
(1910) 01 BOM CK 0006
In the Bombay High Court
Case No : Appeal No. 15 of 1909

Nandlal Thakersey

APPELLANT

Vs

The Bank of Bombay

RESPONDENT

Date of Decision : 17-01-1910

Acts Referred:

Contract Act, 1872 — Section 178

Citation : (1910) 12 BOMLR 316

Hon'ble Judges : Batchelor, J; Basil Scott, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Basil Scott, Kt., C.J.—Lakhmidas Naranji from 1900 till August 1903 carried on business in Bombay as a cotton merchant and Mucca-dam-a Muccadam in the cotton trade being a carting agent and ware-houseman. He was in the habit, throughout that period, of financing his business by means of loans and cash credits given to him by the Bank of Bombay upon the security of fully pressed bales of cotton stored on Jettas (fair weather storage plots) or in godowns (covered warehouses) at Colaba.

2. The Jettas available to him for the storage of cotton in the beginning of 1903 were three contiguous plots hired from the Port Trustees and situate at the cotton storage ground at Colaba. The three plots were numbered 51, 52 and 53. Plot 53, which

3. Was only a half plot, was hired by Lakhmidas in-the name of the Bank, while 51 and 52 appear to have been hired in his own name. It is found as a fact by the learned Judge of the original Court, a finding which I accept as correct, that Jettas 52 and 53 were the Bank Jettas. The Head Accountant of the Bank says that under the financial arrangements between the Bank and Lakhmidas, the Bank intended to keep all the bales brought on their Jettas as security for what they had advanced to Lakhmidas. Similarly, Lakhmidas says that all his bales

were pledged with the Bank as he received them.

4. The plaintiff claims against the Bank under the following circumstances. About two days before the 18th of February 1903 Lakhmidas and a man named Damodar Jivraj were introduced to the plaintiff's Moonim at the plaintiff's Pedhi. Damodar said he wanted to do business in ready cotton which the plaintiff was to buy on his account receiving margin money at the rate of Rs. 1,000 per hundred bales, commission at 8 as. and interest at 8 as. per cent, and Lakhmidas was to be the Muccadam of any goods bought at a fee of 4 as. per bale to be paid by Damodar. These terms, except that providing that Lakhmidas should be the Muccadam, were embodied in a written agreement on the 18th of February. About that time also the plaintiff's Moonim and Damodar together with Lakhmidas visited the firm of Wadia, Ghandy and Co. and had a more elaborate agreement drawn up, stamped and engrossed, which was not, however, executed. It is the case of the Bank, and is admitted by Lakhmidas, that the latter was a partner with Damodar in this transaction, a case which is supported by the fact that he drew the cheque for the margin money payable to the plaintiff. The plaintiff in pursuance of the agreement purchased, on behalf of Damodar Jivraj, 399 fully pressed bales of cotton which were duly entrusted to Lakhmidas for Muccadami, that is, for taking delivery and storing after weighing, but, as the plaintiff's Moonim says, Lakhmidas had no right to do anything with the goods after taking delivery but to store them.

5. On being entrusted with the goods, Lakhmidas signed receipts for the same in the plaintiff's books to the effect that the bales had been kept anamat (as deposit) in his Jetta on the plaintiff's behalf.

6. The plaintiff's Moonim says that he did not know Lakhmidas before except by sight. On behalf of the Bank an attempt was made to contradict this in the cross-examination of Lakhmidas as follows: /

Q. Plaintiff entered into this transaction because he had confidence in you not Damodar ?

A. I don't know, that must be, he knew me more,

Q. How did he not know that this business was being done by you in Damodar's name.

A. He must have known.

7. This suggestion is, however, negatived by the partner in the firm of Wadia, Ghandy and Co., who took instructions for the formal agreement. He says:

From what occurred on that occasion I can say that Damodar was the real contractor. Damodar said he was going to buy and Lakhmidas corroborated him and there was also what had been said by Jaggonath plaintiff's Moonim).

8. The suggestion is, moreover, incredible. No business man in his senses would entrust the goods hypothecated to him for safe custody to the hypothecating

debtor. The plaintiff's Moonim says that after the purchase he saw the bales on the Jetta. Lakhmidas says that as soon as delivery was taken the bales, were placed on the Bank's Jetta. He adhered to this statement in spite of all attempts to shake him. He is corroborated by his servant Canji Jetha.

9. The result was that the Bank at once obtained possession of the bales as pledgees under their arrangements with Lakhmidas. Lakhmidas failed in the following monsoon (August 1903) and it was then found that all bales held by him had passed into the possession of the Bank and were or should be lying in their go-downs (the change from Jetta to godown having been effected for protection from the monsoon).

10. In consequence of the failure of the Bank to deliver up the plaintiff's bales on demand this suit was filed. The learned Judge dismissed the suit on the ground that the plaintiff's bales were validly pledged: Lakhmidas having made the pledge while he was in possession of the bales within the meaning of Section 178 of the Contract Act. This decision is opposed to all Indian authority, of which there is no lack, as to the meaning of the word "possession" in Section 178. It also overlooks the second proviso to the section which is in these terms:

Provided also that such goods or documents have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud.

11. Now, upon the facts above stated, two things appear to me to be clear; first, that the plaintiff was the lawful owner with the property and the right to possession having bought the goods and take delivery of the same subject only to the equity of Damodar Jivraj to take them over on paying the purchase money with interest, commission and Muccadamage; secondly, that Lakhmidas having the intention of pledging the bales with the Bank obtained them from the plaintiff by promising to hold them as Muccadam and thereby committed the offence of cheating as defined by Section 415 of the Indian Penal Code. It follows that even if the learned Judge's view of the meaning of the word "possession" in Section 178 were correct, the conditions did not exist which would give rise to a valid pledge.

12. Counsel for the Bank, who did not contend for the view which found favour with the lower Court, argued that Lakhmidas was the real owner and as such could and did validly pledge the bales. He relied upon the case of *Babcock v. Lawson* (1880) 5 Q.B.D. 284. That was a case in which the plaintiffs who had a special property in goods as pledgees voluntarily gave up that property to the pledgor firm and thus enabled them to deal with the goods as their own unincumbered by the pledge. This abandonment of their special property by the plaintiffs was held to protect the defendants, who were subsequent bonafide pledgees, although the action of the plaintiffs had been induced by the fraud of the pledgors.

13. I doubt if such a decision would be possible in India in view of the second

proviso to Section 178, but the facts of the case are distinguishable from those now before the Court; for the present plaintiff never voluntarily parted with his property in the goods, his Muccadam having attempted to deal with the goods without his knowledge.

14. The line of defence which was ultimately adopted on behalf of the Bank was based upon the discovery at a late stage of entries in the books of Lakhmidas which indicated that the goods in question had been sold in or about June 1903 by Lakhmidas and that delivery of them had been given from the Bank's godowns. It was argued that these sales were prior in date to any formal demand by the plaintiff and that, on the authority of certain obiter dicta of Bigham J. in *United Credit Co. v. Mersy Docks* (1899) 2 Q.B. 205, it should be held that the Bank were not guilty of any conversion. It appears to me that the plaintiff cannot succeed in this contention. Lord Chelmsford in *Hollins v. Fowler* (1875) L.R. 7 Eng 795 said :

Any person who, however innocently, obtains possession of the goods of a person who has been fraudulently deprived of them, and disposes of them, whether for his own benefit or that of any other person, is guilty of conversion.

15. The return of the goods relied upon by the Bank is a delivery to Lakhmidas' vendees not a return of the bales to be held by Lakhmidas as plaintiff's Muccadam free of any lien of the Bank. The Bank by the unauthorised and fraudulent act of their godown-Thakersky keeper Ardesir, which in the stress of argument is now adopted and ratified, gave delivery to the plaintiff's vendees and would thereupon be guilty" of conversion even if they had not exercised dominion over the goods for months previously as security for advances to Lakhmidas. As I hold that the Bank obtained no valid-pledge of the goods and are guilty of conversion it is unnecessary to discuss-the questions raised in paras to and u of the plaint.

16. The question, whether Lakhmidas obtained the goods from the plaintiff by means of an offence or fraud within the meaning of the second proviso to Section 178, was not raised in the first Court and was only adopted by the plaintiff's counsel in reply at my suggestion. It was objected, on behalf of the Bank, that as the point had not been specially raised at the original trial it should not be made a ratio decidendi, since the defendants might, if they had had notice, have given further evidence bearing on the point. I do not think there is any force in this contention. The Bank set up the case of a valid pledge in their written statement and must be taken to have adduced all evidence available to show that the conditions existed which made a valid pledge possible. The judgment about to be delivered by my learned brother is, however, confined to a discussion of points raised in the lower Court. I have considered it and the reasoning and conclusions have my full concurrence. It is also adverse to the defendants.

Basil Scott, Kt., C.J.

17. It is quite clear upon the authorities that the plaintiff is entitled to the value

of the goods at the time of the conversion, and, in the absence of any evidence that the value of the goods at the time of the conversion is different from the value of the goods at the time of the payment for them, the amount he is entitled is the amount paid by the plaintiff on account of Damodar.

18. As to the question whether the plaintiff is not entitled to the insurance paid on Damodar's account, it appears to us that he is. He was entitled to insure the goods and he could not claim that insurance from Damodar until he returned the goods to him.

19. He is, therefore, entitled to a decree for Rs. 34,225-5-9, together with interest at 9 per cent, per annum from the date of suit up to the decree here and costs.

20. Interest on judgment at 6 per cent, per annum,
Batchelor J.

21. In the suit out of which this appeal arises the plaintiff prayed that the two defendants might be ordered to deliver to him the 399 bales of cotton referred to in the plaint or to pay to him the sum of nearly Rs. 35,000 as their value or, if the plaintiff was not entitled to either of these reliefs, that his rights might be ascertained and declared. The plaint sets out that the plaintiff, a merchant and commission agent, entrusted the 399 bales to the second defendant, Lakhmidas, to be held by him on deposit; that the first defendant Bank received the bales in pledge from Lakhmidas; that Lakhmidas had no authority to make such a pledge, which was bad in law; and that the Bank failed or neglected on demand to deliver the bales to the plaintiff. The Bank put in a long written statement in which, among other things, they put the plaintiff to strict proof that any of the bales in their godowns were his property; they pleaded that all the bales received by them from Lakhmidas were so received in good faith and in the belief that Lakhmidas, who was in possession of the bales and who did business as a merchant on his own account, was the owner of the bales; that no knowledge that Lakhmidas was acting as a mere Mukadam or warehouseman was in fact possessed by the Bank or should be imputed to them; and that, so far as they were aware, they had never had possession of any of the 399 bales, the subject of the suit, except two bales which they were entitled to hold and dispose of under their agreement with Lakhmidas. This written statement was declared in December 1904, and before the suit came to a hearing the two bales were delivered by the Bank to the plaintiff.

22. In the Court below the learned Judge gave, the plaintiff a decree against Lakhmidas, who, however, is not likely ever to be able to satisfy it, but dismissed the suit as against the Bank. As regards the case between the plaintiff and the Bank, Beaman J.'s findings on most of the issues were in favour of the plaintiff, but the suit was dismissed mainly because the learned Judge was of opinion, first, that Lakhmidas, when he pledged the goods to the Bank, was in possession of them within the meaning of Section 178 of the Contract Act and so could make

a valid pledge, and, secondly, that the Bank were not affected with the knowledge possessed by their agent, Chunilal, as to the character in which Lakhmidas was trading. These are the two grounds which have been principally challenged by Mr. Lowndes, on behalf of the plaintiff-appellant, while the Advocate-General for the Bank supports the findings on these points and goes further by contending that there are certain preliminary points which are fatal to the plaintiff's success, as that the real owner was Lakhmidas, who had, therefore, authority to make the pledge, and that there had in fact been no conversion by the Bank.

23. The record in the case is heavy my brother Beaman J. has delivered a long and exhaustive judgment, and we have heard careful and elaborate arguments on either side. In these circumstances I shall endeavour to keep my own observations within as small a compass as possible, and, in the view which I take of the case, it will be possible to deal shortly with many points.

24. In the first place I cannot doubt that Beaman J. was right in holding that the plaintiff, if not the actual owner of the bales, had sufficient interest in him to entitle him to bring this suit. He had made advances upon them up to the limit of their value, so that he had a special property in them subject to any valid claims of others. Exhibit I, the receipt passed by Lakhmidas to the plaintiff, acknowledges that Lakhmidas held the goods merely in anamat, that is, on deposit, and the plaintiff was entitled at any time to immediate possession.

25. Then, I agree also with Beaman J. that the 399 bales went on to the Bank's Jettas and thence into the Bank's godowns. This proposition was at first not contested by the Advocate-General, and indeed the Bank are not in a position to contest it. It is proved by Lakhmidas himself, who receives ample corroboration from other witnesses, and though Lakhmidas's testimony is open to obvious criticism, no such reproach can be brought against his books, which have never been impugned and which there is no reason for impugning. We know, moreover, that the Bank after due inquiry delivered up to the plaintiff two bales which in fact were found to be in their godowns; and this must be considered along with Lakhmidas's unchallenged statements that he always dealt with his bales in lots and that all his full pressed bales were pledged to the Bank. A similar statement is to be found in the insurance-policy effected by the plaintiff on the goods, and, though the author of the statement was probably Lakhmidas himself rather than the plaintiff, it must be observed that the policy was taken out in the year 1903, when Lakhmidas's credit stood as high as it had ever stood. On the other hand the Bank, as I have said, are not in a position to displace this evidence, and Mr. Don, when asked whether he was prepared to swear that the 399 bales did not go into the Bank's godowns, candidly answered "No; no one in the Bank's service can do so." The Advocate-General has relied upon the correspondence between Exhibit n, the Bank's Cotton Book, Exhibit 23, the Cotton Book kept by Ardesir, the Assistant godown-keeper of the Bank, and Exhibit 2, Lakhmidas's letter of 27th May 1903 to the Bank with its accompanying list of the different

descriptions of cotton pledged to the Bank. But the correspondence between Exhibits 11 and 23 is by no means exact, and the authority of these documents can be placed no higher than the authority of Ardesir himself. But Ardesir was in the pay of Lakhmidas and, in my opinion, was undoubtedly privy to Lakhmidas's fraud. Exhibit 2 suffers from a similar infirmity, for in preparing the accompaniment to this letter Lakhmidas would naturally refer to Ardesir's book, kept purposely for Lakhmidas's convenience, instead of entering upon the task of verifying the whole list for himself. It seems to me, therefore, that these Exhibits 2, 11 and 21 amount to nothing more than a statement by Ardesir, and such a statement is insignificant by the side of the evidence adduced to show that the Bank received the 399 bales into their godowns.

26. If, then, the plaintiff is entitled to maintain this suit, and if the goods were received by the Bank in pledge from Lakhmidas, we come to the question whether the pledge was good in law u/s 178 of the Contract Act. Upon this point the position is a little singular, inasmuch as the Advocate-General before us, as in the Court below, was not able to press for the view which found favour with the learned Judge. Certainly that view receives some support from the wide language in which the section is couched, and I do not overlook the primary necessity of attending to the actual Words of the statute: see the observations of Lord Herschell in *Bank of England v. Vagliano* [1891] A.C. 144. At the same time there are other important considerations to be borne in mind in seeking to discover the intention of the Legislature. In the first place the "possession" referred to in Section 178 on the subject of pledges must, I think, be the same sort of possession as is referred to in Section 108 on the subject of sale, and in the former section the Legislature itself has drawn a clear distinction between possession and mere custody. Then, if the Legislature had intended to enact the new and far-reaching principle that mere possession of goods was in general an ostensible authority to pledge or sell them, one would have expected to find that principle set out with greater clearness than could be at present claimed for it, seeing that the general words of the section are immediately followed by specific reference to such particular cases as possession of a bill of lading, dock- warrant, warehouse-keeper's certificate &c, so that the context suggests that the words of general import are to be construed with reference to the particular cases set out. Section 178 is not" provided with any illustrations, but if we turn to Section 108 we find that the only relevant illustration is concerned precisely with a mercantile agent entrusted with a bill of lading; this would be rather a misleading illustration, if the object of the Legislature had been, not merely to embody the provisions of the Factors Acts, but to extend the authority from mercantile agents to all and any persons in any kind of possession. It seems to me, moreover, that Section 178 should be read with Section 179, which provides for the case where the pledgor has only a limited interest in the goods pledged. That suggests that in Section 178 we are dealing with the case where the pledgor has more than a limited interest. But to my mind the strongest argument in favour of construing Section 178 in the more limited manner is to be found in the fact that

that is how the Courts have in the past interpreted it, and, though the statute has since been amended, the Legislature has acquiesced in that interpretation. It may be, as Beaman J. complains, that in attempting to define the exact extent of the section the Judges have not hit upon one and the same canon in all cases, but that, as it seems to me, does not invalidate the argument that it is the restrictive interpretation which has prevailed, and prevailed, one must suppose? with the approval of the Legislature. I need not cite all the cases, which will be found discussed in Beaman J.'s judgment; it will suffice to refer to some of them. In *Greenwood v. Holquette* (1873) 12 B L.R. 42 Sir Richard Couch C.J. held that the possession meant by the section was "the kind of possession which a factor or an agent has," and that view was accepted by Sir Charles Sargent C.J. in *Le Geyt v. Harvey* ILR(1884) 8 Bom. 501. Then there is the case of *Shankar v. Mohanlal* ILR (1887) 11 Bom. 705. where West J. in commenting upon Section 108 held that it had particular reference to the case of persons allowed by the owners to have the indicia of property under such circumstances as would naturally induce others to regard them as owners. These expressions are criticised by my brother Beaman, but they can, I think, be supported by what was said by Lord Watson in *Cooke v. Eshelby* (1887) 12 A C 271, and, as I understand the matter, they are not in conflict with other authorities. Mr. Justice West was apparently invoking the doctrine of estoppel in support of his decision, and I can understand that the doctrine would apply as against the principal of a mercantile agent or factor, who is held out as a person having authority to sell; but, so far as I am aware, it has never yet been the law that a warehouseman as such has authority to sell or pledge, and there would be no estoppel against a person entrusting his goods to a warehouseman who subsequently pledged or sold them: see for a general statement of the law on this point *Cole v. North Western Bank* (1875) 10 C.P.C. 354. A similar view was taken in *Seager v. Hukma Kessa* ILR (1900) 24 Bom. 458, where Jenkins C. J. describes the possession meant by the section as being "juridical" possession, and in *Naganada Devay v. Bappu Chettiar* ILR(1903) Mad. 424 where Boddam J. and Subrahmanya Ayyar J. followed Sir Richard Couch's decision in *Greenwood's* case.

27. These cases suffice to show that though the Courts have not used quite the same expressions in attempting to lay down the exact scope of the section, yet they have agreed in thinking that mere possession is not sufficient. Upon the principle, *stare decisis*, therefore, even if no other reasons could be called in aid, we ought, in my opinion, to hold that in this case *Lakhmidas* had not possession within the meaning of the section. It is not necessary, and therefore I do not attempt, to lay down the exact limits of Section 178, though my own view is that, as Couch C. J. and Boddam J. held, the possession intended is such possession as a factor has, in other words, such possession as is had by "an agent entrusted as such and ordinarily having as such agent a power of sale or pledge," as Bramwell B. said in *Cole's* case: but, whatever may be the precise line of demarcation, I think that here *Lakhmidas*, who was in custody of the

goods as a mere warehouseman, had not that possession which under the section would have enabled him to make a valid pledge to the Bank.

28. But I will assume that this view of Section 178 is wrong, and that Lakhmidas had such possession as the section contemplates; even then the pledge was valid only if the Bank acted in good faith and under circumstances which were not such as to raise a reasonable presumption that Lakhmidas was acting improperly. The good faith of the Bank is not questioned, but the absence of the described circumstances is also necessary, and can it be said that the circumstances were absent here? I do not think so. It must be remembered that the Bank is a corporation, which can act only through its officers. There can be no doubt, it seems to me, who was the Bank's officer for the purpose of ascertaining Lakhmidas's position : it was Chunilal. The point was put to Mr. Don, who with his habitual fairness, answered thus:-

It was some one's duty to inquire whether Lakhmidas was a Makadam or a merchant. It was Chunilal's duty. He will speak authoritatively on that part of the case. I never took any steps to find out how much of the cotton on which we had advanced him the number of lacs stated was his own. That would be part of Chunilal's duty too.

29. Now the position was that for some four years the Bank had been doing business with Lakhmidas or with Lakhmidas and his father, the father dying in February 1900. The Bank knew that Lakhmidas and his father occupied the double and dangerous character of merchant and Mukadam; and up to March 1900 the Bank took letters of security : see Exhibits 14 to 17. After the father's death the Bank appears to have forgone this safeguard and to have elected to deal with Lakhmidas as if he were a merchant only and not a Mukadam as well, but I can find nothing in the evidence which warranted the Bank in this change of method. The letter, Exhibit 2, of 27 May 1903 is referred to by the Advocate-General but I do not think it possible to strain its terms into a representation that Lakhmidas had abandoned the old trade as a Mukadam. In fact the two kinds of business continued to be transacted by Lakhmidas as before, and if the responsible officers of the Bank acted on a contrary belief, they had no grounds for such belief unless it were some misrepresentation by their own agent Chunilal. That is frankly so stated in the candid evidence of the Secretary and Treasurer, Mr. Begbie, who, corroborating Mr. Don on this point, says that he trusted to Chunilal's information about all such subjects as the stability of merchants &c. The witness continues.-

Chunilal told me that Lakhmidas had changed his business and ceased to be a Mukadam. As soon as the crash came, I found out that that was wrong, and that he (Lakhmidas) had been dealing as a Mukadam. If Chunilal had informed me that he (Lakhmidas) was dealing as a Mukadam during this period, I wouldn't have trusted him to the same extent as I did. I would in that case have required to be satisfied that the bales were his own, or that he had the power to pledge them.

30. That, it seems to me, is very important evidence, and I observe in passing that it is therefore no part of the Bank's case that mere possession as a Mukadam or warehouseman is apparent authority to sell or pledge; they accepted the warehouseman's pledge not because they considered that as warehouseman he had sufficient possession, but because, they supposed him to be not a warehouseman at all, but an independent merchant. To my mind the evidence of Messrs. Begbie and Don is conclusive that Chunilal was the Bank's "agent to know," to use the words of Lord Halsbury L.C. in *Blackburn Low & Co. v. Vigors* (1887) 12 A. C 531; he was their agent specially employed to ascertain for them the position and character of persons dealing with the Bank as Lakhmidas was dealing. Therefore, u/s 229 of the Contract Act, any information obtained by Chunilal, provided it was obtained in the course of the business transacted by him for the Bank, has, as between the Bank and the plaintiff, the same legal consequence as if it had been obtained by the Bank. As to the nature of the agreement between the Bank and Chunilal I again quote Mr. Begbie, who after saying that he trusted to Chunilal's information on such subjects, goes on-

I knew writ he [Chunilal] went; about a good deal in the bazaar and had opportunities of acquiring information. It was the understanding between him and us that" all the information he acquired was to be at the service of the Bank.

31. Now Chunilal is an extremely bad witness, but fortunately there is little room for doubt as to the extent of his knowledge. The learned Judge below, with whom I am glad to find myself in agreement on all these questions of fact, says of the evidence;

It shows conclusively to my mind that Chunilal knew a great deal about Lakhmidas's business, if he was not actually his partner, and I have not the slightest doubt that Chunilal knew that Lakhmidas was acting as a Mukadam in 1903.

32. That is the opinion to which I also come upon consideration of Chunilal's own halting and embarrassed deposition and of the other evidence in the case, including Chunilal's written statement in suit No. 449 of 1901, Exhibit A 7. As to the requirement of the law that the information must have been obtained by the agent in the course of the business transacted by him for the principal, that, I think, is satisfied here, regard being had to Mr. Begbie's description of the nature of the Bank's agreement with Chunilal. On this point Chunilal himself says that in his capacity as Bank agent it was his business "to know about the Mukadams".

33. The result, then, is that Chunilal, the Bank's agent to know, did know that Lakhmidas in 1903 was the warehouseman as well as a merchant, but he withheld that knowledge from the Bank, his employers, and led them to suppose that Lakhmidas had ceased to trade as a Mukadam. In my opinion the facts of the case bring it within Section 229 of the Contract Act, and this information must, as between the Bank and the plaintiff, be imputed to the Bank. If that is

so, then, as Mr. Begbie candidly recognises, the Bank were put upon inquiry to ascertain the character in which Lakhmidas held these goods. No such inquiry was even made, even of Lakhmidas himself, though it is clear that a slight investigation would have been enough to disclose the fact that Lakhmidas was merely a warehouseman of the cotton; and upon the necessity of making such inquiry reference may be made to what was said by Blackburn J. in *Cole v. North Western Bank* (1875) 10 C.P. 354- And if the Bank, through their agent, had actual notice of Lakhmidas's two fold character, and were thus put upon inquiry as to the character in which he held these bales, I think, they must be held to have had constructive notice of the fact which the slightest inquiry would have elicited, namely, that these bales were in the possession of Lakhmidas as warehouseman only. I do not overlook what was said by Lindley L. J. in *Manchester Trust v. Furness* (1888) 13 A C 333 as to the inexpediency of extending to commercial transactions the equitable doctrines of constructive notice, but in that case the argument disallowed was that, by reason of the reference to the charterparty in the bill of lading, the holder of the bill and the person who took it in the ordinary course of business were to be treated as having notice of all the contents of the charterparty. That, it seems to me, was a very different case from the case now in hand, where all that the plaintiff contends for is that the Bank, being put upon inquiry, should be debited with the knowledge which the slightest inquiry would have elicited. In my opinion that contention should prevail, and in support of it I may refer to *Earl of Sheffield v. London Joint Stock Bank* [1895] 2 Q.B. 539 and *Cooke v. Eshelby* (1887) 12 A C 271. Upon this ground also, then, I am of opinion that the plaintiff should succeed.

34. Upon the question, whether the facts proved establish a wrongful conversion, I do not think it necessary to say much. In strictness we are not concerned with this English form of action, but if we adopt the description for convenience I cannot doubt that the Bank wrongfully converted the goods. I think that that is recited in the plaint as the main cause of action, and I cannot follow the Advocate-General's argument that the only cause of action disclosed was negligence: as I read the plaint, negligence; was put merely as an alternative cause of action. The plaintiff sued to recover his bales or their value, and the Bank, avowing their ignorance of the whole transaction, declined to deliver the bales or to pay their value. It is shown that, by means of an invalid pledge, the plaintiff's bales went into the Bank's possession, and the evidence leaves no doubt as to the Bank's intention in holding them. In para 3 of their written statement the Bank say that "all the bales which were in the said six godowns" which, on the findings of fact, include the plaintiff's bales, "were in the exclusive possession and custody of these defendants." So Mr. Don, who is corroborated by Mr. Marshall and by Chunilal, says that the Bank had absolute control over all the cotton in their godowns, that they retained it with the intention of keeping it as security for their debts, and that they never had any intention of allowing any one else to have any dominion over it: in other words, the Bank converted or

appropriated the plaintiff's goods to their own use, refusing to deliver them to the plaintiff or to pay for them, and thus wrongfully deprived the plaintiff of their use and possession. That, I think, is all that the plaintiff is in the first instance called upon to establish : see *Consolidated Co. v. Centio & Son* [1892] 1 Q.B. 495 *McComb v. Davies* (1805) 6 East 583 and *Hollins v. Fowler* (1874) 7 H.L. 757- But the Bank now seek to avoid liability on the ground that the bales had already been returned by them to Lakhmidas when the plaintiff's demand on the Bank was made and refused in July 1904 (see Exhibit J). As to the question of fact I agree with Beaman J. that the plaintiff's bales are sufficiently identified as those subsequently sold by Lakhmidas to the three firms: that, in my opinion, follows from Lakhmidas's evidence, the correspondence between the descriptions of the lots sold and the lots received from the plaintiff, the evidence that Lakhmidas had no other lots of these particular numbers and descriptions, and the approximate correspondence in the weights. I think also that the Bank were rightly allowed to give evidence of this return of the bales, though it is due to the plaintiff to say that that evidence may well have been embarrassing to him.

35. To return to the facts, the plaintiff brings this suit because the Bank, having come by an invalid pledge into the possession of his goods, refuse to return them, or to account for them, or to pay for them. On all other points in controversy the plaintiff succeeds: is he to be defeated because, over four years later, the Bank discover that they returned the goods to Lakhmidas? In my opinion the answer should be in the negative, and, I think, that the decision of the third of the actions in the *Mersey Docks* case [1899] 2 Q.B. 205 can be distinguished. It may be noted, in the first place, that the observations there as to the immunity of the Bank were obiter, the actual decision turning upon the liability of the Dock Board to the plaintiffs. And, secondly, Bigham J.'s opinion was expressly grounded upon the fact that the Bank had never interfered physically with the goods at all: their intervention was regarded as a transient episode which had ceased to have any effect long before the Bank heard or knew anything of the plaintiff's title. Here the material facts are otherwise: there was a long detention of the goods by the Bank, which reaped the usual profit from such detention, and when the plaintiff's claim was made it was resisted on the ground of the Bank's title from Lakhmidas. In these circumstances I cannot; think that the subsequent discovery of the return of the goods to the fraudulent pawnor is an answer to the plaintiff. The goods were not returned to Lakhmidas, in the capacity of the plaintiff's agent, and the only effect of the returning was to facilitate the completion of Lakhmidas's fraud upon the plaintiff. In my opinion the taking of the goods in pledge and the holding of them with the intention described by Mr. Don were in themselves a complete conversion, and that conversion was not removed or blotted out by the subsequent return to Lakhmidas. Here we have not only a demand and refusal, which are described by Blackburn J. in *Hollins v. Fowler* (1874) 7 H.L. 757 as being "always evidence of conversion," but the refusal is in disregard of the plaintiff's title, and that, as the same judgment points out, is a matter of capital importance. Finally, it appears

to me that the observations of Lord Ellenborough C. J. in *McComb v. Davies* (1805) 6 East 535 are very applicable to the facts disclosed upon this record. His Lordship there held the following language:-

The very assuming to oneself the property and the right of disposing of another man's goods is a conversion; and certainly a man is guilty of a conversion who takes my property from another who has no authority to dispose of it; for what is that but assisting that other in carrying his wrongful act into effect?

36. Upon these grounds I am of opinion that the decree under appeal should be discharged, and a decree should be made in the plaintiff's favour.

37. Since writing the above I have had the advantage of reading the Chief Justice's judgment with which I am in complete agreement; that judgment, therefore, furnishes another ground for my view that this appeal should be allowed.