
(1976) 10 KL CK 0004
In the High Court Of Kerala
Case No : A.S. No. 73 of 1974

Thomas

APPELLANT

Vs

State Bank of Travancore and Others

RESPONDENT

Date of Decision : 20-10-1976

Acts Referred:

Constitution of India, 1950 — Article 50
Contract Act, 1872 — Section 212

Citation : (1976) 10 KL CK 0004

Hon'ble Judges : Chandrasekhara Menon, J; Bhaskaran, J

Bench : Division Bench

Advocate : M.K. Narayana Menon, C.S. Narayana, Radha Nair and K.P. Sreekumar, for the Appellant; K.C. John and George Varghese, for the Respondent

Final Decision : Allowed

Judgement

Chandrasekhara Menon, J.—The first Defendant in O.S. No. 76 of 1966 in the Court of the Subordinate Judge of Irinjalakkuda is the Appellant in this appeal. The suit was one to recover a sum of Rs. 74,985.30 being the principal and Rs. 13,237.50 being the interest on the same at 6 per cent per annum from 26th December 1966 till the date of suit with future interest at 6 per cent on the principal. The amount is alleged to be due to the Plaintiff-Bank on the basis of certain defalcation charges against the Defendants. The facts of the case are as follows: There was a bank by name Latin Christian Bank Ltd. with its Head Office at Ernakulam and branch office at several places including the one at Kottapuram. Kottapuram Branch of the Bank was started on 14th December 1950. The first Defendant was the agent of the said branch office from the date of its opening till the said Bank amalgamated with the Plaintiff-Bank. The second Defendant was the Cashier of the Kottapuram Branch from the date of its opening till the work of the Cashier was taken over from him and entrusted to the first Defendant. Thereafter the second Defendant was working as Head Clerk till 26th December 1953 on which date he was placed under suspension. The 3rd

Defendant was the Accountant of the aforesaid Branch from the date of its opening till 2nd December 1963 on which date he entered on leave. The first Defendant was working as Agent of the branch office as well as doing the work of the Cashier from the time, the said work was entrusted to him. He was receiving and disbursing the cash from and to the Bank's constituents including subscribers to the kuries conducted by the Bank. The second Defendant was maintaining fixed deposit register, gold loan ledgers, Day Book and Cash Book and was also writing generally gold loan pledge forms except entering the amount which the first Defendant used to enter while sanctioning the loan.

2. The alleged defalcation was found out in the following manner. The Accountant, the 3rd Defendant, sent a letter dated 5th December 1963 marked as Ext. P-116 in the case pointing out certain irregularities and misappropriation alleged to have been done by the second Defendant. The first Defendant brought that fact to the notice of the Head Office. P.W.1, the then Secretary of the Bank and the Accountant of the Head Office checked the accounts on 26th December 1963. Thereafter he along with the staff of the Head Office also checked the accounts of the Kottapuram Branch for a number of days and found that there was considerable defalcation. A moratorium was declared on 22nd February 1964. After that the Reserve Bank nominated and the Latin Christian Bank appointed the firm of Chartered Accountants Varma and Varma to investigate into the affairs of the Bank especially that of the Kottapuram Branch. The Chartered Accountants filed their report, which is marked as Ext. P-3 in the case. The investigation by the auditors evidenced by Ext. P-3 revealed defalcation of the funds of the bank to the tune of Rs. 89,98530, towards which a sum of Rs. 15,000 is stated to have been paid by the second Defendant and credited on 24th February 1964. As per the scheme of amalgamation evidenced by Ext. P-117 in the case the Latin Christian Bank was amalgamated in the State Bank of Travancore with effect from 17th August 1964. It is the State Bank of Travancore, which has brought forward this suit claiming the amounts detailed earlier against the Defendants.

3. The case of the Plaintiff is that the first Defendant who was the Agent misappropriated the funds of the bank as well enabled misappropriation by Defendants 2 and 3, who are the employees of the bank by his negligence in the discharge of his duties. Defendants 2 and 3 were ex parte in the case. The first Defendant-Appellant contended that he was not negligent in discharging his duties, that he did not violate any of the instructions from the Head Office or the custom of the business in the performance of his duties. According to him, he used reasonable diligence in the performance of his duties and the bank did not sustain any loss, and even if any loss had been occasioned it cannot be due to the direct consequence of his negligence.

4. The lower court after a detailed examination of the evidence in the case found that the first Defendant did not misappropriate any amount that belonged to the bank. The court referred to the evidence of P.W.1 in the case who in his cross-

examination had stated that he was unable to say whether he can establish from the documents produced that the first Defendant had misappropriated any amount. P.W. 1, as stated earlier, was the Secretary of the Christian Bank. P.W. 1 had also stated that he cannot say whether the first Defendant had misappropriated any amount in cash. He also admitted that he did not find any misappropriation by the first Defendant. However, the court below came to the conclusion that the first Defendant was negligent in passing payments in respect of 74 forged cheques without comparing the signatures found in the cheques with the specimen signatures and that for that sum the first Defendant is liable. In the result, as against the first Defendant, the court below passed a decree for a sum of Rs. 8,720. He was made jointly and severally liable for this amount along with Defendants 2 and 3. A decree was also passed against Defendants 2 and 3 for a sum of Rs. 21,523.50 the said amount being the correct amount found due as per the claim made in paragraph 9(a) of the plaint. In regard to Anr. claim made in the plaint, Defendants 2 and 3 were made liable for Rs. 225. These Defendants, viz., Defendants 2 and 3 were also held liable for the amounts of Rs. 6,598.33, Rs. 56.35 and Rs. 41036 being the amounts found due as per the various other claims in the plaint. A preliminary decree was also passed against Defendants 2 and 3 for the amounts alleged to have been misappropriated by them and due to the Plaintiff in respect of 131 constituents detailed in the plaint. The correct amount was to be determined at the final decree stage. The Plaintiff was entitled to interest at 6 per cent per annum on the correct amount as stated earlier from the date of suit till date of decree and from date of decree till realisation. The Plaintiff was held entitled to proportionate costs of the suit from the Defendants; but was directed to pay the proportionate costs of the first Defendant in respect of the amounts dis-allowed as against him. It is from this decree that the first Defendant has come up in appeal to this Court.

5. It is the Appellant's contention that the lower court had erred in granting the decree against him and that the reasons given in the judgment of the trial court making him liable are all wrong and unsustainable. It is urged that the trial court had gone wrong in thinking that there is any duty cast on the Appellant to compare the signature in the cheques with the specimen signatures. It is his case that there was nothing to give suspicion to him regarding the signatures and therefore, there cannot be any negligence on his part in not verifying the same with the specimen signatures, found even if there is any such duty. In substance, what he contends is that he cannot be liable for the amount concerned for his alleged negligence in passing the amounts without comparing the signature in the cheques with the specimen signatures. It is pointed out that the court below went wrong in assuming that the cheques are forged finding that the signatures in the alleged cheques are not similar with the specimen signature so as to elicit suspicion in the mind of a person who sees only the cheques after a long interval of time. According to the Appellants it was the duty of Defendants 2 and 3 who pass cheques for payment to the agent after initialling the same after verification with the ledger and no further duty is cast on the Agent except

in the matter of any suspicious feature to verify the signature in the cheque with the specimen signature. In this connection he points out that even after scrutiny, inspection and verification were done by more competent and qualified persons like the Secretary, Directors, Internal Auditors and Chartered Accountants, the alleged forgery had not been detected by them. It is contended that there is no material or evidence in the case to show that the Appellant -- 1st Defendant did not exercise ordinary care and prudence required of him under the circumstances. It is further argued that any particular act of commission or omission on his part has not been alleged, proved or found. According to him, there was no custom, rule or direction to the Appellant enjoining comparison, as is now sought to be made by the Plaintiff, either alleged, proved or found by the court below. The first Defendant-Appellant also takes up the plea that the Plaintiff-bank is estopped from claiming any amounts from the Appellant on the ground of negligence because of the conduct of the bank all along.

6. In considering the questions involved in the appeal it will be useful to refer to the relevant pleadings on the particular point. In paragraph 5 of the plaint it is stated that according to the general accepted practice and custom in the offices of the former Latin Christian Bank, Ltd., and of banks generally and also according to the instructions issued to the said Kottappuram Branch and other branches of the Latin Christian Bank, Ltd., the second Defendant is to enter in the personal ledgers details of cheques presented and chalans and vouchers, put his initials in the cheques, chalans and vouchers enter the page of the folio and the date, and send the ledgers together with the cheques, chalans or vouchers as the case may be to the first Defendant. The first Defendant is to checkup and verify all the entries made in the ledgers and the cheques, chalans and vouchers and he is wherever necessary, to compare the signature on the cheques with the concerned specimen signature and satisfy himself regarding its genuineness as he is the passing officer. Having done the verifications mentioned above, he has to be satisfied that payment can be made, and he pays cash as the cash is also with him. Further in paragraph 9 of the plaint it is stated that it was the duty of the Agent of the Bank and of whosoever was in that office on the relevant dates to pass the cheques only on being satisfied by comparing, if necessary, the signature in the cheques with the specimen signature of the parties concerned. The Agent or the one acting for him could have passed the above cheques only because he was an active party to the misappropriation or because he was grossly negligent in the discharge of his duties. Dissimilarity between the specimen signatures and those on the above said cheques is so great that any comparison would have led to detection.

7. In reply to this, the first Defendant in his written statement denies the practice, custom or instructions, referred to in paragraph 5 of the plaint. According to him, the specimen signatures are either pinned to the folio or kept in the file concerned and they are in the custody of the ledger clerk. The duty to check the signature in the cheque with the specimen signature was that of the ledger clerk and it is also his duty to make appropriate entries in the registers

concerned. The first Defendant proceeds to state that after such verification and checking the concerned clerk sends the cheque for payment to this Defendant who in turn pays the amount as per the cheque to the persons concerned. Ledgers are not usually sent to the Agent on such occasions. In paragraph 15 of the written statement the claim made in paragraph 9 of the plaint is said to be foundationless. Cheques referred to in paragraphs 9 and 11 were alleged to have been dealt with on days or occasions when the first Defendant was not present. He cannot be made responsible for such amounts nor is he responsible in respect of such cheques dealt with during his absence. He also pleads that he cannot be made responsible with respect to the cheques dealt with when he was present. The concerned cheques appear to be of five parties and there was no occasion for the first Defendant to suspect any misconduct in the matter of the cheques, several of which had been already dealt with and no occasion arose for him to verify the specimen signatures.

8. We may now examine how the court below has dealt with this question. The learned Subordinate Judge holds that the first Defendant is required to perform his duties with as much skill as he possesses. The court, however, holds that there were no directions proved in the case to show that the first Defendant was to be in the custody of the specimen signature or that he was to compare the genuineness of the signature before passing the payments. No custom to that effect can be held to have been established according to the learned Judge. The court then considers the first Defendant's action in not periodically checking as is required of him in the instructions Ext. P-1(f) Clause 4. The negligence of the first Defendant in this respect is not sought to be made out on account of his not carrying out that direction but not following the practice of initialling each entries. The court below finds that Ext. P-1(f) directions do not cast a duty on the agent to verify each entries. In view of that direction, the court holds that the agent cannot be held to be negligent in not following the alleged special directions stated as existing in the Kottapuram branch in the evidence of P.W.1. The court below then goes to the question whether the first Defendant's action in not initialling each and every entry will amount to carelessness or negligence in not acting as a reasonable and prudent man under the circumstances. The court states that the higher authorities of the bank had sufficient notice to the fact that the Agent had not been initialling the ledger entries and that they did not take any action against him for not doing so. Even after coming to know the same, they did not give any direction to initial the entries. The higher authorities had the duty to inform the Agent of the special care or the attention he had to bestow in verifying and checking the ledger entries with slips and to warn him against the practice which he was following after 1956. As such, the court below holds that the conduct of the first Defendant under the circumstances cannot be held to be unreasonable. The court below points out that it has come out in evidence that the embezzlement did not come to the notice of the Secretary who inspects the branch every month and whose duty it is to check the accounts with the concerned vouchers, chalangans and cheques. The court below also points out

that it is seen from the evidence that some of the Directors of the bank also used to inspect the branch. There is also a body of internal auditors who also periodically inspected the branch and checked the accounts. Apart from the above, the accounts of the bank is inspected every year and checked by Chartered Accountants. None of the above persons who are specially equipped in the matter of checking and verifying the accounts and whose duty it is to check with reference to the concerned slips were not able to find out the defalcation. Therefore, the court below comes to the conclusions that the first Defendant, who did not have any special qualifications and whose want of skill had been specifically brought to the notice of the principal cannot be expected to have detected the defalcation by the periodical checking which he is required of as per Ext. P-1(f) Clause (4). From this, the conclusion is made by the court below that the first Defendant cannot be held to be negligent in not exercising the skill of an ordinary person which alone can be expected of him. The court very positively comes to the conclusion from the evidence that it cannot be held that there were directions requiring the Agent to check the personal ledgers of the parties with their relative slips.

9. The court below very elaborately considers the questions of the duties of the Agent before passing the cheque for payment. Paragraph 5 of the plaint, the relevant portion of which has been extracted earlier, describes the different duties of the Clerk and the Agent before passing a cheque for payment. They are: (i) that the 2nd Defendant is to enter in the personal ledger the details of cheques, chalans and vouchers presented; (ii) put his initials on the same, enter the page of the folio and the date; (iii) send the ledgers together with the cheques, chalans or vouchers to the first Defendant; (iv) the first Defendant is to verify all the entries in the ledger with cheques, vouchers chalans, etc., and (v) in case of doubt the first Defendant has to compare the signature with the specimen signature. As earlier state 1, the first Defendant in his written statement denied the practice of sending the personal ledgers along with the cheques, chalans or slips and that the Agent was to verify the entries in the ledger and to compare the signature in the cheques in case of doubt. The case of the first Defendant is that the specimen signatures are either pinned to the folio of the respective parties in the personal ledger or kept in a separate file in the custody of the concerned clerk and that the duty to compare the signature is that of the clerk. But, in his evidence D.W.1 stated that the duties alleged by him are as per an instruction or as per the custom or practice prevailing in the Latin Christian Bank and in other banks. The plaint was amended after the first Defendant-Appellant filed his written statement denying that he was in custody of the specimen signatures. The court below points out that in the amended plaint there was no averment as to who is to be in custody of the specimen signatures. It is common ground that the custody of the specimen signatures will be with him who has the duty to compare or vice versa. The lower court correctly points out that no specific instruction has been proved in the case that the Agent is to be in custody of the specimen signatures. Ext. P-1(e) is the instructions

dated 20th January 1958. Clause (9) shows that the specimen signatures are to be kept in responsible custody which would mean that the custody of the same had to be in one or the other responsible officers of the bank. The learned Subordinate Judge points out that Defendants 2 and 3 are responsible officers of the bank, which fact is admitted by P.W.1. The instructions in Ext. P-1(e) do not show that the Agent is to be in custody of the specimen signatures. In contrast to the direction in Clause (9), Clause (11) direct the cash and valuables of the bank should be kept in the joint custody of the Agent and Anr. member of the bank which would show that where the Agent has to be in custody of any particular article it has been specifically instructed; whereas Clause (9) do not show any such instruction. Therefore, the court below comes to the conclusions that the custody of the specimen signature with the second Defendant as contended by the first Defendant cannot be held as contravening the directions in Clause (9) especially in the light of the fact that Ext. P-1(e) does not show that the Agent is to be in custody of the specimen signature. The lower court refers to the admission of P.W.1 that there will be no documents to show that first Defendant was in custody of Exts. P-4 to P-8, which are account opening forms containing the specimen signatures of the parties. P.W.1 had stated that the first Defendant was removed from his office as Agent after the amalgamation of the State Bank of Travancore; but he does not know whether there was any charge list showing the documents received from the custody of the first Defendant. He admitted that usually there must be a charge list. There is no case that no charge list was obtained under the signature of the first Defendant when charge of the bank was taken over from him. The court below, according to us, correctly points out that the charge list would have shown what are the documents handed over by the first Defendant at the time of handing over charge which would clearly establish whether the first Defendant was in custody of Exts. P-4 to P-8 or not. D.W.3, who was the Agent of the Head Office from 1947 to 1958 deposed that the specimen signatures in his branch were not kept in his custody, but in the custody of the Accountant and that showed that there was no practice obtaining in the Latin Christian Bank of the Agent being in custody of the specimen signatures. The learned Subordinate Judge also mentions about the fact that there is no direction either in Ext. P-1 series or in Ext. P-2 casting a duty on the Agent to compare the signatures with the specimen in case of doubt. The relevant evidence in the matter has been considered with care and meticulously by the lower court and that court comes to the conclusion that the cheque containing the necessary entries are sent to the Agent only after the concerned clerk satisfies himself of the genuineness of the signature. That satisfaction, again the court below points out, under the circumstances, can be only by comparison with the specimen. If the concerned clerk was familiar with the signature of the constituent the dissimilarity, if any, in the cheque can be easily noticed by him. Therefore, in order to satisfy himself that the signature is genuine the concerned clerk had necessarily to compare the same with the specimen before sending the cheque to the Agent for passing payment. Logically the court below comes to the finding that it was the duty of the second

Defendant to compare the signature of the constituents appearing in the cheques with that of the specimen in case of doubt and not that of the Agent. The practice spoken to by P.W.1 also conforms to the same. D.W.3 in his evidence admitted that he used to compare the signatures in cheques with that of the specimen in case of doubt. According to him the specimen signatures are kept not in his custody; but that of the Accountant. When he was asked whether he gets specimen signature from the Accountant as and when occasion arises for comparison, he replied that he had no occasion to doubt the genuineness of the signature appearing in the cheques passed by him for payment. The court below was of the opinion that he did not give a direct answer to the question put to him. No doubt, in Sessions Case No. 10 of 1966 the first Defendant had deposed that the specimen signature of the parties is not pinned on the ledger and that it is kept in the bank in a separate file in the custody of the Agent. With regard to this, D.W.1, the first Defendant said that he does not know whether the admission so made by him in the Sessions Case was correct or not. In the re-examination the first Defendant gave an explanation to the matter. He stated that specimen signatures were kept in a file in a cabinet where the cheque books and pass books not issued to the parties and stationeries are kept in the room used by Defendants 2 and 3, the key of which is kept by him. Either Defendant No. 2 or the 3rd Defendant will get the key of the said cabinet on each day before the work of the bank starts and returns the same in the evening. This explanation of the first Defendant has been accepted by the court below and according to us, correctly too, in view of the evidence of P.W.1 and in the absence of any direction proved in the case in regard to the custody of the specimen signatures.

10. But then after having come to these conclusions, according to us on a proper consideration of the relevant evidence in the case, very strangely, the court below then proceeds to hold that the first Defendant is negligent in the matter of passing of 74 cheques. How the court below comes to this conclusion can be best given in his own words: --

16. It was contended before me that the above 74 cheques were passed during a period of nearly 4 years and since those cheques contained all necessary entries made by the 2nd Defendant the first Defendant had no reason to doubt the genuineness of the same. Hence it was contended that the first Defendant cannot be held to be negligent in passing payment in respect of the above 74 cheques. P.W.1 at page 132 admitted that the above cheques contain all the entries required to be made by the 2nd Defendant similar to that of any other genuine cheque. The above circumstance will tend to show that the 1st Defendant did not notice the difference in the signature appearing in the above cheques and passed payment of those cheques trusting the 2nd Defendant. It is no doubt true that business cannot be carried on the basis of distrust of the subordinates. But nevertheless the first Defendant cannot be held to have exercised the ordinary care and prudence required of him under the circumstances. The vouchers by the parties for having received payment of the

amount covered by the same deposited by them in the bank are the cheques. A person who makes a payment of Anr. 's money has to exercise the ordinary care and prudence of verifying whether the constituent had authorised payment and whether the authorisation is a proper voucher for the payment to be made. The first Defendant was admittedly the passing officer who paid the cash under the above cheques and as such he cannot be absolved of the duty of exercising the ordinary care which he is expected to do before passing payment. The contention that the principal had acquiesced in the practice of the 2nd Defendant verifying the signature and the first Defendant did not verifying the same also cannot be upheld because the principal could not have known unless that fact had been specifically brought to their notice. There is no specific instance brought out from the evidence of D.W.1 when the principal had notice of that fact or could have known that fact. From the documents produced in this case nobody will be able to find out whether the first Defendant was not comparing the signature. The fact that either Defendants 2 or 3 who are also responsible officers of the bank had satisfied themselves of the genuineness of the signature by comparison with specimen and as such it was not necessary for the 1st Defendant to have compared them again also does not appear to be tenable in view of the fact that the first Defendant is the passing officer who, under the ordinary circumstances, must satisfy himself of the genuineness of the voucher before the payment is made by him.

Then again the learned Subordinate Judge states in paragraph 23 as follows:

In view of what is stated earlier it has to be held that the first Defendant was negligent in passing payment in respect of 74 forged cheques without comparing the signature with the specimen. He cannot be held to be negligent in not checking the ledger entries with slips. Therefore, I hold that the first Defendant is liable for a sum of Rs. 8,720 covered by the 74 forged cheques along with Defendants 2 and 3.

There is no rhyme or reason for this finding entered by the court below. After having found that the first Defendant had not violated any instruction, custom or conduct of the Bank, that he had only acted in the discharge of his duties as enjoined by such rules and conduct, how could the first Defendant be held liable for the passing of the cheques concerned? When he need not compare the signature unless some doubts strike him, he cannot be held to be in fault in passing cheques compared by Anr. responsible officer of the Bank.

11. In this connection, we would examine the relevant law on the matter, in regard to the duty of an Agent or an employee as regards his principal or master. Every agent acting for reward is bound to exercise such skill, care and diligence in the performance of his undertaking as is usual or necessary in or for the ordinary or proper conduct of the profession or business in which he is employed, or is reasonably necessary for the proper performance of the duties undertaken by him. (See Article 50 -- Bowstead on Agency XIII Edition at pages 115 and 166). A question has arisen whether the Agent's duty of care towards his

principal is tortious or contractual. In *Jarvis v. Moy, Davies, Smith Vandervel and Co.* (1936) 1 K.B. 399 at page 405 Greer, L.J. said "where the breach of duty alleged arises out of a liability independently of the personal obligation undertaken by contract, it is tort, and it may be tort even though there may happen to be a contract between the parties, if the duty in fact arises independently of that contract. Breach of contract occurs where that which is complained of is a breach of duty arising out of the obligations undertaken by the contract". Bowstead in his *Law of Agency* states that this definition given by Greer, L.J. has been developed more recently by Diplock, L.J. in *Bagot v. Stevens Scanlan and Co. Ltd.* 1966 1 Q.B. 197 in which he held that a claim against an architect for his professional negligence lay in contract and not in tort. The basis of his reasoning was that:

In this case, the relationship which created the duty of exercising reasonable skill and care by the architects to their clients arose out of the contract and not otherwise. The complaint that is made against them is of a failure to do the very thing which they contracted to do. That was the relationship which gave rise to the duty which was broken. It was a contractual relationship, a contractual duty, and any action brought for failure to comply with that duty is, in my view, an action founded on contract. It is also, in my view, an action founded upon contract alone.

Diplock, L.J. recognised that there were cases in which there was a duty both in contract and in tort but, he said, they were ones in which the law formerly recognised that from the mere status of the parties (such as a common carrier, a common inkeeper, bailor and bailee or master and servant) there arose a relationship which gave rise to a duty of care not dependent upon the existence of a contract between the parties. The learned author Bowstead says that the reasoning of Diplock, L.J. is applicable to all classes of agents appointed by contract.

12. But the principle that an agent should exercise reasonable diligence and care in performing of the duties of his principal is not different even if the question arose in tort. The latter imposes on all persons the duty to exercise the care, skill and diligence of a reasonable man or of an average person of prudence and competence. Therefore a person cannot be made liable on the ground that he fails to take extraordinary care. This principle is implicit in all the authorities arising under the law of torts. Among the servant's or employee's duties under the express terms by the contract with his master or employer, the most important is the duty to do the work which he engages to do. Obviously this is the foundation on which his rights against his master and the latter's correlative obligations rest. The servant has some duties as part of the implied terms of the contract and alternatively under the general law apart from contract. He has a duty to possess reasonable skill and care in his work. Therefore, he is liable in contract and in tort for negligence in performing the work resulting in injury or loss to the master. We may also refer in this connection to Section 212 of the

Contract Act, which reads thus:

An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such negligence, want of skill or misconduct.

A Principal is entitled to sue his agent for damages for loss caused to him by negligence of the agent; but if the agent proves that he used the reasonable skill and diligence which persons of common prudence are accustomed to use about their own business affairs, he cannot be made liable because an agent cannot ordinarily be deemed insurer for any loss which could not have been prevented by exercise of reasonable skill and diligence. Paramount and vital principle of all agency is good faith and loyalty to the principal. If the agent establishes this he cannot be held liable. (19-1-13 Cal. L.J. 165 at 181). Good faith only implies the exercise of reasonable skill or diligence. As pointed in Venkatachallam Chettiar (dead) and Another Vs. Ponnuswami Aiyangar and Another, at page 48, the measure of reasonableness as between agent and his principal (or between employer and employee -- according to us) depends upon the usual course of conduct and trade custom. It was held in the Madras case that the agent accustomed to send goods by rail uninsured was not liable for loss due to non-insurance. An agent exercising reasonable skill and diligence cannot be responsible for loss caused due to an error of judgment.

13. In this case we find that the first Defendant had not acted against any instructions issued to him. He has not acted, as correctly found by the court below, against any custom, direction or practice in the bank. The employee's promise of service whether expressed or implied includes an obligation to do the work for which he is employed diligently and in a reasonably skilful way. A contract of employment implies that the services shall be of the character which is usual or customary in performing contracts of the kind in question. And while the standard of diligence may be much the same in every contract of employment, whatever its nature, the standard of skill is necessarily subject to great variation. Unless the contract itself contains some definition, the question is one of fact to determine what degree of skill the employer was justified in expecting, or what was reasonable taking into account the nature of the employment and the usages connected with it. The nature of the employment, the amount of the remuneration payable to the employee, the age and experience of the employee and other factors may have a bearing upon the degree of skill which may be expected of him. As remarked by Willes, J., in *Harmer v. Cornelius* 141 E.R. 94 "if a gentleman should employ a man who is known to have never done anything but sweep a crossing, to clean or mend his watch, the employer would probably be held to have incurred all risk himself".

We have quoted the above passage because in the context of this case it is rather important to know of the circumstances in which the first Defendant was appointed as agent. The first Defendant in his evidence has stated that the then Managing Director of the bank Mr. T.C. Xavier, in 190, along with D.W.2, a Director and D.W.3. the Agent of the Head Office approached him and requested him to accept the post of agent because of their belief that in view of the position of the first Defendant and his family among the Latin Christian community in Kotlapuram and suburbs the bank will be able to attract sufficient deposits. The first Defendant, D.W.1, was, at first, reluctant to accept the post; but he was prevailed upon to accept the same finally in view of the pressure exerted and also on the undertaking given that the Secretary and the Directors will give necessary instructions in the conduct of the business. This evidence of D.W.1 is supported by D.W.2, who was a Director, who approached and pressed the first Defendant to accept the post. D.W.3, the Agent of the Head Office also supports the case of the first Defendant. He further states that they happened to pitch upon the first Defendant for the post of the agent of the Kottapuram Branch because they felt that in that case the bank will be able to attract large deposits. The evidence of D.W.3, as pointed out by the court below, goes to show that the primary consideration in appointing the first Defendant was not whether he was qualified or able to act as the Agent but his popularity and influence among the community in order to attract the deposits. He also further deposed that he knew that the first Defendant did not have the necessary qualification or knowledge in the conduct of the banking business. These circumstances, thus, indicated that the authorities had notice of the want of skill of the first Defendant to do the duties of an Agent. So, if there is no evidence which would indicate that the first Defendant had not acted with reasonable diligence and used such skill as he possessed, he cannot be made liable.

14. On a perusal of the facts and circumstances of the case, we are of the opinion that the Plaintiff has failed to prove that the first Defendant had not acted with reasonable diligence and using such skill as he possessed. In the light of the evaluation of the evidence given by the court below itself, it is not at all possible to come to the conclusion that the first Defendant was negligent in passing the payments in respect of 74 alleged forged cheques, without comparing the signature with the specimen signature.

Therefore, we allow the appeal and set aside the judgment and decree passed by the court below in so far as it makes liable the first Defendant for the sum of Rs. 8,720. In the circumstances of the case, we make no order as to costs.