

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Neikram Dobay v. The Bank of Bengal, from the High Court of Judicature at Fort William in Bengal; delivered 18th December 1891.*

---

Present :

LORD MORRIS.

LORD HANNEN.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Sir Richard Couch.*]

The action which is the subject of this appeal was brought in the High Court at Calcutta by the Plaintiff, a dealer in Government securities, against the Bank of Bengal, which carries on business in Calcutta. The plaint alleged that on or about the 19th July 1883 the Plaintiff entered into an arrangement with the Bank as to his future dealings, it being agreed that in all future loans taken by him the Bank should charge 1 per cent. less than the usual Bank rate of interest, and should not call for prompt or heavy margins in respect of Government promissory notes deposited for the purpose of securing loans; that under this agreement the Plaintiff took extensive loans from the Bank, giving promissory notes, and depositing Government paper as security; that, notwithstanding the agreement, the Bank called for prompt and heavy margins, and between the 3rd October

69418. 125.—12/91.

1883 and the 31st January 1884, notwithstanding a tender of 7 lakhs of rupees and an offer of 4 lakhs more, wrongfully and without due and reasonable notice to the Plaintiff, sold off at a great loss to him all the Government promissory notes in their possession deposited by the Plaintiff as security for the loans, and from the proceeds paid off the loans. The questions raised at the trial were, first, what were the terms of the arrangement, and, secondly, had they been broken by the Bank?

The following are the facts proved. The Bank, through Mr. Gordon its Chief Accountant and Deputy Secretary in Calcutta, agreed to grant the Plaintiff loans at the special loan rate on their usual conditions of business, one of which was "The Bank reserves to itself the option of selling securities that have been deposited against loans at any time after the issue of notice of demand," and another, "Interest on securities in deposit against loans or overdrawn accounts will be realized by the Bank on receipt of written instruction from the borrower." Immediately upon the making of the agreement the Plaintiff began to take loans to large amounts from the Bank upon the security of the deposit of Government notes. Some of these loans were consolidated and renewed, the last renewal being under the date of the 21st December 1883.

At that time the market for these securities was falling, and on the 28th December 1883 Mr. Gordon wrote to the Plaintiff, requesting that he would at once either pay off his demand loan or deposit the additional margin of Rs. 24,300, failing which he said the securities deposited against the loans would be sold. Nothing was done on this letter. On the 2nd January 1884 Mr. Gordon again wrote to the Plaintiff that unless he made satisfactory arrange-

ments to adjust the margin and interest due on his loan account by noon the next day the Bank would proceed at once to sell his Government securities. On the 12th January Mr. Gordon again wrote to the Plaintiff that unless the margin on the loan account and interest to the 31st December 1883 was adjusted on the 14th January the Bank would at once proceed to sell his securities as advised in the letter of the 2nd. Nothing having been done by the Plaintiff the Bank on the 15th January commenced to sell his securities, crediting the proceeds to the Plaintiff's account, and informing him by letter that they had done so. The sales continued during the month of January. On the 30th January the Plaintiff paid to the Bank the sum of Rs. 6,74,467, and received from it Government notes of the nominal value of Rs. 7,17,500 which the Bank represented as being, and the Plaintiff believed to be, the whole of his securities remaining unsold in the Bank's hands. On the 31st January Mr. Gordon sent the Plaintiff an account, showing a balance in the Plaintiff's favour of Rs. 326. 7. 4, which the Plaintiff refused to accept, and the Bank paid it into Court.

Previous to the trial it appeared, by the answer of the Bank to interrogatories, that of the securities stated in the account to have been sold Rs. 4,55,500 had not been in fact sold, but were taken over by the Bank in their books at the market price of the day, Rs. 4,00,000 to the Bank itself and Rs. 55,000 to the depositors' department. It appeared at the trial that the Bank had resold nearly all, if not all, of these Government notes, and when the case came before the High Court on appeal further evidence was taken before it as to the dealings of the Bank with the Plaintiff's securities. It was then proved that the whole of the securities taken

over by the Bank were disposed of by them between the 17th January and the 8th February 1884, either by sale or in exchange for other securities, and that the amounts realized were in every instance less than the prices for which credit had been given for them to the Plaintiff.

The learned Judge who tried the suit made a decree dismissing the claims of the Plaintiff so far as they were included in the plaint, but declaring that the sales by the Bank to itself were null and void against the Plaintiff, and that the Plaintiff was entitled to recover the value of the Government promissory notes so sold at the market rate on the date when the suit was instituted, or, at the option of the Plaintiff, on the date of the hearing, with interest at 4 per cent. on their par value from the respective dates of the sales, and that the Bank was entitled to credit for the advances to the Plaintiff, with interest at the rates claimed by the Bank up to the dates when the Bank closed the several loans. In his judgment he said interest could not run as to the sum of money which the amount of the pretended sales purported to wipe off after the dates of them, and an account was ordered to be taken on that footing. The Bank appealed, and the High Court in its appellate jurisdiction allowed the appeal and dismissed the suit.

Their Lordships are of opinion that this decision should be affirmed. The sales by the Bank to itself, though unauthorized, did not put an end to the contract of pledge, so as to entitle the Plaintiff to have back the Government notes, without payment of the loans for which they were security, and until the delivery of the account on the 31st January, the loans being unpaid after demand, the Bank was entitled to sell the notes and credit the Plaintiff with the proceeds. The Plaintiff did not sustain any damage by the sale to the Bank of the

notes which were resold by it before the 31st January.

As to the notes which were resold by the Bank after the 30th January, the position of the Bank was different. It was represented to the Plaintiff by the Bank and believed by him that the Government notes which he received on the 30th January were the whole of his securities remaining unsold in the hands of the Bank. He paid the Rs. 6,74,467 in order, as he believed, to redeem the whole of his securities. It would be inequitable to allow the Bank, after this transaction, to treat the securities, which it had sold to itself, and then had in its hands, as still subject to the pledge. In their Lordships' opinion, the Bank should be held to be no longer a pledgee of these notes, and to have converted them to its own use, and to be liable in damages for the value of them including the interest thereon. But if the Bank is so liable, the Plaintiff cannot have credit in the loan account for the proceeds of these notes. He cannot both affirm and disaffirm the sales to the Bank. It appears from the account of the dealings of the Bank with the Plaintiff's securities, referred to in the judgment on appeal, that the rate of interest on the loan from the 1st to the 5th January 1884 was 7 per cent., from the 5th to the 20th 8 per cent., and from the 20th to the 30th 9 per cent. The rate of interest on the Government notes was 4 per cent., and it is obvious that the longer the account was kept open the more the balance would be against the Plaintiff. If the Plaintiff has sustained any special damage by the conduct of the Bank the evidence of it is not before this Board. Their Lordships will therefore humbly advise Her Majesty to affirm the decree of the High Court and to dismiss this appeal. The Appellant will pay the costs of it.

---

