, having regard to the existence of Karachi funds, is less than the overdraft limit.

(54) Even part from clause 15 of the letters of hypothecation referred to above, the first defendant Bank has a right to combine the different accounts of the plaintiff. In Halsbury's Laws of England, Third Edition, Volume 2, at page 172 paragraph 322 it is stated that, "unless precluded by agreement, express or implied for the course of business, the banker is entitled to combine different accounts kept by the customer in his own right, even though at different branches of the same bank, and to treat the balance, if any, as the only amount rally standing to his credit, and hat the customer, however, has not the equivalent right, and cannot utilise a credit balance at one branch for the purpose of drawing cheques on another branch where he has no account or where his account is overdrawn". The same principles are stated in Paget's Law of Banking, Sixth Edition at pages 106 and 108 and in Sheldon's "The Practice and Law of Banking", Sixth Edition, page 193. At page 108 of Paget's Law of Banking, Sixth Edition, it is stated that the right to combine is a right of the banker only, not of his customer. In Garnett Mckewan, (1827) 8 Ex. 10, the plaintiff having an account at the "L" branch of the defendant's Bank, which showed a

balance to his credit exceeding 23½, drew cheques to that amount on that branch. At the same time he was indebted to the bank at their "B" branch in an amount which having regard to his whole account, reduced his assets in the bank's hands to a few shillings only and he bank without any notice to him, transferred the B debt to the L branch and refused to pay the cheques on presentment. There was no special contract between the parties that each account should be kept separate. It was held that the bank was entitled at any time to combine the accounts, and to charge the L account with the B debt. *Bramwell v. Bank of London* (1857) 12 Q.B. 97. Bramwell J pointed out that there is no duty apart from usage or contract on the part of the banker to honour cheques at one branch because the customer has a credit there, if at another branch there is a counter availing debt. The learned Advocate for the plaintiff referred to the observation of Bramwell J at page 15 that

In practice, bankers do constantly allow over drawing at a particular branch, because they know they may debit the customer with balance at some other branch.

But it is not obligatory for the Bank to do so. In *Mutton v. Peat*, 1900-2 Ch. 79, a bank had a loan account and also a current account in credit with the same customer and held security for the ultimate balance. It was held in that case that the bank cannot on the bankruptcy of the customers, appropriate the proceeds of the security to the loan account, ignoring the credit balance in the current account, but must treat the two as one account. At page 108 of Paget's Law of Banking, Sixth Edition this decision has been given as an illustration for the principle that in some circumstances the banker is bound to combine. The suggestion in the judgment of the Master of the Rolls which might be thought to mean that in the absence of agreement a banker might combine a loan account with a current account has been referred to at page 108 in that Book and explained on the basis that the Master of Rolls was speaking of the indebtedness for which the deposited bonds were security and in the context of the borrower's bankruptcy and it is pointed out on the authority of the well-known decisions in *Woodland v. Fear*. (1857) 7 E&B 519 and *Joachimson, v. Swiss Bank Corporation*, 1921 3 KB 110, that the customer has not the corresponding right to combine accounts kept at different branches, so as to draw cheques indiscriminately.

(55) The general lien of bankers over any goods bailed to them is embodied in S. 171 of the Indian Contract Act. There is conflict of decisions as

to whether any such lien may be over money in Halsbury's Laws of England, Third Edition, Volume 2, at page 170 in paragraph 317, it is stated

that the banker's lien applies to money paid in current account. At page 446 of Paget's Law of Banking, Sixth Edition it is instated that money

paid into the bankers has been expressly stated by the House of Lords to be subject to the banker's lien. But is pointed out by the same author

that it is somewhat difficult to see how in ordinary cases money could be the subject of lien. The law is well settled as stated in the well-known

decision of the House of Lords in *Foley v. Hill*, (1848) 2 HLC 28, that when moneys are deposited in a bank, the relationship that is constituted

between the banker and the customer is one of a debtor and creditor relationship. In *Roxburghe v. Cox*, (1881) 17 Ch D 520, the Court of

Appeal did not express any dissent from the conclusion to which the Vice Chancellor came on the ground that Messrs. Cox and Co. had an

authorised lien but preferred to base the conclusion on the ground that there is a clear right to set off. Similar conclusion was reached in *Coney v.*

Morris, (192) 1 IR 81. In *Radha Raman Choudhary and Another Vs. Chota Nagpur Banking Association Ltd. and Others*, , it was held that the

banker's right of lien can only attach to money so long as it remains an earmarked sum of money, while after it has ceased to be such a separate

ear marked sum of money and is represented only a balance of account or debt due from the bank no lien can continue to attach to it, though the

rights of the bank by way of set-off will not thereby be affected. In *Devendrakumar v. Gulabsingh*, AIR 1946 Nag 114, it was held that in the

absence of specific provision on the subject, when moneys are held by the bank in one account, and the payer in respect of these moneys owes the

bank on another account, the banker's lien gives the bank a charge on all the monies of the payer in its hands, so that they may be transferred to

whatever account the bank chooses, to set off or liquidate the debt. In *Brahmayya and Co. v. Thangavelu*, AIR 1956 Mad 570 , it was held that

when moneys are deposited in a bank the ownership of the moneys passes to the bank and the right of the bank over the moneys lodged with it

would not be really a lien at all and it would be more correct to speak of it as a right of set off or adjustment. So far as the present case is

concerned, it does not really matter whether the right of the bank is called a lien or set off. But he said right can be exercised only by the getting

the Karachi funds transferred to Madras with the consent of the plaintiff. It is not open to the plaintiff to call upon the bank to exercise any such lien

or set off.

(56) The fact that the plaintiff had funds in the Karachi branch would not entitle him to insist on the first defendant bank honouring his cheques at

Madras in excess of the overdraft limit.

The learned Advocate for the plaintiff referred to Paget's Law of Banking, Sixth Edition, page 541 where it is stated that branches and the Head

Office constitute but one undertaking. He also relied on the decision in *Dunlop Rubber Co. v. Haigh and Sons*, 1937 1 KB 347, where it was

pointed out that "the plaintiff's no matter how many branches they may have, are in law a single person" and hence the assent given by their

authorised agent at Liverpool was necessarily on assent to the deed of composition for all purposes and for all debts and neither the Birmingham

branch nor any other branch could afterwards dissent. This decision is only an application of the general principle of law that an act of an agent would

bind his principal and that the bank is no exception to this principle. The following passage at page 192 in *Sheldon's Practice and Law of Banking*,

Sixth Edition clearly shows how the branches of a bank are distinct legal entities from their Head Office for certain purposes:

The legal relation between the branches of a bank and the head office is summed up in the following quotation: "The position of branch banks is

that, in principle and in fact, they are agencies of one principal and in fact, they are agencies of one principal banking corporation or firm,

notwithstanding that they may be regarded as distinct for special purposes, e.g., that of estimating the time at which notice of dishonour should be

given, or of entitling a banker to refuse payment of a customer's cheque except the branch where he keeps his account". *Prince v. Oriental Bank*

Corporation, (1878) 3 AC 325. In giving notice of dishonour each branch is considered as an independent holder, and, therefore, entitled, within

the usual time, to receive notice from and to transmit notice to the other branches of the same bank (S 49(12), (13), Bills of Exchange Act, 1882,).

In regard to cheques, when a customer draws a cheque he does not draw it upon

the bank generally, but upon the particular branch at which he keeps his account. On branch is, therefore, not compelled to pay a cheque drawn upon another branch. And if one branch does cash a cheque drawn upon another branch, it has been held that it does so on the credit of the person presenting the cheque, and not as the bankers of the drawer.

The following passage from the judgment of Lord Robson in *Rex. v. Lovitt*, 1912 AC 212 brings out clearly how a branch of a bank has to be

regarded as a distinct entity for certain purposes:

Although branch banks are agencies of one principal firm it is well settled that for certain special purposes of bank business they may be regarded

as distinct trading bodies. Thus it was held in (1887) 7 El & Bl 519, that the obligation of a bank to pay cheques of a customer rests primarily on

the bank at which he kept his accounts and that the bank in that case had originally refused to cash the cheque at another branch. Commenting on

that decision, Sir Montague Smith in delivering judgment of their Lordships' Board points out that it would be difficult for a bank to carry on its

business by means of branches on any other footing, because the official at one branch do not know the state of a man's account at another

branch.

(57) In Halsbury's Laws of England, Third Editions, Volume 2 at page 194 in paragraph 363 it is stated that a balance at one branch of a bank

does not entitle a customer to draw on another branch where he has no account or is overdrawn, for, different branches of a bank are for his

purpose separate entities though the bank may apply funds which it holds at one branch to meet an overdraft of the customer at another".

(58) There is no obligation on the part of the first defendant Bank to pay to the plaintiff at Madras the amount due to him from the Karachi branch.

This in *Clare and Co. v. Dresdner Bank*, 1915 2 KB 576 the plaintiffs had an account at the Berlin branch of the defendant bank, which had its

Head Office in Germany and a branch in London and they wrote to the London branch demanding payment of the balance due on the account at

the Berlin branch without having made any request to the branch in Berlin to pay or to remit the balance to London. It was held that the plaintiffs

were not entitled to demand payment from the London branch and that there

had not been any breach by the defendant bank of any obligation to the plaintiffs.

The decision *Leader and Co. v. Direction der Disconto Gesellschaft*, (1914) 31 TLR 83 has been referred to in this decision and is distinguished

on the ground that in that case an actual demand was made at the branch where the account was kept and refused. In *Richardson v. Richardson*,

1927 P 28 the earlier decisions have been referred to and it was held that the bank is not liable anywhere until the demand is made at the branch

where the account is kept. It was also pointed out that decision that the cause of actions upon refusal and not for debt.

The learned Advocate for the plaintiff relied on the following passage at page 234 of the judgment :

It is the practice of banks at the request of a customer to transfer amounts to the credit of the customer from one account to another. And

perhaps it is an implied term of the contract that the bank shall at the request of the customer make such transfer at the expense of the customer,

and if a conversion from one currency to another is necessary, at the rate of exchange ruling at the time to be made to the branch officer where the

amount is kept, the act must be for damages for refusal to transfer and that the refusal to transfer at request and that the refusal to transfer at

money lent elsewhere than at the branch where the account is kept. Thus the decision does not hold that such a request for transfer can be made as

a right at the head office. In fact the evidence of D.W. 2, Vergheese is that such request should be made at the Karachi branch.

In *Arab Bank v. Barclays Bank*, 1954 AC 495 the principle that a customer must make a demand for payment at the branch where his current

account is kept before he has a cause of action against the bank is reiterated. It was held in that decision that the balance at the customer's credit is

only payable at the branch where the current account is kept and so the customer must go there or send his instructions there before he can get his

money. The above principles have been followed in several decisions in this country and it is sufficient to refer to the decision in *Mahaluxmi Bank*

Ltd. Vs. Chotanagpur Industrial and Commercial Association, and in *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, .

It is clear from the Supreme Court decision that the rule that the customer must

make a demand for payment at the branch where his account is kept before he has cause of action against the bank is the same whether the account is a current account or whether it is a case of a deposit. Thus the plaintiff in this case can have no cause of action against the first defendant bank in respect of the Karachi fund in the absence of a demand for payment at the Karachi branch. Even assuming that the plaintiff could make any such request to the first defendant Bank on the ground that he transacted through the first defendant in respect of his Karachi funds, it is clear from my findings that he made no such request till 1958.

(59) The plaintiff has submitted in paragraph 19 of his plaint that had the information obtained by the first defendant Bank from Karachi been

communicated to him even as late as May 1959, he would have been able to avert the crash of his business and his adjudication as insolvent on

1-7-1959. D.W. 2, Vergheese was in charge of the correspondence relating to the transfer of Karachi funds. He deposed that there was no

necessity to inform the plaintiff about the communication Ex. D-113, dated 27-4-1959 received from the Karachi branch regarding the sanction

accorded but the State Bank of Pakistan for the opening of a blocked account and its request for obtaining a letter of authority from the plaintiff

D.W.2, Vergheese stated that as the first defendant Bank had already the necessary authority given by the plaintiff's letter Ex. D-45, there was no

necessity to communicate to the plaintiff. In fact the first defendant Bank has mentioned in its communication Ex. D-114 to the Karachi branch that

they propose to rely on the authorisation given in Ex. D-45, dated 14-6-1958 and that they would not approach the plaintiff for a further letter of

authority as he had turned hostile. In view of the authorisation given in Ex. D-45, it was unnecessary for the first defendant Bank to inform the

plaintiff about the communication Ex. D-113. Even after obtaining the permission of the Reserve Bank of Pakistan for opening a blocked account,

the first defendant the Karachi funds in the blocked account towards the overdraft account of the plaintiff and the first defendant Bank got a

favourable order Ex. D-120 only on 4-7-1959 and on the same day they communicated the fact to the plaintiff in its letter Ex. D-121.

Further I fail to see how the communication of Ex. D-114 to the plaintiff would have helped him to avert his insolvency. The first defendant Bank

would-be entitled to adjust or set off the Karachi funds towards the overdraft account of the plaintiff and it would not be available to the plaintiff

for paying any of his creditors. The letters Ex. D-178., Ed. D-179 and Ex.D-149 sent by the first defendant Bank to the Head Office, July 1958

and April and June 1959 show that the local limit for the overdraft of Rs. 2,50,000 a granted to the plaintiff was kept in abeyance. It is clear from

the accounts of the plaintiff that the last cheque drawn by him was in July 1958. In fact the plaintiff wanted to close down his overdraft account as

required by the first defendant Bank and he wrote the letters not have operated on his overdraft account even if he had intimation about the

permission granted by he Reserve Bank of Pakistan for the opening of a blocked account. The insolvency of the plaintiff was due to his inability to

meet to the demands of other creditors and not due to any claim by the first defendant Bank. Hence the submission of the plaintiff in paragraph 19

of his plaint is without substance.

(60) For the foregoing reasons, I find on issue 12 that the first defendant was not under any legal obligation to take into account he funds in

Karachi while disposing of the cheques drawn by the plaintiff and on issue 13 that he funds of the plaintiff with the Chartered Bank at Karachi

cannot be deemed to be available in the plaintiff at anytime at Madras.

(61) The plaintiff has alleged in paragraph 7 of his plaint that he was informed by the first defendant that the bank was experiencing difficulty in

getting the money to India and that plaintiff now understands that there was not much difficulty in the way of the first defendant getting back the

amount to India from Karachi. The plaintiff prevaricated when he was cross-examined about these averments. It is clear from my findings that the

plaintiff made a specific request for the transfer of the Karachi funds to Madras only in June 1958 and the first defendant Bank took all reasonable

steps to carryout the instructions. It is clear from what I have already stated that on account of exchange regulations it was not possible to

repatriate or transfer the funds form Pakistan to Madras.

It is suggested to D.W. 2, Vergheese that with he consent of the plaintiff the first defendant Bank could set of the Karachi funds towards the

overdraft account without the permission of the exchange controller. But the witness stated that it could not be done without the permission of the

controller. It was suggested to the witness by way of illustration that if a constituent of a Bank owes Rs. 2,00,000 to a branch at Malaya and has

Rs. 3,00,000 to his credit in India, the debt in Malaya could be written off and his account in India could be debited to the extent of the said Rs.

2,00,000 with his consent without seeking the permission of the exchange controller and the witness stated that such violation of exchange control

regulation would entail cancellation of the licence given to the Bank. The evidence of D.W. 1, Pryce, shows that keeping a blocked account in

Karachi meant that the first defendant took all exchange risks attendant upon it and hence the permission of the Head office was obtained. D.W. 1

Pryce a deposed that after getting the permission from the Head Office in London, the first defendant bank got the permission of the Indian

Exchange Controller to have the funds in Pakistan credited in the overdraft account of the plaintiff and that it was rally a gift because the first

defendant Bank had cleared the overdraft at a risk to itself. For the foregoing reasons, I find on issue 7 that the repatriation or transfer, of funds

from Pakistan to Madras was impossible at all material time.

(61A) The plaintiff has alleged in paragraph 21 of his plaint that he first defendant aggravated the situation which had arisen had hastened the

bankruptcy by unlawfully taking possession of his tannery at Vaniyambadi and putting up a board as ""mortgagee in possession"". In his chief-

examination the plaintiff deposed that on 25th March 1959 the first defendant put up its name-board without his consent stating that it was

mortgagee in possession. In cross-examination he admitted that an interim receiver was appointed on 19th March 1959 and that under clause 11

of the letter of hypothecation Ex. D-28 the Bank had a right under certain circumstances to take possession of the tannery in order to protect its

rights. The insolvency proceedings taken against the plaintiff would clearly justify the first defendant to take such action under clause 11 of Ex. D-

28 But the Bank did not actually take possession of the goods. According to be the plaintiff, the Bank locked the outer door and he handed over

the keys of the tannery to the Bank at the intervention of the Official Assignee. He denied the suggestion that he himself put up the Board even in

May 1958 to scare the creditors. He was uncertain whether there was any such Board at the Madras godown. D.W. 1 Pryce was cross-examined

with reference to the entry, dated 25-3-1959 in the account book Ex. D-85 about the expense for train fare for sending two peons for fixing the

Bank's Board at the tannery and he admitted that he Bank took possession of the tannery and put a watchman there. The first defendant Bank

was entitled to put up the board by virtue of clause 11 of the letter of hypothecation Ex. D-28. I find on issue 14 that the first defendant Bank did

not act unlawfully in putting up a board that it was mortgagee in possession and taking possession of the keys of the tannery through the Official

Assignee.

(62) In view of my findings on issues 1 to 14, the plaintiff can have no cause of action to sue the first defendant Bank for damages. Even if the

plaintiff had proved any of the illegal acts of omission or commission the apart of the first defendant Bank was alleged on the part of the first

defendant Bank as alleged by him, he cannot succeed unless he could show that his bankruptcy was caused by such unlawful acts omission; The

putting up of a board by the first defendant at the premises of the tannery that it was the mortgagee on possession was subsequent to the

insolvency proceedings and it could not have led to the insolvency of the plaintiff. Hence the only question to be considered is whether the

bankruptcy of the plaintiff was caused by the acts of the first defendant Bank in dishonouring the cheques of the plaintiff.

(62A) The first defendant Bank dishonoured as many as 45 cheques issued in favour of 10 persons, Excluding the first cheque which was

dishonoured in August 1957 on the ground that it was post-dated, the other cheques were dishonoured in October 1957 and from January to

April 1958. The first insolvency petition No. 19 of 1956, Ex. D-196 was filed by Md. Shamveel and Co. on 19-3-1959 and the second

insolvency petition No. 28 of 1959 Ex. P-28, was filed by Danapal Chetty on 8th April 1959. Thus the insolvency petitions were filed nearly a

year after the last cheque was dishonoured.

I have already referred to the fact that it is only in March 1958 the plaintiff complained about the dishonour of the cheques for the first time in writing.

The plaintiff continued to have dealings with the first defendant Bank, and in fact he has drawn cheques on the first defendant Bank till 25th July

1958. Among the persons to whom cheques were issued by the plaintiff and were

dishonoured by the first defendant Bank, Bagurudeen alone filed a suit, O. S. No. 903 of 1958, on the file of the City Civil Court, Madras, on the dishonoured cheques. Ex. P-39 is the plaint in that suit and it shows that it was filed in respect of nine cheques given by the present plaintiff. In that plaint it is alleged that the cheques except the last one were returned as dishonoured when presented and the last one were returned as dishonoured when presented and the last cheque was not presented at the Bank in view of the defendant's (the present plaintiff's) request not to present it. Ex. D-174 is the written statement filed by the present plaintiff as defendant in that suit. It is significant to note that the plaintiff in this suit has not mentioned anything against the first defendant Bank in the said statement and his explanation is that he might have felt that there was no necessity. Exs. P-26 and P-27 show that the suit was dismissed as settled out of Court, evidently on account of the subsequent insolvency proceedings, as the plaintiff in that suit appears to have proved his claim on the insolvency proceedings.

(63) I have already referred to the suit filed by Soundarapandiyan in O. S. No. 764 of 1958, on the file of the City Civil Court, Madras. But the said suit was filed for the value of hides and skins sold to the present plaintiff. The present plaintiff gave post-dated cheques to Soundarapandiyan and wrote to him not to send the cheques to the Bank for endorsement on the due dated promised that he would arrange to pay the same. In that suit Soundarapandiyan got the movable of the present plaintiff attached and the attachment subsisted for a period of over 21 days and it is this fact which was relied on as an act of insolvent in both I. P. No. 19 and 28 of 1959. This is clear from the insolvency petition Ex. D-196 filed by Shamveel and Co. and the insolvency petition Ex. P-28 filed by Danapal, and the orders Exs. P-31 and P-29 respectively passed thereon. The evidence of the plaintiff that on the basis of the dishonoured cheques there were other attachments and that on that basis the insolvency took place is not supported by any record. Thus the bankruptcy of the plaintiff was not caused by the act of the first defendant in dishonouring the cheques a year earlier.

(64) I have already referred to the financial difficulties of the plaintiff from 1953 onwards. The plaintiff had to pay arrears of Income Tax and sales-

tax for several years. Subsequent to 1954, he incurred loss in several years and did not earn large amount of profit in the other years as proved by the certificate Ex. D-165 and other evidence. There were enquired by the Head office of the first defendant Bank regarding the financial position of the plaintiff and the first defendant Bank itself gradually reduced the overdraft limit and finally asked the plaintiff to close down his account. The plaintiff even applied for a loan to the Industrial Investment Corporation, but was unsuccessful. In his chief-examination the plaintiff stated that he d turnover of Rs. 50,00,000 a year. But when it was suggested to him in cross-examination that his turnover was only Rs. 26,000 in 1956-57 and Rs. 15,000 in 1957-58 he gave evasive answers. In the schedule Ex. D-199 the plaintiff has mentioned his unsecured debts as only Rs. 10,00,000 and odd;. But the plaintiff admitted in his evidence that the total of the claims admitted by the Official Assignee came to Rs. 15,86,601 as stated in the report of the Official Assignee Exhibit D-201. Having regard to the above facts, there is considerable force in the suggestion made by the learned Advocate for the first defendant to the plaintiff that he bankruptcy of the plaintiff was entirely die to this own state of affairs and the decline in his business form 1952 onwards. this the bankruptcy of the plaintiff was due to his own making and no to the dishonour of the cheques by the first defendant Bank.

(65) The learned Advocate for the plaintiff referred to the rules laid down in the leading case *Hadley v. Baxendale*, (1854) 9 Ex. 341. Sec 73 of the Indian Contract Act has been enacted to affirm the said rules and one had to follow its provisions strictly in preference to later. English decisions. The learned Advocate for the plaintiff relied on the illustration (n) to S. 73 of the Contract Act which has adopted the rule o English Law that the law does not regard collateral or consequential damage arising from delay in payment of money. It is this principle which was applied in *Rangaswamy v. Venkatarama*, AIR 1915 Mad 942 where the defendant had undertaken to collect some moneys due to the plaintiff and out of such collections to pay the debt due by the plaintiff the third person, who however, because of the defendant's default, recovered it with costs from the plaintiff. In an action by the plaintiff to recover from the defendant the amount of the debt and the cost he had to pay to his creditor, it was

held that the amount of costs recovered against him was a consequential damage for which the law does not award compensation under S. 73 of

the Indian Contract Act. But that rule, however, does not apply where there is a special contract which controls the relations and, for breach of

which, damages may be awarded for consequential losses. Thus in *Rolin v. Steward* (1854) 139 ER 245 it was held that substantial dishonouring

cheques of customer, there being sufficient assets in the hands of the banker at the time to meet them. In the present case the first defendant Bank

had agreed to give overdraft on the securities of movables and immovables of the plaintiff. In *Wilson v. United Counties Bank Ltd.*, 1920 AC 102

relied on by both the parties, an action was brought upon an agreement which the defendant Bank had made with the plaintiff to look after his

business during his absence. It was held that the defendant Bank by its negligence in the discharge of its duties under the agreement caused the

bankruptcy of the customer and was liable in damages. At page 132 of the decision it is pointed out that said case differed from the case of a

banker who, having adequate funds in his hands to pay his customer's cheques, dishonours it as in the latter case the banker does not contract to

take any steps to maintain his customer's credit or reputation but only to honour the customer's credit funds available for the purpose. But it is

pointed out in the decision that he refusal to honour the customer's cheques while such funds are so available, is in itself injurious to the customer's

credit, if he be a trader as to entitle him-though no special damage be alleged or proved-not merely to recover nominal charges, but to recover in

the shape of damages temperate and reasonable compensation for the injury thus done to this credit.

(66) Both sides referred to several decisions in the question of remoteness of damage. But as pointed out in *India General Navigation and Railway*

Co. Ltd. Vs. The Eastern Assam Company Ltd., a negligent act may be the effective cause of an injury though it may not be proximate in time, if it

is the particular incident in a chain of events which has in fact led to the injury, that is, if it is the real cause of subsequent accident, that to determine

responsibility the law will consider the proximate and not the remote cause of an injury and that no general formula however can be framed for the

solution of all conceivable cases; each case must be decided largely upon the special facts belonging to it and often upon the very nicest

discrimination. The learned advocate for the plaintiff relied on the decision in Davis. Garnett (1830) 130 ER 1456 where it was held by Tindal C.

J. that

.....no wrong doer can be allowed to apportion or qualify his own wrong and that as a loss has actually happened whilst his wrongful

act was in operation and force, and which is attributable to his wrongful act, he cannot set up as an answer to the action the bare possibility of a

loss, if his wrongful act had never been done"".

But before the plaintiff can invoke this principle he should not only show that the first defendant, wrongfully dishonoured his cheques, but also

approve that the loss as a result of bankruptcy acutely happened whilst the wrongful act was in operation and force. In fact Tindal C. J. has

pointed out in the very best sentence in that decision that, it might admit of a different construction if it could how not only that he same loss might

have happened, but that must have happened if the act complained of had not been done. But there was no such evidence in that case. The learned

advocate of the first defendant Bank relied on the decision in W. Jayaraghavan Vs. The Leo Films, where a producer was held entitled to damages

for only Rs. 250/- for a breach an agreement on the part of a person, who had taken a lease hold right for distribution of the picture within

specified districts for five years, to pay advance instalments of rent. It was observed in that decision that the producer incurred heavy loss solely on

account of the fact that he had no finance when he embarked upon the undertaking to produce a picture. The learned advocate for the first

defendant argued that in the present case also the loss or bankruptcy suffered by the plaintiff was on account of his own financial condition and not

on account of any act on the part of the defendant Bank. If the plaintiff had succeeded improving that he first defendant b Bank wrongfully

dishonoured his cheques, he would be entitled to some damages on the ground that it affected his credit and reputation, though he may not be able

to make out than his bankruptcy was caused by reason of such wrongful acts. I find on the former part of issue 15 against the plaintiff, and in view

of this finding, it is unnecessary to give any finding on the latter part of issue 15.

(67) It is clear from the decision in 1920 AC 102 that the right to claim damages for the injury to the bankrupt's credit and reputation did not pass

to the trustee in bankruptcy, but remained in the bankrupt. The plaintiff has amended his plaint by confining his belief to a claim for damages caused

to his reputation, credit and social position and he has restricted his claim to a sum of Rupees 12,00,000. I find on issue 17 that the plaintiff as an

undischarged insolvent is entitled to maintain the suit. But in view of my finding on the other issues. I find on the former part of issue 16 that he is

not entitled to claim damages to his reputation credit and social position.

(68) The plaintiff has claimed Rs. 75,00,000 as damages in the plaint as originally filed by him. But he has subsequently amended his plaint by

confining his claim for damages to injury caused to his reputation, credit and social position and restricted his claim for damages to Rs. 12,00,000.

In view of my findings on the other issues, it is unnecessary to consider the quantum of damages. But even if the plaintiff had succeeded on the

other issues, his claim for damages of Rs. 12,00,000 would be excessive.

The learned advocate for the plaintiff referred to the decision in Davidson v. Barclay's Bank Ltd., 19401 ALL ER 316 where the plaintiff, a credit

book master was awarded ₹250 damages for the wrongful dishonour of his cheque for ₹2-15-8. It was pointed out in that decision that the

amount of damages will not necessarily be large only because the amount of the cheque dishonoured is large, as a customer is supposed to suffer

more in credit if his cheque for a small amount is dishonoured than in the case of one for a large amount. But it cannot be inferred from this decision

that a person can get as damages more than the value of his estate.

In 1920 AC 102 the quantum of damages was assessed by finding out the extent to which the value of the estate of Wilson suffered by reason of

the negligent act of the bank. It is true the amount realised by sale of the assets of the plaintiff during the insolvency proceedings may not represent

the real market value of the same P.W. 2 Vaidyalinga Chetty and P.W. 3 Abdul Jabbar Sahib have given evidence about the status and assets of

the plaintiff. But their evidence is general and vague. I have already referred to the fact that the plaintiff has valued the machinery only at Rs.

1,00,000 in the stock lists, though he deposed that it was worth about Rs. 2,00,000. The immovable properties and the machinery were sold for

Rs. 2,15,000 in the bankruptcy proceedings. The amount realised in the bankruptcy proceedings went in discharge of only part of the debts due to

the preferential creditors as evidenced by Ex. D201. In Ex. D13 dated 14-9-1955 the first defendant Bank has estimated the worth of the

plaintiff's company at Rs. 8,00,000. But the financial condition of the plaintiff's company deteriorated in the subsequent years. In his application Ex.

D68 dated 10-7-1957 the plaintiff has valued his immovable properties at Rs. 6,82,080 and the machinery at Rs. 1,92,000. I have already

referred the fact that the plaintiff has failed to mention the Karachi funds in this application. Even if the Karachi funds are included the total assets

would come to Rs. 10,00,000 an odd even according to the plaintiff. Ex. D 68 shows that on that date the plaintiff's overdrawing with the first

defendant Bank stood at about Rs. 2,50,000. If the overdrawing are deducted from the value of the state, the balance would come to only about

Rs. 8,00,000. The debts of the plaintiff have to be deducted from this amount to determine the net value of the estate. Hence the claim for damages

of Rs. 12,00,000 is clearly excessive. If the bankruptcy was caused by the wrongful acts of the first defendant Bank, the plaintiff would be entitled

to recovery by way of damages the value of the loss of the estate and some additional damages for his loss of reputation, credit and social position.

Such damages have to be computed in the same manner as was done in 1920 AC 102. For the foregoing reasons, I find on the latter part of issue

16 that even the claim for damages of Rs. 12,00,000 as mentioned in the amended plaint is excessive.

(69) The Official Assignee, Madras who has been impleaded as the second defendant in the suit, has pleaded in his written statement that, if and

when a decree for any amount is passed in the suit in favour of the plaintiff against the first defendant, the same will vest in him as the after acquired

property of the plaintiff-insolvent for the benefit of the general body of creditors. It is really unnecessary to consider this issue in view of the fact

that the ; plaintiff's claim has to fall on my findings on the other issues.

Under section 52(2)(a) of the Presidency Towns Insolvency Act, it is provided that the property of the insolvent divisible among his creditors shall

comprise of all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by, or

devolve on him before his discharge. Under S. 17 of the said Act the whole of the property for the insolvent vests in the Official Assignee on the

making of an order of adjudication. But the property of acquired by the insolvent after adjudication does not vest in the Official Assignee until he

intervenes, that is, he takes active steps to assert his title thereto. If the official Assignee intervenes, the property indefensibly vests in him. The

Official Assignee has been impleaded as the second defendant in the suit and he has asked for a decree, in his favour. This is sufficient intervention

on his part to vest in him such rights in the decree, in the suit as the plaintiff might get as an after acquired property.

In *In re Roberts*, 1900 1 Q. B. 122, it was held that all personal earnings of the bankrupt between the commencement of the bankruptcy and his

discharge belong to his trustee, save only what was necessary for the support of the bankrupt and his family. In *Bailey v. Thurston & Co. Ltd.*,

1930 1 KB 137, it was held that an undischarged bankrupt, employed as a traveller for a firm under a contract made before the commencement of

the bankruptcy, can maintain an action against the firm for a wrongful dismissal occurring after the commencement of his bankruptcy, the trustee in

bankruptcy not having intervened in action. In *Sriramulu Naidu v. Andalammal* ILR 30 Mad 145, it has been pointed out that an undischarged

insolvent has, in respect of after-acquired property, moveable and immovable, a right against all the world except the Official Assignee and may

sue to recover such property, of the Official Assignee does not intervene. In *S. P. S. Mani Iyer v. D. K. Syed Ebrahim*, AIR 1934 Rang. 333, an

insolvent brought a suit claiming damages for a personal tort and got a decree for costs before he obtained a discharge. A creditor who had

obtained a money decree prior to the insolvency applied for leave to execute the decree by attachment of the costs awarded to the insolvent and it

was held that he could not do so the Official Assignee had not intervened and claimed the costs as an after acquired property. But in the present

case the Official Assignee has intervened in the suit as second defendant and he is entitled to the relief claimed by him in his written statement. I

find issue 18 in favour of the second defendant.

(70) The first defendant has claimed in paragraph 38 for this written statement that the suit should be dismissed in limine with exemplary cost under

S. 35-A of the Civil Procedure Code. The first defendant has not specifically pleaded that the claim in the suit is false or vexatious to the

knowledge of the plaintiff and it has not also adduced any such evidence. In fact, no argument was advance by the learned advocate for he first

defendant Bank in support of its claim for compensatory costs and I therefore fin on issue 19 that the first defendant is not entitled to compensatory

costs under Sec. 35-A C.P.C.

(71) In view of my findings on he other issues, the suit is liable to be dismissed, and it is here by dismissed with costs of the first defendant. The

plaintiff should pay the court fee due to the Government.

(72) Suit dismissed.