

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of The  
Bank of Australasia v. George Hamilton  
Dougharty, and Cross Appeal, from the  
Supreme Court of Victoria; delivered 15th  
December 1897.*

---

Present:

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

MR. WAY.

[*Delivered by Sir Richard Couch.*]

The action which is the subject of these appeals was brought by Dougharty against the Bank in the Supreme Court of Victoria. In his statement of claim he alleged that various agreements had been made between him and the Bank for overdrafts and discounts which the Bank had broken and claimed 30,000*l.* as damages. The Bank denied the breaches and made a counterclaim for 5,000*l.* The action was tried on the 3rd and eighteen following days of June and the 1st, 2nd and 3rd of July 1889 before Mr. Justice Holroyd and a jury. Ten issues on the Plaintiff's claims were left to the jury, and an issue on the counterclaim. By direction of the learned Judge the jury found for the Defendants on the 4th 5th 6th 8th and 9th issues, and there is now no question about them. They also found for the Defendants on the 2nd issue and on the counterclaim for 4,622*l.* 8*s.* 1*d.* On

the 1st issue they found for the Plaintiff with 4,500*l.* damages, on the 3rd for him 500*l.* damages and on the 7th for him 2,175*l.* 2nd head of damage. They also found on the 10th issue for the Plaintiff, 100*l.* damages, upon which there is no question. The learned Judge on these findings of the jury reserved for the opinion of the Court certain questions of law which were decided by the Court on the 8th of April 1891. On the 9th of July 1889 the Bank gave notice of motion to set aside the verdict on the 1st 3rd and 7th issues and for a new trial on the ground that the verdict on each of those issues was contrary to evidence and against the weight of evidence and that the damages on each of the issues were excessive and as regards the 7th issue on the ground of misdirection and improper reception of evidence. The motion was heard before the Full Court on the 30th September 1891 and was dismissed with costs. On the 11th February 1892 Mr. Justice Holroyd on motion for judgment by the Plaintiff ordered judgment to be entered for him for 4,750*l.* 1*s.* being 4,500*l.* on the 1st issue, one shilling on the 3rd issue, 150*l.* on the 7th, and 100*l.* on the 10th, and judgment to be entered for the Defendants for 4,622*l.* 8*s.* 1*d.* on the counterclaim and also for them on the 2nd 4th 5th 6th 8th and 9th issues. Both parties have appealed to Her Majesty in Council, the Bank appealing against the order dismissing their motion for a new trial as well as against the order for judgment of Mr. Justice Holroyd.

Upon the argument before their Lordships the contention for the Bank in their appeal was that the 4,500*l.* damages on the first issue are excessive and unreasonable and the contention for the Plaintiff in his appeal was that the 500*l.* given by the verdict on the 3rd issue ought not

to have been reduced to one shilling and that on the 7th issue the judgment should have been for 2,175*l.* damages and not 150*l.*

The 4,500*l.* damages on the 1st issue were awarded to the Plaintiff as general damages for injury to his credit. The acts of the Bank by which he alleged his credit was injured and his business was injured and diminished were said in his plaint to have been done in November and December 1885. Mr. Blundell the manager of the Bank in Melbourne said in his evidence that he first became acquainted with the Plaintiff in January 1883 and in a paper dated 22nd January 1883 enclosed in a letter written by the Plaintiff to Mr. Blundell dated the 29th there are the following passages:—“The business was started  
“on 1st January 1881 at zero. It has steadily  
“increased particularly within the last three or  
“four months. It is now I believe doing a good  
“deal more than paying its own and my house-  
“hold expenses. The latter are at the rate of  
“about 500*l.* or 600*l.* per annum.” . . . “I open  
“accounts current at from 8 to 10 per cent.  
“interest with respectable well-to-do graziers to  
“assist them in stocking and working their  
“land.” . . . “The profit is not on the excess  
“charged by me over the Bank rate of discount  
“which may pay bookkeepers, wages &c., but in  
“the commissions charged for selling the stock  
“when fat and finding a second lot as stores to  
“take their place and be again fattened off.”  
In a memorandum by the Plaintiff of an interview with Mr. Blundell on the 16th February 1885 it appears that he then told Mr. Blundell that his “business was getting very bad.” In a letter to the manager of 21st August 1886 he says “I attribute the breaking down of my  
“account to continuous droughts and times so  
“bad that I could scarcely be blamed for not  
“foreseeing them.” . . . “I bought sheep

“ at a much higher price than I would otherwise  
“ have given trusting with stock on to effect a  
“ sale but just at that time wool fell and an  
“ unsettled land law then and ever since has  
“ stopped station buying.” In a letter of the  
10th September 1885 he says “ From the date  
“ when I got the extension of overdraft and  
“ decided on realizing the station I have regarded  
“ my estate as simply in liquidation.” Their  
Lordships have considered this evidence together  
with the Plaintiff’s evidence at the trial (Record  
p. 31) and his answer to the 9th interrogatory  
(p. 266) in which he says his business was  
generally damaged but it was impossible for him  
to say to what extent and they are clearly of  
opinion that the jury could not reasonably give  
4,500*l.* as general damages for injury to the  
Plaintiff’s credit. These damages are excessive  
and there ought to be a new trial as the parties  
appear to be unable to agree upon a reduction of  
them. Upon the 3rd issue upon which the jury  
gave 500*l.* damages the learned Judge reserved  
for the consideration of the Full Court the  
questions : 1. Whether the statement of claim  
alleges any consideration for the agreement for  
the breach of which the damages were given ;  
2. If so whether there was any evidence of such  
consideration proper to be submitted to the jury ;  
3. Whether the Plaintiff is entitled to damages  
for actual loss on sale of sheep. The answer of  
the Court to the third question was in the negative  
and the 500*l.* was reduced to one shilling, the  
Court saying they were of opinion that there was  
no evidence to justify the conclusion that the  
sale of the sheep was the necessary consequence  
of the Defendants’ failure to provide money for  
expenses, such failure being the wrong alleged in  
the statement of claim. Their Lordships have  
considered the evidence on this matter of the  
Plaintiff (Rec. p. 27) and his letters (pp. 384,

388) and upon this question they agree with the Full Court.

On the 7th issue the damages were reduced to 150*l.* in consequence of the interpretation which the Court put upon an agreement between the Plaintiff and the Bank of the 15th April 1887. This agreement recited that the Plaintiff had requested the Bank to purchase sheep for the purpose of stocking a station which had in October 1885 been mortgaged by him to the Bank, and of which the Bank were in possession for the purpose of utilising the same to the best advantage, which the Bank had agreed to do, and he agreed that it should be lawful for the Bank to charge his account with the cost of all sheep which they might in their absolute discretion deem it advisable to purchase for the purpose of stocking the station. And the statement of claim alleged that about the 26th May 1887 the Bank sold the station separately and without any of the sheep upon it and on the 1st of June 1887 sold the sheep separately whereby the station and the sheep realized a much less amount than they would otherwise have realized. The Bank admitted that they did purchase sheep for the purpose of stocking the station and said in their statement of defence that whilst the sheep were being travelled to the station and before they were actually placed thereon they sold the station in accordance with their powers under the mortgage and the sheep were sold to the same person who bought the station. The jury gave 150*l.* damages for selling the sheep separately but in the statement of claim it was alleged that the station was wrongfully sold and for that they gave 2,175*l.* damages. The questions reserved for the Full Court were whether the Bank having purchased sheep for stocking the station was not bound to put them on the station and whether if the Bank was bound to do so they were bound to carry on the station so as to

utilise stock and station to the best advantage. To the former question it was answered that the Bank having purchased sheep for stocking the station was not bound to put them on the station in all events and to the second that the Bank was not bound by the agreement to carry on the station so as to utilise stock and station to the best advantage in all events. Accordingly the sum for which Mr. Justice Holroyd gave judgment does not include the 2,175*l.* The mortgage contained a power to the Bank to sell the station but no covenant by the Bank to carry it on. In their Lordships' opinion the agreement did not bind the Bank to carry on the station if they purchased sheep for stocking the station or restrict them in the exercise of the power of sale and the 2,175*l.* damages have been properly disallowed. They will therefore humbly advise Her Majesty to dismiss the appeal of the Plaintiff Dougharty and in the appeal of the Bank to reverse the order of the Supreme Court of the 30th September 1891 and the judgment of the 11th February 1892 and to order a new trial of the action so far as the first issue is concerned the costs of the former trial and the costs of the Motion for a new trial to be in the discretion of the Judge. In the course of the hearing of the appeals it appeared that the final leave to appeal to Her Majesty in Council had been given to the Bank on the 2nd September 1892 and that the Record did not reach the Privy Council Office till the 9th May 1896. Their Lordships therefore desired to have an explanation of this delay. That has been given to their satisfaction in an affidavit which has been filed by the Bank. If the parties can agree upon the amount to which the damages may be reduced there need be no new trial and the judgment may by consent be altered accordingly. The Plaintiff will pay the costs of both of these appeals.

---