PRIVY COUNCIL.

THE TEXAS COMPANY, LIMITED (PLAINTIFFS) *v.* THE BOMBAY BANKING COMPANY AND ANOTHER (DEFENDANTS)

P. C.*
1919.
May 2, 5, 30.

[On appeal from the High Court of Judicature at Bombay.]

Principal and Agent—Ownership of money paid into Bank—Constructive notice—Knowledge of agent unknown to principal—Contract Act (IX of 1872), section 194.

V was the sole agent of the appellant Company for securing the distribution of oil under an agreement, dated 25th October 1911, made between them whereby on receipt by the Company of an order for oil, a delivery order would be given in exchange for a specified deposit of security which could be realised by the Company on failure of V to remit the sale proceeds of the oil which the agent expressly agreed to send to the Company as they became due without any deduction, and deposited with them Rs. 5,000 as a guarantee of good faith. V entered into a series of sub-agencies between himself and persons operating in the district whom he constituted his agents for a smaller commission, but in other respects according to the provisions of his agreement with the appellant Company, but except so far as V was referred to as being sole agent for the Oil Company no reference whatever was made to the Company in the agreements. In addition to V's position as sole-agent he was also a member of a firm which acted as Secretaries, Treasurers, and Agents, and as General Managers of the affairs of the respondent bank under the latter's articles of association. In 1912 V's account with the respondent bank was largely overdrawn and he paid into the bank to the credit of his account Rs. 65,000 which was paid by cheque drawn by or on behalf of V on other banks in Bombay. This money came from monies provided by the sub-agents either by way of guarantees or by monies paid for oil purchased. The respondent bank suspended payment in October 1913. In a suit by the appellant Company claiming repayment of the sum of Rs. 65,000 in priority to other creditors of the bank on the ground that such sum represented their money in the hands of V and had been received by the bank with knowledge of that fact,

Held, that the deposit did not belong to the appellants. There was no evidence to show that they had ever expressly or impliedly authorised V to enter into any agreements with sub-agents, or that they ever knew of the agreements or of their terms, which did not establish any privity, between the Oil Company and the sub-agents, or that V had any authority to name any person to act for the Oil Company.

* *Present* :—Viscount Haldane, Lord Buckmaster and Lord Dunedin.

1919.

TEXAS COMPANY, LTD. v. THE BOMBAY BANKING COMPANY.

Held, further, that from whatever source the money was drawn it was not paid into the bank under circumstances that affected them with knowledge of any infirmities in V's title either by reason of the form in which the cheques were drawn, or by reason of V's association with the firm that acted as Secretaries, Treasurers, Agents, and Managers of the affairs of the respondent bank.

APPEAL No. 67 of 1918 from a decree (13th July 1916) of the High Court at Bombay in the exercise of its appellate jurisdiction, affirming a decree (2nd October 1915) of a Judge of the same Court in the exercise of its ordinary original jurisdiction.

For the purpose of this report the facts will be found sufficiently stated in the judgment of the Judicial Committee.

The judgment appealed from was that of Scott C. J. and Heaton J.

On this appeal,

Mackinnon K. C. and *Hansell* for the appellants contended that the moneys paid to the respondent bank were the moneys of the appellants, and were so paid without their knowledge and authority: the persons appointed as sub-agents by Vaidya became agents of the appellants, and money paid by them to Vaidya became the money of the appellants: see section 194 of the Contract Act (IX of 1872). The money was held by their agents in trust for the appellants; and they were entitled to follow it in the hands of the respondent bank or the liquidator respondent, and to recover it from any person who had received it with notice. Reference was made to *Kennedy* v. *Green*[1]; and *In re Hallett's Estate*[2]. The appellants were not, it was submitted, bound to establish that the respondent bank had notice that the moneys belonged to the appellants, for, under the circumstances the bank must be presumed

[1] (1834) 3 Mylne & Keen 699 at p. 700. [2] (1879) 13 Ch. D. 696 at p. 709.

to have had notice that they were the moneys of the appellants; reference was made to *Cave* v. *Cave*[1]; and *In re David Payne & Co., Limited*[2]. Also the respondent bank should have been put on inquiry by the form of the cheque paid to them, especially as the bank had received benefit from the payment. The case of *Coleman* v. *Bucks and Oxon Union Bank*[3] was distinguishable from the present case. The appellants were in any case entitled to an account. The judgments appealed from were erroneous and ought to be reversed.

Upjohn K. C. and *E. B. Raikes* for the respondents were not called upon.

1919 May 30th:—The judgment of their Lordships was delivered by

LORD BUCKMASTER:—The appellants are a Corporation, incorporated under the laws of the State of Texas in United States of America, and either owning or having control over extensive oil fields. Their head office for India is in Bombay, and for the purpose of securing distribution of kerosene oil throughout the district of Bengal, they entered into an agreement in writing, on the 25th October 1911, with one Prabhakar Govind Vaidya, whereby he was appointed for five years their exclusive agent for the sale of such oil within named areas on certain specified terms.

So far as they are material to the present dispute these terms provided that, on receipt by the Company of an order from the agent for kerosene oil, they would give to him a delivery order for the quantity required in exchange for a deposit by him with the Company of such an amount of certain specified securities as should, at the market rate at the date of the deposit, represent 5 per cent. excess of the market rate of the

(1) (1880) 15 Ch. D. 639.

(2) [1904] 2 Ch. 608.

(3) [1897] 2 Ch. 243.

1919.

TEXAS COMPANY, LTD. v. THE BOMBAY BANKING COMPANY.

oil, and that they should have power to realise the securities after seven days' notice of the failure by the agent to remit the sale proceeds of the oil, in respect of which the deposit was made. The price at which the oil was to be sold by the agent was to be named by the Company from time to time, and the agent guaranteed that the full sale proceeds should be paid to the Company, his commission being 4 annas per 8 gallons of oil. Sales were to be for cash, credits were to be at the risk of the agent and the agent expressly agreed to remit to the Company all sale proceeds directly they became due, without any deduction on any account. The only other material provision of this agreement was clause 23, which is in the following terms :—

"23. The Agent has deposited with the Company the sum of Rs. 5,000 in 5 per cent. Tansa Bonds as a guarantee of good faith which amount is liable to confiscation by the Company for any breach of any clause of this agreement and it is hereby expressly agreed and understood that the interest accruing on such Tansa Bond Deposit will be paid to the Agent by the Company so long as the Agent faithfully observes and performs the conditions of this Agreement."

The agent proceeded to make this agreement effectual by entering into a series of sub-agency agreements between himself and a variety of people operating in the district, constituting them as agents on terms which provided for a smaller rate of commission but in other respects following the provisions of his agreement with the Texas Oil Company. They are entitled sub-agency agreements; but, except so far as Vaidya is referred to as being the sole agent for the Texas Oil Company, no reference whatever is made to the Company in the agreement, and no privity whatever is established between the Company and the sub-agent. Clause 23 of the original agreement found its equivalent in clause 24, which ran as follows :—

"24. The Sub-Agent shall deposit with the Sole Agent the sum of money which the Sole Agent may fix from time to time as a guarantee of good faith

which amount is liable to confiscation by the Sole Agent for any breach of any clause of this agreement and it is hereby expressly agreed and understood that interest at per cent. per annum accruing on such deposit will be paid to the Sub-Agent by the Sole Agent so long as the Sub-Agent faithfully observes and performs the conditions of this agreement."

Considerable business appears to have been done under these agreements, and large sums of money were received by Vaidya pursuant to their terms, both from the sale of the oil and from the deposits made under clause 24, the deposits alone amounting to at least Rs. 52,000 in September 1912. In addition to Vaidya's position as agent for the Texas Company, he was also a member—together with one Kothavle—in a firm, V. N. Apte & Co., and this firm were the secretary, treasurer and agent of the respondent's bank.

In October of 1912 Vaidya, who had various accounts with the bank, was overdrawn to the extent of about Rs. 3,00,000. At the beginning of this month the bank finding themselves face to face with fast gathering financial difficulties, Kothavle was asked by two directors to obtain from Vaidya the money that he owed to them. Vaidya was then returning from England, and on his return an interview took place between him and Kothavle, with the result that Vaidya sent to the bank the sum of Rs. 65,000—Rs. 60,000 in October and Rs. 5,000 in the following February. Of this sum, Rs. 60,000 was paid in cash by cheques drawn by or on behalf of Vaidya on the Indian Specie Bank, Bombay, and Rs. 5,000 by a cheque on the Eastern Bank, Bombay. The monies so received were credited by the Bombay Bank as to Rs. 52,000 to the personal account of Vaidya, as to Rs. 8,000 to the account of Kothavle and Rs. 5,000 to an account headed Vaidya's Texas Account.

1919.

TEXAS COMPANY, LTD. v. THE BOMBAY BANKING COMPANY.

It appears to be accepted in these proceedings that the whole of these monies came from the monies provided by the sub-agents, either by way of guarantees or by monies paid for oil purchased; as to Rs. 45,000 from actual deposits and purchase monies of oil, and as to Rs. 20,000 by a loan granted to Vaidya on the security of certain bonds which had been purchased by him out of monies derived from the same source.

The Bombay Bank suspended payment in October 1913, and on the 13th February 1915, the appellant Company instituted the proceedings out of which this appeal has arisen, claiming repayment of the sum of Rs. 65,000 in priority to other creditors of the bank, on the ground that such sum represented their money in the hands of Vaidya, and had been received by the bank with knowledge of this fact. In order that this claim should succeed, it is essential that the appellant Company should be in a position to establish two independent facts:—

First, that the money was theirs and held for them by Vaidya as trustee, and

Secondly, that the bank knew this fact when they received it.

If they fail in establishing both these points the question as to how the money was dealt with does not arise.

With regard to the first matter, the trial Judge, Mr. Justice Beaman, held that the aggregate amount of the deposits alone made by the sub-agents with Vaidya was some Rs. 68,000 in cash, and he decided that these monies were never in any real sense the plaintiff's monies at all. Upon the character and quality of these monies, so far as they represented deposits, their Lordships, from the evidence before them on this appeal,

have no hesitation whatever in accepting the conclusions of the learned Judge. There is no evidence to show that the Oil Company ever expressly or impliedly authorised Vaidya to enter into any sub-agency agreements at all, nor that they ever knew of the actual agreements or of their terms. It has already been pointed out that the agreements did not establish any privity of relationship between the Texas Company and the sub-agents; nor did the course of business between the Company and Vaidya necessarily imply that the parties must be assumed to contemplate the establishment of such sub-agencies. The appellants, however, say that such privity is established by section 194 of the Indian Contract Act, 1872, which is in these terms :—

"Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him."

The answer to this contention is to be found in the fact already mentioned that Vaidya never did have express or implied authority to name any person to act for the Texas Oil Company in the business; that he did not appoint them to act on behalf of the principal but on behalf of himself, and that the guarantees and deposited monies were to secure him as against them, and not for the security of the Oil Company. If, therefore, the Rs. 65,000 consisted entirely of these deposited monies, there would be no need for any further investigation into the matter; but in truth the appellants made a strong case for showing that only Rs. 52,000 were properly attributable to this source. In these circumstances it might have been necessary to hear the respondents upon the question as to what was the true extent of these monies, and whether there was not, in the circumstances, some material difference between

1919.

TEXAS COMPANY, LTD.

THE BOMBAY BANKING COMPANY.

them and the sale monies, had it not been that their Lordships have come to the clear conclusion that, from whatever source the money was drawn, it was not paid into the bank under circumstances that affected them with knowledge of any infirmities in Vaidya's title. The notice that it was alleged they received was first by reason of the form in which some of the cheques were drawn, and secondly, by reason of Vaidya's association with the firm of Apte & Co. Upon the form of the cheque the notice is assumed to come from the signature, which in four cases is in these terms :-

"B. R. Manerikar,
per pro P. G. Vaidya,
Sole agent for Bengal & U. P."

Manerikar was the head clerk and manager of Vaidya's agency for the appellants, and the signature was authorised and honoured ; but there is nothing on the face of these documents that would lead the bank to doubt that Vaidya was perfectly entitled to deal with the monies to which they related in whatever manner he thought fit. To affect a bank with knowledge of the ownership of monies paid into the accounts of their customers by the mere form of the signature on the negotiable documents by which such monies are transferred is to proceed far beyond the recognised limits of the doctrine of notice, and such a principle if accepted would create a serious embarrassment to the conduct of banking business. The case of *Coleman* v. *Bucks and Oxon Union Bank*[a] is an authority to show that even a direction to carry money to the credit of a customer's trust account when no such account existed is insufficient for such a purpose. Had Vaidya's account, to which the proceeds of the oil business were paid, been kept with the Bombay Bank under

[a] [1897] 2 Ch. 243.

circumstances that could fairly impute to them knowledge that the monies were not Vaidya's, different considerations would apply (see *Gray* v. *Johnston* [1]); but in this case there is nothing beyond the fact that a cheque signed *per pro* with a statement that Vaidya is sole agent for Bengal and United Provinces is handed into the bank to be placed to the credit of Vaidya's account. Indeed, if the ledger account of the Indian Specie Bank be correctly stated in the record, there is nothing on the face of that account itself to suggest any infirmity in Vaidya's title, for it is simply headed "Account of P. G. Vaidya, Esq.," and there is no explanation offered of the meaning of the signature, which indeed appears to have been quite unnecessary, for the cheque for Rs. 5,000 drawn on the 22nd February 1913, is signed without any such qualification, and is met out of the same account. Probably because of the infirmity of the proposition it does not appear from the documents and judgment that this point was ever raised in the whole course of the proceedings until the hearing of this appeal. As to verbal notice the only person with whom it appears that any interview took place was Kothavle, and both Vaidya and Kothavle's evidence are in agreement upon the fact that Kothavle was told that Vaidya had complete control over the monies, and to quote Kothavle's own evidence, Vaidya told him that the monies of all the cheques belonged to his rock oil business, as is shown by the following extract from this evidence :—

"A. ...Vaidya told me that the monies of all the cheques belonged to his rock oil business.

"Q. And that he had full power and authority to give you those monies?

"A. Yes.

"Q. He did not tell you that he was giving you some one else's money?

"A. No.

[1] (1868) L R. 3 H. L. 1 at p. 11.

1919.

TEXAS COMPANY, LTD. v. THE BOMBAY BANKING COMPANY.

"Q. As far as you knew, the monies belonged to Vaidya?

"A. They did as far as I knew.

"Q. You told your Directors so after the monies were paid, viz., that Vaidya had paid in monies belonging to himself?

"A. Yes."

This evidence, which appears to have been accepted by the Trial Judge, and was certainly not impaired by cross-examination, is complete for the purpose of showing that neither by the knowledge of the directors nor of Kothavle can notice be imputed.

There remains only the question of whether the knowledge of Vaidya himself is sufficient to form the necessary link. With regard to this it is important to observe that the banking company, though governed in the ordinary way by a board of directors, had, by articles of association, appointed the firm of V. N. Apte & Co., secretaries, treasurers, and agents, and provided that they should have the general management of the business. But this is entirely insufficient to bring home to the company notice of an irregularity on the part of Vaidya *in his own private concerns* which was only within his knowledge, and was solely due to his own *improper conduct*.

There is no principle and there is no authority to establish that, in such circumstances, the bank could be affected with notice, and authorities indeed establish the exact opposite of such a proposition.

Without considering the earlier decisions it is sufficient to refer to the two cases of *Cavè* v. *Cave*[1], and *In re David Payne & Co., Limited.*[2] In the former, a solicitor, who was the sole trustee of a settlement, paid the trust money in the joint name of his brother and

[1] (1880) 15 Ch D. 639 [2] [1904] 2 Ch. 608.

himself and used the fund in the purchase of land, which was conveyed to his brother alone. The property was then mortgaged in favour of a mortgagee for whom the trustee acted as solicitor; but it was decided that this fact could not affect the mortgagees with notice of the improper use of the trust money in the purchase of the estate.

In the latter case, the director of a company induced the advance by them of £6,000 on the security of a second mortgage debenture in another company, with the intention of using the money for the purpose of forwarding a scheme in which he was personally interested, a scheme outside the scope of their business. No other director of the lending company knew anything of the circumstance. It was sought to affect the lending company by the knowledge which the director possessed. Lord Wrenbury—then Buckley J.—decided that no such notice could be imputed, and he stated the law in terms which their Lordships regard as accurate and appropriate. He said:—

"I understand the law to be this: that if a communication be made to an agent which it would be his duty to hand on to his principals,.....and if the agent has an interest which would lead him not to disclose to his principals the information which he has thus obtained, and in point of fact he does not communicate it, you are not to impute to his principals knowledge by reason of the fact that their agent knew something which it was not his interest to disclose, and which he did not disclose."

And this view was again supported in the Court of Appeal.

The facts in the present case do not, in their Lordships' opinion, go so far to constitute notice as those in the cases mentioned. In fact, they amount to nothing more than this, that a company wanting payment of a debt from one of its agents asked that payment should be made, and obtained part of their debt without

1919.

TEXAS COMPANY, LTD. v. THE BOMBAY BANKING COMPANY.

any knowlegde whatever of the sources from which the money came. It would be straining the doctrine of notice beyond all reasonable limits to hold that in such circumstances moneys received in absolute good faith should be earmarked with some independent ownership, because the debtor, who was also a servant of the company, committed a fraud in order to discharge his obligations.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for the appellants. Messrs. *William A. Crump & Son.*

Solicitors for the respondents: Messrs. *T. L. Wilson & Co.*

Appeal Dismissed.

J. V. W.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Hayward.

1919. *April* 11.

ASHARAM GANPATRAM GOR AND OTHERS (ORIGINAL APPLICANTS) APPELLANTS *v.* THE MANAGER OF THE DAKORE TEMPLE COMMITTEE AND OTHERS (ORIGINAL OPPONENTS AND ADDED RESPONDENT), RESPONDENTS.*

Hindu temple—Sanctuary of the temple—Admission of public to the sanctuary—Levy of fees for admission not permissible—Dakore temple—Gors, rights of.

Whilst the Shevaks were managing the affairs of the temple of Shri Ranchhod Raiji at Dakore, they issued in 1883 rules levying fees from devotees and Gors who entered the sanctuary of the temple, known as the Nij Mandir. In a litigation brought to test the validity of those rules, the rules were declared invalid; but they continued to subsist pending the framing of the scheme of management of the temple. When the scheme came to be framed

* First Appeals Nos. 75, 76, 78-80, 121, 122, 149, 206 and 223 of 1919.