
(1973) 12 KL CK 0003
In the High Court Of Kerala
Case No : A.S. No. 254 of 1969

The Federal bank Ltd.

APPELLANT

Vs

Geevarghese

RESPONDENT

Date of Decision : 21-12-1973

Acts Referred:

Citation : (1974) 1 KLJ 57

Hon'ble Judges : P. Subramonian Poti, J;K. Bhaskaran, J

Bench : Division Bench

Advocate : Kalathil Velayudhan Nair and V.S. Moothath, for the Appellant; S. Narayanan Poti, for the Respondent

Final Decision : Dismissed

Judgement

P. Subramonian Poti, J.—The defendant in the suit, the Federal Bank Limited, is the appellant here. The plaintiff claims to have deposited a sum of Rs. 54000/- in the Angamali Branch of the defendant Bank on 8-7-1959. It was a short notice deposit liable to be repaid with interest at 15 days" notice. The plaintiff's case is that when notice for payment of the amount due under the deposit was made the Bank did not make the payment and therefore the suit was necessitated. The defendant Bank has its registered office at Alwaye which is very near Angamali. The plaintiff who was a resident of Angamali was said to have been having dealings ever since 1952 with the Angamali Branch of the defendant Bank. According to the plaintiff for the deposit of Rs. 54000/- he made in that Branch on 8-7-1959 a deposit receipt was given to him. Interest upto 31-12-1960 is said to have been paid and when on 6-3-1961 the amount due under the deposit account was demanded, it was not paid even after the expiry of 15 days. Therefore a notice was issued to the defendant Bank on 24-3-1961 and to this notice a reply was given by the defendant Bank denying its liability to pay. The deposit receipt has been issued by the Agent of the Bank. Against that Agent proceedings had been taken by the Bank for misappropriation of amounts due to it and ever since 1961 when the proceedings were so commenced, the Agent is

said to have been absconding. The case of the defendant is that no deposit was made by the plaintiff with the Angamali Branch and the fixed deposit receipt was not a genuine and valid receipt issued by the defendant Bank in the ordinary course of business. The Agent of the Bank Sri. A.P. George is said to have colluded with the plaintiff and brought into existence the receipt without receiving any money for the Bank. It is said that since such receipt of money, if any, was not in the ordinary course of business it was not binding on the defendant Bank. The payment of interest is also denied. In the Bank records the counterfoil of the deposit receipt relied on by the plaintiff is seen to be of a deposit of Rs. 500/- in the name of Kumari George, the wife of the Agent. Sri. A.P. George. The issue of notice by the plaintiff to the Bank on 6-3-1961 for payment of money after 15 days is denied. In short, the case of the defendant is that the plaintiff; has not paid any money to the defendant Bank and even if it has been paid to the Agent the Bank is not liable as such payment was not made in the ordinary course of business of the defendant Bank.

2. The court below found that the plaintiff had come into possession of the deposit receipt, Ext. P9, in due course of the business of the Bank and that it was supported by consideration. In Ext. P9 there was the signature of not only the Agent but also of the Cashier and Accountant and the Court found that the signatures of the Cashier and Accountant were forged and to that extent the deposit receipt could be said to be not genuine. It was further found that Ext. P9 was issued by Sri. George in the course of his employment as Agent and was within the scope of his authority. If, in the course of such dealings the agent had committed a fraud in not making the necessary credit and entries in the Bank's book of accounts, it was not for the plaintiff to suffer. The court below held that under such circumstances the defendant would be answerable for holding out to the outside world that the Agent had authority to receive deposits and issue receipts. Consequently the court below decreed the suit.

3. Sri. Velayudhan Nair, learned counsel for the appellant, the Federal Bank Limited, has raised two questions. According to him the plaintiff had not paid any amount to get the deposit receipt and it was the result of collusive action between the plaintiff and Sri. A.P. George. It is also his case that in the face of the forged signatures of the Cashier and Accountant in Ext. P9 receipt, the document is a forged instrument and no relief can be given on the basis of such forged document. If, on the evidence, we find that the deposit receipt was issued to the plaintiff by the then Agent Sri. George collusively and without receipt of any money, then, of course, the second question does not arise for consideration.

4. As we said earlier, Angamali is a place very near Alwaye, only about 8 to 10 miles away. The defendant Bank has its Head Office at Alwaye. Sri. A.P. George was the Agent of the Angamali Branch for a fairly long period until he was transferred from there towards the end of 1960. He was transferred to the Munnar Branch of the Bank where he is said to have joined duty sometime in January, 1961. Sri. George also belong to Angamali. The plaintiff and his wife

claimed to be customers of the defendant Bank. Though this is denied in the written statement the averments in the written statement themselves show that they had dealings with the defendant Bank all along. As early as in 1952 the plaintiff had opened a current account in the Angamli Branch of the Bank. The plaintiff had made various deposits in 1954 and 1955. Para.8 of the written statement details these deposits. It is seen therefrom that one of the deposits made in 1954 was withdrawn in 1955 and several other deposits made in 1954, 1955 and 1956 were all withdrawn on 19-6-1956. The total amount seen to be so withdrawn on 19-6-1956 was a sum of Rs. 23000/- and interest. The plaintiff's wife had also made deposits in 1954 of Rs. 14000/-, and that too was seen withdrawn in 1956. Apparently the amount so withdrawn by the plaintiff and his wife were kept with them until a sum of Rs. 30000/- is seen deposited again on 17-12-1956 in the name of the plaintiff's wife. This amount was withdrawn on 3-4-1957. It is the plaintiff's case that it was so withdrawn for purchase of a property and when it could not be so purchased it was again re-deposited in the Bank, Rs. 20000/- in the name of the plaintiff and Rs. 10000/- in the name of his wife. Besides this four other small deposits were also said to have been made subsequently and it is these sums which are said to have been adjusted in making the fresh deposit of Rs. 54000/-. It is said that besides the amounts thus due under the deposits a sum of Rs. 15751159 was also paid in cash so as to have the deposit for a round sum of Rs. 54000/-.

5. The plaintiff does not have the earlier deposits receipt and the explanation is that these deposit receipts were surrendered when the receipt for Rs. 54000/- was taken. There is nothing unlikely in this and therefore the absence of any record with the plaintiff to prove the earlier deposits need not be taken as a circumstance against the plaintiff.

6. Sri. A.P. George, it is admitted, was found to have misappropriated several other sums due to the depositors. After he was transferred to Munnar Branch such instances of misappropriation by him were noticed. It is also admitted that the Bank had in one instance agreed to pay back the money to the depositor. When Criminal Proceedings were started against the Agent he absconded from the Munnar Branch.

7. We have now to consider the question whether the fixed deposit receipt was issued by the Agent Sri. A.P. George without any money having been received by him by way of deposit. It is in this context that the prior conduct of the plaintiff in regard to his dealings with the Bank becomes relevant.

8. There is ample evidence in this case to show that the plaintiff is a man of considerable means. Ext. P14 (a) which is an order of assessment under the Agricultural income tax Act shows that the petitioner possessed 125-74 acres of wet lands and 20.295 acres of dry lands. Ext. P15 to P24 are certified copies of sale deeds and lease deeds executed by the plaintiff between the years 1950 to 1956. These show that under such transactions the plaintiff would have come into possession of about Rs. 30000/-. The averments in Para.8 of the written

statement of the defendant Bank will show that from time to time deposits of considerably large sums were being made by the plaintiff as well as his wife in the Angamali branch of the defendant Bank. A sum of about Rs. 36500/- seen withdrawn on 19-6-1956 is seen to have been with the plaintiff and his wife for sometime and it is further seen that a few months later Rs. 30000/- was deposited and that was withdrawn on 3-4-1957. The plaintiff is said to have intended to purchase some property in 1957 and so he withdrew an amount of Rs. 30000/- on 3-4-1957. But since the proposal fell through, the amount is said to have been redeposited in 1957. There is no reason to disbelieve the plaintiff so far as this part of the case is concerned, The fact that the deposits said to have been made in 1957, 1958 and 1959 are not seen credited in the Bank's account need not necessarily lead to the inference that no such deposits were made because, if the Agent had, in issuing Ext. P9 receipt, resorted to the device of issuing it without accounting it to the Bank and without the corresponding counterfoil, the same method could have been adopted by him even in regard to the earlier deposits. The accountant of the Bank is examined as Dw2 and in his evidence he admits that the plaintiff was a very rich man and that he was in possession of considerable funds.

(***)

There is no case that the plaintiff had dealings with any other Bank during the relevant period and whatever amount was available with him from time to time, even small amounts, he is seen to have been depositing with the Federal Bank. In such circumstances it is only likely that the amount withdrawn by him on 3-4-1957, if not utilised in some investment and other amounts which he would have come by would have been deposited by him in the Federal Bank with which he had dealings all along. Parties have attempted to lead in evidence about all relevant circumstances in the case. The head office of the Bank is near about the Angamali Branch as we have already indicated. If the plaintiff had invested the amount withdrawn on 3-4-1957 otherwise, certainly that fact would have come out in evidence. One would expect the defendant Bank, in the circumstances of the case, to attempt to find out whether the amount drawn by the plaintiff's wife on 3-4-1957 was utilised either by the plaintiff or his wife in making any investment. There is no suggestion that any such has been made by him.

9. We have to remember that normally any person who deposits money with a Bank and obtains fixed deposit receipt in the usual course is not called upon to prove the source of income for such deposit. It is in the unique circumstances of this case that the plaintiff is called upon to prove that he actually paid money in the Bank for taking a deposit receipt. The fact that he was a man of considerable means, that he was regularly depositing money in the Bank, that it was, all along, in the defendant Bank that he was so depositing and he would have had money with him at the time the controversial deposits were said to have been made are all circumstances which would go a long way to prove the plaintiff's case. It has to be noticed that there is no dispute that the fixed deposit receipt

would have been issued in July, 1959, the date the receipt bears. The fraudulent conduct of the Agent was found out long later, in March, 1961, and he absconded also only then. It is very difficult to believe that a Deposit receipt would have been issued by him in July, 1959 as a collusive receipt without receiving any amount from the plaintiff in anticipation of his absconding two years later. Even so what benefit the Agent or the plaintiff would obtain by taking such a receipt is not quite evident. It is too much to think that the plaintiff who was actually a standing customer of the Bank for years and a man of means would have been a party to such a collusive transaction. It is also difficult to imagine any logical reason why he should be a party to such a course. Ext. D3 is the counterfoil corresponding to the number of the deposit receipt, Ext. P9. It notes a deposit of Rs. 500/- in the name of the wife of the Agent, Kumari George on 9-7-1959. Ext. D24 is the application corresponding to Ext. D3 counterfoil. Ext. D24 application is dated 9-7-1959 and it is taken from Mrs. Kumari George for deposit of Rs. 500/- in the defendant Bank. The deposit receipt corresponding to Ext. D3 counterfoil is seen dated 8-7-1959, the previous day and is issued in the name of plaintiff for Rs. 54000/-. It is evident that having utilised the receipt form to issue Ext. P9 receipt on 8-7-1959, the counterfoil had necessarily to bear the entry and that was filled up the next day as per a deposit of Rs. 500/- in the name of the Agent's wife and that was sought to be supported by Ext. D24 application. The books of account therefore reflect the deposit: of Rs. 500/- by the Agent's wife made pursuant to Ext. D24 application. Therefore in the books of account as against the fixed deposit receipt issued to the plaintiff the credit would correspond only to Ext. D3. The Accountant of the Angamali Branch who has been examined to support the case of the Bank swears that he filled up Ext. D 24 application. That is said to be in his handwriting. He further swears that he and the Cashier signed in a fixed deposit receipt for Rs. 500/- prepared by the Agent Sri. George.

(***)

But it is seen that the deposit receipt corresponding to Ext. D3 is Ext. P9. Then it is strange how a deposit receipt could have been issued to Kumari George. The Agent's wife as spoken to by Dw2. It is therefore not possible to believe Dw. 2 on this part of the case. Kumari George was not examined though it is admitted that she is in station. She has not taken back the amount of Rs. 500/- shown in her name though it is stated that notice has been given by the Bank to her to receive back the money. It is very difficult in these circumstances to believe the case of dw 2 that a fixed deposit receipt was issued to Kumari George for a sum of Rs. 500/- when the fixed deposit receipt corresponding to Ext. D3 was apparently issued to the plaintiff and when the defendant Bank has no case that any other fixed deposit receipt near about that date corresponds to Ext. D3.

10. The Managing Director of the Bank has been examined as Dw1. The plaintiff's case, it may be remembered, was that a notice for return of the deposit was issued to the Bank on 6-3-1961. Of course that was not a registered

notice. The defendant Bank denied having received such a notice. But it is admitted by Dw1 that the father-in-law of the plaintiff met him in the 3rd week of March. In the second week of March the then Agent of the Angamali Branch is said to have informed the Managing Director about the fixed deposit receipt, Ext P9. In the 3rd week of March the plaintiff's father-in-law showed Dw1 a photostat copy of Ext. P9. Then the Managing Director is said to have compared the specimen signature of the Accountant and Cashier. According to Dw1 the plaintiff's father-in-law is then said to have been told that no deposit has been made by the plaintiff. But it is seen that when the First Information Report was given soon thereafter about the Bank Agent Sri. George the Managing Director had a different case. We are referring to Ext. P6 statement given on 9-4-1961, pursuant to the complaint Ext. P5 filed by the Managing Director before the Circle Inspector of Police, Munnar. In Ext. P6 statement he refers to the Agent having embezzled the funds of the Bank and one of the funds so embezzled is said to be that deposited by the plaintiff under the receipt for Rs. 54000/-.

(***)

What is significant is that this statement is made after the complaint by the plaintiff's father-in-law and after investigation is said to have been made on it by Dvl. The definite case at that time was that the plaintiff had made the deposit of Rs. 54000/- and that money has been swindled by the Agent. There was no case that any investigation revealed circumstances which justify a different case, as spoken to later by the Managing Director as Dw1 in this case.

11. These circumstances, according to us, would be sufficient for the Court to hold that the deposit receipt was issued in the ordinary course of business by the Bank's Agent and not collusively without receipt of any money as contended by the defendant Bank.

12. One of the circumstances on which considerable reliance has been placed by the Bank to persuade the Court to come to a different conclusion is that the case of the plaintiff as to the payment of interest up to 31-12-1960 cannot be true. In the plaint it is said that interest up to 31-12-1960 has been paid and received. In the evidence it is the plaintiff's case that interest up to December 1959 was paid to the plaintiff in December 1959 when he went to the Bank and interest for the succeeding two half years were paid to him by the Agent at the plaintiff's house. The payment by the Agent Sri. George at plaintiff's house is said to be unlikely particularly when the plaintiff had a current account with the bank and the interest would have been credited to the current account. It is said that the plaintiff could not have seen present as the Agent in the Bank in December 1959 as he had already been transferred to Munnar by that time. We do not think that there is substance in this contention. Taking into account that in a small place like Angamali in the case of a customer like the plaintiff who had fairly large deposits the plaintiff might have taken it as an honour and a special service done to him when the interest was paid to him at his house. He might have considered such treatment as due in view of his position as a valuable customer to the Bank.

There is no data available in the case to show when exactly Sri. George relinquished charge as Agent of Angamali Branch. It is agreed that he joined Munnar Branch only in 1960 January. There is no case that anyone else had been appointed as Agent in the Angamali Branch in 1959. According to the defendant Bank in October and November 1959 the Agent had been deputed to work in the Ernakulam Branch and that could be seen from the acquittance roll. Even if he had been deputed to Ernakulam Branch, if it is not shown that he relinquished his charge as Agent in the Angamali Branch prior to 1959 December, there is no reason to assume that the plaintiff's case that he received interest from the Bank in December 1959 is not true. We have also to remember that there was no reason which obliged the plaintiff to admit in the plaint that any interest had been received by him and therefore there is no particular significance why he should set up such a case and to lead in false evidence to prove such a case. Moreover, in view of the over-abundant circumstances which indicate that the plaintiff was a bonafide customer who had been making deposits with the defendant Bank, we are left in no doubt as to the genuineness of the transaction from the point of view of the plaintiff. The plaintiff has deposed in his evidence very elaborately as to what happened when the deposit receipt of Rs. 54000/- was issued to him. He swears to the source of the amount so deposited and he swears to the receipt having been issued to him at the Bank. Though an attempt was unsuccessfully made in the court below to show that the plaintiff and the Agent are relatives that has not been pursued here. We see no reason to disbelieve the evidence of the plaintiff. There is no direct evidence in rebuttal of what the plaintiff has deposed to in the witness box. Dw1, the Managing Director, is only assuming that possibly the plaintiff might not have made any deposit at all. That assumption, as we have pointed out, was not made even at the time when he made the statement in the First Information Report to the Police.

13. Now that we have found that the plaintiff had in fact entrusted the funds at the Bank to the Agent who held a power of attorney to receive money on behalf of the Bank, the next question to be considered is the liability of the Bank to answer for the amount under the deposit receipt, when it is shown that the signature of the Accountant and Cashier which also appear, on the face of Ext. P), are not genuine. That they are not genuine has been found by the Court below and it has not been shown that the fact is otherwise. If that be the case, is the Bank answerable in an action based upon the fixed deposit receipt which is found to be not genuine. That is the question which calls for a decision here. It has also to be noticed here that the power of attorney given to the Agent, Ext. P4, enables him by himself to receive deposits and issue receipts. Though the signature of the agent seen on the deposit receipt is really that of the agent himself and the deposit receipt has been drawn up in the serially numbered form kept in the office of the defendant bank, in so far as the receipt purports to contain the signature of the Accountant and the Cashier and these signatures are really not of those persons it may be said that the deposit receipt is a forged instrument. But this has been issued by the agent acting as such in the office of

the Bank in the course of his employment. The deposit was also received in the course of his employment and on such receipt he has authority under Ext. P4 to issue receipt to a party who has made the deposit. He was apparently acting under his authority in doing so. In fact it is argued that his authority extends not only to signing the receipt for the deposit received, but also delivering the deposit receipt which delivery would be sufficient warranty of the acknowledgment by the Bank of the amount received from the customer by way of deposit. It is the plaintiff's case that in issuing Ext. P1 deposit receipt the agent was acting on the basis of his real authority and in any case he had at least apparent authority to deliver the receipt as a duly executed one binding upon the defendant Bank. It is contended that, if so, even if the instrument is a forged one, it is binding upon the principal. This is a question which is by no means easy to resolve. There has been considerable controversy in the English Courts on what is familiarly known as the "Turquand's Rule". That is the rule evolved in the case of *Royal British Bank v. Turquand* (1856 (6) E & B 327). According to this rule, while persons dealing with a company are assumed to have read the public documents of the company and to have satisfied themselves that the transaction entered into is not inconsistent therewith, they are not expected or required to do anything more. Regularity of the internal management or the proceedings that take place within which results in the apparent action by the employee or the servant or agent of the company need not be inquired into. In other words the "indoor management" may be assumed to have been done regularly. This is a practical rule based on expediency in business. For, business could not be carried on if persons dealing with apparent agents of a company are compelled on every occasion to call for evidence to satisfy themselves that the internal regulations have been duly observed. Whether the Turquand's rule will have application when the plea is not one of invalidity of an instrument executed by the apparent agent by reason of the irregularity in the conduct of the agent but one of the instruments being a pure forgery is a matter on which there was controversy. Whether in such cases the principal could nevertheless be bound by reason of the rule of estoppel, of the rule that the principal is liable for the act of his agent, or employee so long as the representation was within the real or ostensible authority of such agent or employee was a question on which there was, at one time, keen difference of opinion in the English Courts. But we think we may be right in observing that by now the question is more or less well settled as we would point out in due course.

14. The case of *Ruben v. Great Fingall Consolidated* (1906 A.C. 439) has, to a considerable extent, contributed to the controversy. The question there arose out of the fraud and forgery by a man named Rowe. He was the secretary of the defendant company. He approached the plaintiffs who were stockbrokers to advance him a loan of 20000/- in order to enable him to purchase 5000 shares in the defendant company of which he was secretary. The plaintiffs agreed and arranged with a firm of bankers to pay over the amount to Rowe on Rowe securing 5000 shares. 5000 shares said to be standing in the name of one Story

was purported to be transferred in the name of the Bank and the plaintiffs delivered it to Rowe in exchange for a certificate. The certificate purported to state that the bankers were the registered proprietors of 5000 shares. This certificate purported to bear the signature of the two directors of the defendant company and had its seal affixed. In fact it turned out that the signatures of these two directors were forged by Rowe and the seal was fraudulently affixed by him without authority in order to promote his own private purposes. The amount of 20000 was received by him. When it was ultimately found that the certificate was not genuine and a fraud had been practised, the plaintiffs were obliged to repay to the Bank the sum of 20000 advanced by the Bank. In their behalf thereupon the plaintiffs brought a suit against the defendant company, on the ground that they were liable for the fraud of Rowe. The action was one for damages for refusing to register the plaintiffs as owners of the shares. Rowe was found to be a person competent to deliver certificates on behalf of the company. The question that arose in the case before the House of Lords was whether the defendant company should be made liable in the action.

15. All the learned Law Lords were agreed that the instrument issued by Rowe was a forged one in that it neither bore the signatures of the Directors nor was the seal affixed with authority and further that, the doctrine of "indoor management" notwithstanding, the forged certificate must be considered as a pure nullity. The doctrine that persons dealing with the limited companies were not bound to inquire into the indoor management was held to apply to irregularities that otherwise might effect a genuine transaction but not to forgeries.

16. An independent ground also was urged in Ruben's case to support the plaintiffs' claim against the defendant company. The case was that since the certificate was delivered by Rowe in the course of his employment and that delivery imported a representation or a warranty that the certificate was genuine, that would be sufficient for the plaintiff to claim a decree against the defendants as whose agent Rowe must be deemed to have made the representation or warranty. The answer by the defendants to such a plea was that, in the circumstances of that case, there was nothing to show that Rowe had held out as having any authority to make any such representation or to give any such warranty: A person may have authority to deliver a certificate but that does not necessarily mean that he has authority to warrant a certificate to be genuine. The mere fact that Rowe held office as Secretary or that he had authority to deliver would not, therefore, be sufficient to read an authority in him to make a representation as to the genuineness of the certificate delivered by him. This, as Lord Loreburn observed, was another way of pleading estoppel. No estoppel would arise where the representation has been all along only that of Rowe and not that of the company. If Rowe had, in making the representation, been acting within his authority, the representation would have been that of the company. But any representation made outside his authority would not, by itself, be sufficient to sustain a plea of estoppel. The case of *Shaw v. Port Philip Gold*

Mining Co. (13 Q, B.D. 103) relied on by the appellants before the House of Lords was distinguished on the ground that in that case the Secretary was, in fact, held out as having authority to warrant the genuineness of a certificate.

17. Lord Davey's observations in the same case based on the decision in *Barwick v. English Joint Stock Bank* (L. R.2 Ex. 259) has invited comment in subsequent decisions. The learned Law Lord also was of the view that a forged document would not be any basis for the claim of the plaintiffs and was also of the view that merely being called upon to act a Secretary did not confer upon Rowe any authority to represent that the document delivered by him was genuine. His Lordship went further and expressed the view that even if the Secretary Rowe had authority to warrant the genuineness of the document delivered by him it would not assist the plaintiffs and for this reliance was placed on a passage in the decision to which we have just now adverted. Willes J. in *Barwick's* case had said

The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit.

This was understood by Lord Davey to mean that where the Secretary was acting fraudulently for his own illegal purposes, no representation by him relating to the matter will bind his employer. So long as his acts were not for the benefit of the master it would not bind the latter. This, it was assumed, followed from the decision in *Barwick v. English Joint Stock Bank* (L. R.2 Ex. 259).

18. The same question came up again before the House of Lords in *Lloyd v. Grace, Smith & Co.* (1912 A.C. 716). Mrs. Lloyd went to the office of the defendants who were solicitors to make some enquiries about the disposal of some property belonging to her. One Sandles who was managing the business of the defendants induced her to give him instructions to sell an item of freehold property and realise the mortgage money on another item. For that purpose she signed two documents which she neither read nor knew the tenor of. The deeds were also given to Sandles. He disposed of the property and appropriated the proceeds, called in the mortgage money and appropriated that too. It was thereupon that Mrs. Lloyd sued the Solicitors. That Sandles committed fraud in order to misappropriate the proceeds was said to be obvious. Therefore in the sense in which Lord Davey in *Ruben's* case referred to "acting for the master's benefit" it could not be said that Sandles was acting for the benefit of the defendants and if the dictum of Lord Davey was to be applied this was a case where the plaintiff would not be entitled to obtain any relief on the plea of the authority of the employee to act for the employer. Of course, she would not get any relief on any instrument, as there was none on which she could sue. It is in this context that the case of *Barwick v. English Joint Stock Bank* (L.R. 2 Ex. 259) came up for consideration by the House of Lords again in that case. Lord Loreburn said

I have only to say, as to the authority of *Barwick v. English Joint Stock Bank*, that I entirely agree in the opinion about to be delivered by Lord Macnaghten. If the agent commits the fraud purporting to act in the course of business such as he was authorised, or held out as authorised, to transact on account of his principal, then the latter may be held liable for it. And if the whole judgment of Willes J, be looked at instead of one sentence alone, he does not say otherwise.

The Earl of Halsbury expressed the opinion that the judgment in *Barwick v. English Joint Stock Bank* in the Exchequer Chamber, had been misunderstood and as it was certainly a judgment of very high authority it was desirable to examine it carefully and to see what it really did decide. The learned Law Lord observed

So far from giving any authority for the proposition in favour of which it is quoted, the Court went out of its way to disclaim there being any doubt about the rule that the principal is answerable for the act of his agent in the course of his master's business, and the words added, "and for his benefit," obviously mean that it is something in the master's business; and the judgment in question says that that question was settled as early as Lord Holt's time, a tolerably strong indication that the judges thought there was not much doubt about what the law is now.

In *Hern v. Nicholas* (1 Saik 289) cited by Willes J. the complaint was that one kind of silk was agreed to be sold and another and an Inferior sort of silk was supplied and an action on the case for deceit was brought by Hern against Nicholas. It appeared at the trial that there was no actual deceit by the defendant, but it was by his factor beyond the sea and the question was whether the defendant should be answerable. Chief Justice Sir John Holt was of the opinion that

....the merchant was accountable for the deceit of his factor, though not criminaliter, yet civiliter, "for seeing somebody must be a loser by this deceit, it is more reason that he that employes and puts a trust and confidence in the deceiver should be a loser than a stranger.

After referring to this passage in *Hern v. Nicholls* (1 Salk 289) Earl of Halsbury continued:

I should be very sorry to see a principle which appears to me of so great value shaken by any authority. No treatise on agency that I have ever come across has thrown any doubt on it, and it would be strange indeed if it should be shaken by the decision in *Barwick v. English Joint Stock Bank* since that case appears to me a strong authority confirming and strengthening the accuracy of the principle.

19. When *Barwick's* case was decided there was some difference of judicial opinion on the question whether an innocent principal was liable for the fraud of his agent. In *Barwick's* case the agent committed the fraud for the benefit of his principal. Lord Macnaghten in the same decision we have been adverting to,

Lloyd v. Grace, Smith & Co. (1912 A.C. 716) referring to these facts and to the observations of Willes J. quoted by Lord Davey in his speech in Ruben's case, expressed the view that it was with reference to the facts of the particular case under review, where the fraud, if committed must have been for the benefit of the principal, that Willes J. expressed himself in the language, which has been misunderstood. Lord Macnaghten continued

But it is a very different proposition to say that the master is not answerable for the wrong of the servant or agent, committed in the course of the service, if it be not committed for the master's benefit. Willes J. does not, I think, say anything of the kind. In a sentence immediately preceding the sentence I have quoted, he observes that the question whether the principal is answerable for the act of an agent was settled as early as Lord Holt's time a general observation not, confined to the case where the principal is a gainer by the fraud.

The long line of earlier decisions of the English Courts on this question was exhaustively examined by Lord Macnaghten and the conclusion reached was

The only difference in my opinion between the case where the principal receives the benefit of the fraud, and the case where he does not, is that in the latter case the principal is liable for the wrong done to the person defrauded by his agent acting within the scope of his agency; in the former case he is liable on that ground and also on the ground that by taking the benefit he has adopted the act of his agent; he cannot approbate and reprobate.

Lord Shaw of Dunfermline too expressed strongly on this question with the following observations:

If I may respectfully do so, I tender my entire concurrence in the opinion just delivered by my noble and learned friend Lord Macnaghten upon the dicta of Lords Davey and Bowen in these cases. But I do so subject to this that I cannot bring myself to think that it was ever distinctly meant to be announced or suggested as law that, on the assumption that a person deals with an agent in good faith, and that the conduct of the agent is fully within the scope of his authority, then the principal of that agent is not responsible for the agent's fraud, by reason of the fact that the agent did not mean to benefit his principal by the fraud, but to benefit himself. That, in my opinion, is not the law. On the contrary, the principal is, in such circumstances, legally responsible for his agent's conduct.

We think, we should observe here that even in the decision in Barwick's case there are observations of Willes J. which make it clear that the rule that a master is bound by the acts of his servant made in the course "of his employment and with authority ostensible or real even without showing that it is for the master's benefit. Willes J. had stated the principle thus:

In all these cases it may be said, as it was said here, that the master has not authorised the act. It is true, he has not authorised the particular act, but he has

put the agent, in his place to do that class of acts, and he must be, answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in.

20. The rule stated by the Earl of Halsbury and Lord Macnaghten in *Lloyd v. Grace Smith & Co.* (1912 AC. 716) have not been doubted, as far as we are aware, and subsequent decisions of the English Courts have taken the same view of Lord Davey's observation based on *Barwick's* case as that of the House of Lords in *Lloyd's* case. The position therefore is that though in an action on the instrument which is held to be forged and which, for that reason, is a nullity, no relief can be obtained by a party, it may be possible to hold the defendant liable in case it is shown that his agent who has been responsible for the causing of the loss acted in the course of his employment and his representation was authorised. The authority will be real where the instrument appointing him or conferring powers on him or the contract between him and his master enables him to make such representation. It is ostensible where the master has held him out as having that authority. Where in such cases the employee or servant acts fraudulently it may be for the benefit of the employer or as it happens in most cases it may be for his own benefit. That it was for his personal benefit that the fraud was committed may not be a sufficient answer to a plaintiff's claim and in such a case that the plaintiff claims on a forged instrument may also not be a sufficient answer.

21. Reliance has been placed by learned counsel for the defendant here on the decision of the Court of Appeal in *Kreditbank Cassel G.M.B.H. v. Schenkers* (1927 (1) KBD. 826). The plaintiffs sued the defendants alleging that the latter were the drawers and endorsers of certain bills of exchange which were dishonoured by the acceptors on presentation. The bills were drawn and indorsed by a man who was merely branch manager of the defendant Firm in Manchester. The defendant disputed the authority of the Manager to draw and indorse the bills of exchange. The plea in effect was that the manager acted in fraud of the defendants. The plaintiffs relied upon the rule that a stranger dealing with the company has a right to assume as against the company that all matters of internal management have been duly complied with. That the bills drawn up by the manager purporting to act on behalf of the defendant was a forgery was of course found. Bankes L.J., referred to *Ruben's* case and considered the question whether even if the bills are forgeries the law of estoppel would operate against the plaintiffs. The learned judge observed

It seems to me to have been proved that the bills are forgeries, and there being no evidence of estoppel, the plaintiffs cannot rely upon the rule laid down in *Mabony v. East Holyford Mining Co.* They are then driven to rely, if they can, upon the ordinary rule applicable in the case of principal and agent. If they could have shown that the drawing and indorsing of bills of exchange was within the ostensible authority of a person occupying the position which this branch manager occupied, they might have been in a position to establish a claim

founded upon that ground. No such evidence was given; and I certainly am not prepared to accept the proposition that it was within the ostensible authority of this branch manager, having regard to his position, to sign bills to this amount and in this form.

Referring to the observation of Lord Davey in *Ruben's case*, Scrutton L.J. remarked

There is this difficulty about *Ruben's case* that Lord Davey put as one of the grounds for the decision in favour of the company, that the fraudulent act giving rise to the action was done for the benefit of the secretary and not for the benefit of the company, thus applying a passage in the judgment of Willes I. in *Barwick v. English Joint Stock Bank*; but the House of Lords, in the subsequent case of *Lloyd v. Grace, Smith & Co.*, in the decision of which Lord Loreburn and Lord Macnaghten took part, said that a principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent.

We fail to see any assistance to the case of the defendant here in the decision of the Court of Appeal just now adverted to. The law as stated by Scrutton L.J. is evidently against the case of the defendant here. It is true that in the case before their Lordships the plaintiff did not succeed. But that was because, on the facts of that case, no decree could be awarded against the defendants since the agent was found to have no authority real or ostensible to draw or indorse the bills of exchange.

22. Nor do we see any assistance in the decision in *South London Greyhound Racecourses Ltd. v. Wake* (1931 (1) CD 496). A certificate was issued in that case by a director and Secretary of the South London Greyhound Racecourses Limited to one Wake certifying that Wake was the registered holder of 2000 preferred ordinary shares fully paid in the plaintiff's company which certificate was accepted by Wake as security for the payment of the debt due to him from the Director and Secretary and on the strength of that he abstained from serving the writ. The plaintiffs sought a declaration that Wake was not entitled to the shares in question, that the same were not fully paid, and that Wake's name was improperly entered on the register of members of the company. The certificate issued by the Director and the Secretary to Wake was found to be a forgery. It was disputed to be otherwise since it had been signed by those who were said to have been competent to sign it and the seal had also been affixed. The question was whether the impression of the seal and the signature of a Director would be sufficient to consider the certificate as genuine. The further question whether a plea of estoppel was available did not arise and therefore we do not think that any further consideration of this decision is called for in this case.

23. It may be useful to refer in this context to the decision of Atkinson J. in *Uxbridge Permanent Benefit Building Society v. Pickard* (1939 (1) K.B.D. 266). The defendant in the suit was a solicitor practising in London in the name of

Pickard & Company. He had a branch office at Slough. That was managed by one Conway, as the managing clerk. The plaintiffs, Uxbridge Permanent Benefit Building Society, alleged that they had been induced to advance 500 on the purported security of freehold property and they were so induced by a fraud of Conway, the managing clerk of the defendant. The defendant was sought to be made liable for the fraud of his agent. The question the learned judge had to decide was posed in this manner:

Here was a man who was in sole charge of a branch office; he was authorised by the defendant and on his behalf to carry out conveyancing business and to borrow money from building societies for clients, secured by mortgages of real property. He was engaged in a transaction which, on the face of it, was an ordinary everyday transaction well within his actual and ostensible authority, and which put 11 pounds 10 shillings into the defendant's pocket for costs. Now can there be any doubt as to what the law is when you have facts such as these?" Quoting the following passage from the opinion of Lord Shaw in *Loyd v. Grace, Smith & Co.* (1912 A.C. 716).

But when the authority does ostensibly include within its scope transactions of a particular character, then quoad a third party dealing in good faith with such an agent, the apparent authority, is, as is well settled, equivalent to the real authority and binds the principal",

Atkinson J. said that these observations "puts the point in a nutshell" Atkinson J. continued

Here was something done which was within, if not the actual, the apparent authority, and I cannot see on what ground this case does not come within that principle. But this point was taken: it is said that this fraud involved forgery, and that forgery can never be within a presumed or ostensible authority. Of course, the fraud did involve forgery. The fraud consisted of a number of false misrepresentations backed up by the production of a forged deed which, I was going to say Conway wrote and forged, but there is no evidence that he forged it; at any rate he knew it was a false document and the second deed, for which he must accept responsibility, is the conveyance to Cox. Here are a series of misrepresentations, certainly backed up by forgery. The argument was that, assuming the worst, this is not a case for which the principal can be held responsible, because the fraud involved forgery. There have been three cases relied upon for this contention. They were: *Ruben v. Great Fingall Consolidated*; *Kreditbank Cassel v. Schenkers*; and *Slingsby v. District Bank*. Ruben's case really does not help the defendant at all. In that case a secretary for the defendant company had forged a certain share certificate. He forged the signatures of the directors, and put the seal on without any authority, and the question was whether the company were bound by the certificate. Of course they could not be, the whole thing was a nullity; but it was nowhere said or suggested there that if what had been done had been done within the apparent scope of the authority of the secretary of the company, the company might not have been

liable. I take this from Lord Loreburn's opinion: "I cannot see upon what principle your Lordships can hold that the defendants are liable in this action. The forged certificate is a pure nullity. It is quite true that persons dealing with limited liability companies are not bound to inquire into their indoor management, and will not be affected by irregularities of which they had no notice. But this doctrine which is well established, applies only to irregularities that otherwise might affect a genuine transaction. It cannot apply to a forgery." That is, a particular assumption which a person dealing with a company is entitled to make cannot cover a forgery. "Another ground was pressed upon us, namely, that this certificate was delivered by Rowe in the course of his employment, and that delivery imported a representation or warranty that the certificate was genuine. He had not, nor was held out as having, authority to make any such representation or to give any such warranty. And certainly no such authority arises from the simple fact that he held the office of secretary and was a proper person to deliver certificates. Nor am I able to see how the defendant company is estopped from disputing the genuineness of this certificate.

There is nothing there to support the suggestion that a principal may not be liable for a forgery if that forgery is committed in the course of a man's employment and within the scope of his ostensible authority. The Court is pointing out that there was no evidence in that case of such holding out or such authority.

The learned judge concluded

.....forgery is just like any other fraud. If it is committed within the ostensible authority of an agent the principal is liable.

24. The decision of Atkinson J. was taken up in appeal and it was affirmed in *Uxbridge Permanent Benefit Building Society v. Pickard* (1939 (2) K.B.D. 248). It may be profitable to refer to certain observations of Sir Wilfrid Greene M.R. in that decision. At page 254, referring to the authority of Conway, Sir Wilfrid Greene M.R. said

"When a person is put in that position his actual authority and his ostensible authority are in one sense the same, because the ostensible authority of a solicitor's clerk put in such a position coincides with the actual authority which he is given. But the ostensible authority may go a little further, and for this reason, that it is not within his actual authority to commit a fraud. Nevertheless it is within his ostensible authority to perform acts of the class I have mentioned. So long as he is acting within the scope of that class of act, his employer is bound whether or not the clerk is acting for his own purposes or for his employer's purposes."

Referring to Barwick's case and the particular observation which, as we have pointed out, came up for comment earlier, it was said

It was for long thought that the words for the "master's benefit" were a correct

statement of the law and involved placing upon the liability of principals a very close limitation. That observation upon which Bowen L.J. founded the reasoning of his judgment was expressly disapproved in *Lloyd v. Grace, Smith & Co.* Mr. Morris says that that is the only thing which was disapproved in *Lloyd v. Grace, Smith & Co.* and in particular the observations of Lord Esher M.R. in *British Mutual Banking Co. v. Charnwood Forest Ry. Co.* were not disapproved. Now looking at the judgment of Lord Esher, it seems to me that in so far as its reasoning is based on the same conception (and I must confess that it appears to me on reading it to be based on the same conception) as that on which Bowen L.J.'s reasoning was based, then Lord Esher's judgment is subject to precisely the same objection as that of Bowen L.J. In any event it appears to me that no sound argument can be based on that case in view of what was said about it in *Lloyd v. Grace, Smith & Co.*, where the most modern statement of the law is to be found.

Again it was observed:

Leaving that aside altogether and dealing merely with the question as to whether the well known principles affecting the authority of agents and the extent to which their acts will bind their principals apply in the case of a forged document, and taking that by itself,¹ find myself in entire agreement with the view taken by the learned Judge. The cases of *Ruben v. Great Fingall Consolidated*; *Kreditbank Cassel v. Schenkers* and *Shingsly v. District Bank* (one of them in the House of Lords and the other two in this Court) appear to me to make it quite clear that in the view of the learned judges who dealt with the matter, the question of the effect of a forged instrument as affecting the principal falls within the question of ostensible authority. I can find no justification in any of the observations in those cases for the suggestion that a forgery, if in other respects it comes within the scope of ostensible authority, in any way prevents the doctrine from applying.

The learned judge concluded

It is quite obvious that the business of limited companies could never be carried on if everybody dealing with a company was at his peril bound to ascertain whether the internal administration of the company had been regularly conducted. The fact that forgeries do not fall within this doctrine is not based on the law of principal and agent or any analogy therewith nor, so far as I know, has it ever been linked up with it in the way that Wright J. apparently suggests. I can see no justification for applying the analogy of cases such as *Ruben v. Great Fingall Consolidated* to the ordinary case of principal and agent. For those reasons, and restating in my own language what the learned judge has said, I express my entire agreement with his judgment on this point, and the appeal must in consequence be dismissed with costs.

25. There is more or less a thorough examination of the indoor management rule in 76 *Law Quarterly Review* at page 115. The application of the rule in *Turquand's* case to cases of forgeries has been considered therein fairly

elaborately. It may be useful to refer here to a passage at page 133 of the Review.

But where a person executes an instrument on behalf of a company as its agent, though without actual authority, the rule in *Turquand's* case is applicable, and has repeatedly been applied, notwithstanding the fact that the instrument is a forgery. Indeed, it is difficult to discover any instance whatever of the application of the rule to a document where there was not a forgery in this technical sense. Since the rule operates only to supply authority where none existed, it is hard to see how it could ever apply to a document which was not a forgery, for it is of necessity a document made on behalf of a person who did not authorise it. The rule was so applied in *Turquand's* case and in the other nine cases already listed.

I.D. Campbell, the learned author of the articles, concludes after discussion of the question, this way:

It is accordingly submitted that the rule in *Turquand's* case applies to forgery if" but only if, the person who executed the document purported to do so as an agent; and that dicta to the contrary in *Ruben's* case and the decisions on this point in *Kreditbank Cassel v. Schenkers Ltd.* (supra) and *South London Greyhound Racecourses Ltd. v. Wake* (supra) cannot be reconciled in principle with the rule in *Turquand's* case, and should not be followed.

Gower, in his Treatise "The Principles of Modern Company Law", has summarised the present law on the rule in *Turquand's* case in a series of rules and R.6, as stated by the author, reads

R. 6. If a document purporting to be sealed by or signed on behalf of the company is proved to be a forgery, it does not bind the company. But the company may be estopped from disclaiming the document as a forgery if it has been put forward as genuine by an officer acting within his actual, usual, or apparent authority, and if a transaction is binding on the company under the foregoing rules the company will be liable notwithstanding that, the officer has acted fraudulently or committed forgery.

The author particularly notices that the decision of the House of Lords in *Ruben v. Great Fingall Consolidated* decided no more than that the acts of the Secretary were outside the scope of his authority. The author rightly indicates that the statement sometimes seen made that *Turquand's* rule has no application where forgery is involved may not be correct.

26. A Division Bench of the High Court of; Madras, after referring to English cases on the point, held in *The Secretary, Naguneri Peace Memorial Co-operative Urban Bank Ltd., Naguneri Vs. Alamelu Ammal*, thus

"All these cases cited above establish two principles. One is that the well established principle that strangers are entitled to assume that all things connected in the transactions and pertaining to the internal management, of the company have been validly done has no application to fraud and forged

instruments, as forged instruments are simply null and void. The other principle is: A secretary is a mere servant. His position is that he has to do what he is told and no person can assume that he has any authority to represent anything at all.

If the Secretary is shown to have either express authority to perform certain acts or implied authority by a course of dealing the company would be liable. In other words, if he is acting within the scope of his authority the actions of the secretary will bind the company, even if done tortuously or fraudulently and even though they enure not for the company's benefit but for the secretary himself."

These established rules and principles will equally apply whether in the Law of Agency, or in law of Master and Servant."

It may be profitable in this context to refer to the acts within the "usual" authority of the company's agent. Reference may be made to page 245 of Palmer's Company Law, 21st Edition:

The authority of an agent may be an actual authority or an apparent or ostensible authority. The former arises from the express or implied appointment of the agent by the principal; the latter by a representation by the principal to a third party that the agent has authority to act on his behalf. In either case if the agent is appointed, or is held out as having been appointed, to a particular office, persons dealing with him are entitled to assume that he has the authority usually conferred on a person in that position, and are not bound by any limitation imposed by the principal upon the agent inconsistent with his "usual" authority of which they have no knowledge.

These general principles of agency apply to agents of companies subject to two qualifications. In the first place, the agent's powers are in any event limited by the powers of the company itself, and, secondly, by the doctrine of constructive notice, limitations imposed upon the agent's powers by the articles or other public documents are deemed to be within the knowledge of persons dealing with the agent. Subject to this, any person who has been expressly appointed agent may bind the company by any act which is within the usual authority of such an agent. The rule in *Turquand's* case will operate in such a case to relieve the third party from any obligation to ascertain whether authority was given to carry out the particular transaction, unless this can be ascertained from the public documents. So, where a person has been appointed managing director under a power in the articles, the third party need not concern himself as to what powers have actually been delegated to the managing director: he can safely assume that the person he is dealing with has the usual powers of a person in that position. This rule was expressed by Atkin L. J in *Kreditbank Cassel G.M.B.H v. Schenkers* as follows:

If you are dealing with a director in a matter in which "normally a director would have power to act for the company you are not obliged to inquire whether or not the formalities required by the articles have been complied with before he exercises that power.

27. Coming to the case before us the position is thus: That the Agent Sri. George who received the deposit from the plaintiff was at that time functioning as agent of the Angamali Branch, that he had a power of attorney to receive such deposit and issue receipt, that he was acting in the course of his employment in receiving such deposit in the instant case, the delivery of the deposit receipt was also in the course of his employment and that he had sufficient authority for what he did are matters either admitted or proved. When a customer approaches the bank, puts the money by way of deposit in the hands of the Agent of the Bank and sets the receipt in due course from the Agent, he would be justified in assuming that the amount has been paid to the defendant Bank as whose Agent the person who received the money apparently functioned at the time payment was made. It is not practical to expect the customer on receiving the deposit receipt to proceed to the Accounts section and ascertain whether the amount has been entered in the books of account of the Bank. It is not practical to expect the customer to go to the Accountant and the Cashier and ascertain from them whether the signatures in the deposit receipt purporting to be theirs are really affixed by them. We are aware of the observations of Lord James of Hereford in Ruben's case, suggesting that as between two innocent parties the availability of the course suggested above to one may be relevant. But with great respect, we find it difficult to envisage such a situation. We find that in receiving the deposit amount and delivering the deposit receipt, apparently duly executed, the Agent Sri. George was acting within the scope of his authority and therefore even if his conduct was fraudulent the plaintiff who is not a party to that fraud is entitled to obtain a decree against the defendant Bank.

In the result, the appeal is dismissed with costs.
