(1927) 07 BOM CK 0022

In the Bombay High Court

The Roal Bank of Canada APPELLANT

Vs

Joseph Salvatori RESPONDENT

Date of Decision : 21-07-1927

Acts Referred:

Citation : (1928) 30 BOMLR 760

Hon'ble Judges : Warrington, J;Viscount Haldane, J;Darling, J;Blanesburgh, J;Atkinson, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Atkinson, J.—[For the purposes of this report, only the following extracts are material]:-

2. The instrument of guarantee is, with the exception of the last clause of it, a printed document. Before dealing with the construction of its language, it is necessary to consider the condition of things out of which it sprung, and the objects apparently designed by the parties to it to be effected by it.

3. Their Lordships do not think that the language of this deed is so ambiguous as the appellants contend that it is, but if it be so then they think that the koy to its construction is that laid down by Lord Blackburn, River Wear Commissioners v. Adamson (1877) 2 App. Cas. 743. In the report he expressed himself thus (p. 763) :-

...though no doubt the principles of construction of statutes laid down by this House in the present case must have an important effect on those who have to construe that or any other enactment. My Lords, it is of great importance that these principles should be ascertained; and 1 shall therefore state, as precisely as I can, what I understand from the decided cases for bathe principles on. which the Courts of Law act in construing instruments in writing; and a statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used. But from the imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used.

4. Adopting that rule of construction, it is impossible, in their Lordships'' view, having regard to the circumstances out of which the deed of guarantee arose, and in reference to which its language was used, to suppose that what was intended was that these broken and insolvent traders, the firm, should get no help from the bank beyond leaving their account open, merely continuing to carry the liability, as Connell phrases it. The learned Judge, Mr. Justice Adrian Clark, said that the words "Continuing to deal with Antoni Brothers in the way of its business as a bank must involve some bona fide fresh transaction between the parties." Their Lordships concur with him in this view. They think it is impossible to confine these words to merely keeping the account of this firm open, that is merely receiving payment from anyone who chooses to pay in money to the bank to the firm''s credit....