ORIGINAL CIVIL.

Before Buckland J.

RAMNARAYAN SATYAPAL
v.
CAREY & DANIEL.*

1930
March 26.

Principal and Agent—Receiver appointed by the Court, personal liability on contracts—Restrictions on the authority of receivers, effect of.

Receivers appointed by the Court are not agents to contract, either of the court appointing them or of anybody else, but they are principals. They are personally liable for contracts entered into by them, unless the express terms of the contract exclude any personal liability.

Any limitation upon the powers of a receiver does not put him in a position analogous to that of persons under disability. Any question as to sanction is a matter between the receiver and the court, and the court may indemnify the receiver if he has acted *bonafide*.

Burt, Boulton & Hayward v. *Bull* (1), *In re Glasdir Copper Mines, Limited* (2) and *Parsons* v. *Sovereign Bank of Canada* (3) followed.

This is a suit to recover Rs. 15,000 as damages for wrongful repudiation and breach of contract. The defendant firm were appointed receivers of Messrs. Linton's Angarpathra Colliery, Ltd., by the District Judge of Dhanbad, on the 22nd June, 1928. Under the order of appointment, they were authorised to carry on the coal business of the company, but they were to secure sanction of the court for contracts for sale of coal.

On or about the 27th June, 1928, the receivers verbally agreed to sell to the plaintiffs the whole output of slack in the colliery from that date till the end of June, 1929. This contract was subject to an existing contract with Messrs. Andrew, Yule and Company, Limited.

The defendants subsequently failed to perform the contract and it was alleged that surplus coal, after meeting Andrew, Yule's contract, was sold by them in the market. Later, on the 20th August, 1928, the

*Original Civil Suit No. 2103 of 1928.

(1) [1895] 1 Q. B. 276. (2) [1906] 1 Ch. 365.
(3) [1913] A. C. 160.

receivers repudiated the contract. This suit was filed on the 13th September, 1928. The defence taken to the action was—

(1) there was no concluded contract and (2) the receivers were not empowered to make contracts for the sale of coal, which fact was known to the plaintiffs.

At the hearing the contract was admitted and the only point pressed was that the contracts were *ultra vires* the receivers.

N. N. Sircar, the Advocate-General (with him *A. K. Roy*) for the plaintiffs. Receivers appointed by the court are personally liable to persons dealing with them, in respect of contracts entered into by them. See Kerr on Receivers (8th Edition), p. 291, and *Burt, Boulton & Hayward* v. *Bull* (1) and *In re Glasdir Copper Mines, Limited* (2).

The doctrine of exceeding their authority arises when they are acting as agents. But here they are not so acting. Supposing the receiver has not obtained sanction, it only touches the question whether he could get any indemnity.

E. C. Ormond for the defendants. There is a distinct difference between a receiver and a manager. You can have a receiver with certain express powers, but without them he is only to hold money pending further orders of the court. A mere receiver has no power to contract. *In re Manchester and Milford Railway Company* (3).

[BUCKLAND J. But supposing they contracted to sell certain things which they could not sell, do you say they would not be liable?]

They would be liable, but the plaint would be different in form. They ought to be sued for breach of warranty of authority. This suit is against the defendants in their representative capacity as

(1) [1895] 1 Q. B. 276. (2) [1906] 1 Ch. 365.
(3) (1880) 14 Ch. D. 645, 652, 653.

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receivers and not personally. This should be considered as a suit on a contract on behalf of the company. *Parsons* v. *The Sovereign Bank of Canada* (1).

The receivers had no power to contract outside powers given to them by the court. The order of appointment does not give them power to sell coal. *Moss Steamship Company, Limited* v. *Whinney* (2). Power to sell coal is in abeyance and any contract for sale is void, without the sanction of the court. See Kerr on Receivers (8th Edition), p. 290.

BUCKLAND J. This is a suit to recover a sum of Rs. 15,000, as damages for the wrongful repudiation and breach of a contract, whereby the defendants agreed to sell and deliver coal to the plaintiff. The contract is said to have been made on the 27th June, 1928, and by it the defendants agreed to sell to the plaintiff the whole of the output of Messrs. Linton's Angarpathra Colliery's slack coal from such date until the end of June, 1929. That contract was subject to an existing contract with Messrs. Andrew, Yule & Co., Ld., which was current until the end of the year 1928, and the plaintiff was only to receive so much coal as was available after Messrs. Andrew, Yule & Co., Ld., had been satisfied.

At the hearing, it has not been denied that the contract in suit was entered into and that there has been a breach and the only question of substance is whether the defendants are personally liable, though there may have to be a reference to ascertain the damages in the event of their liability being established.

The defendants were appointed receivers of the colliery by the Subordinate Judge of Dhanbad in a suit in that court by the receiver of the estate of Trighunait Bros. against P. F. Linton & Ors., and, by the order appointing them, they were required to secure the sanction of the court to contracts for the sale of coal.

(1) [1913] A. C. 160, 167. (2) [1912] A. C. 254, 263.

The defence preferred on behalf of the defendants at the hearing is based upon their receivership, and the following issues have been submitted by learned counsel for the parties :—

(1) Had the defendants power without the sanction of the court of Dhanbad to make the contract in suit as receivers?

(2) Is the contract void for want of sanction?

(3) Are the defendants personally liable for breach of the said contracts?

(4) To what sum, by way of damages, is the plaintiff entitled?

The argument advanced on behalf of the defendants is that the defendant contracted in a representative capacity, that the order appointing them expressly provides that they shall not enter into contracts without the sanction of the court, that they entered into these contracts without the sanction of the court, and that consequently they are not liable and that there was no contract.

These contentions appear to be based upon confusion as to the position of a receiver and introduce considerations applicable to claims against an agent or against a person under a disability, which have no application to a claim against a receiver. The position of a receiver who enters into a contract is discussed in Kerr on Receivers (8th Edition, p. 290) in the following passage :—

"Persons contracting with a receiver and manager, "who is carrying on the business of a company, and are "cognizant of his appointment must be taken to know "that he is contracting as principal, not as agent for "the company, whose powers are paralysed :" On the next page the learned author continues, "Receivers "and managers appointed by the court * * * are "personally liable to persons dealing with them in "respect of liabilities incurred or contracts entered "into by them in carrying on the business unless the "express terms of the contract exclude, as they may "do, any personal liability."

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In *Burt, Boulton & Hayward* v. *Bull* (1), Lord Esher M. R. pointed out that a receiver is not an agent of the company, who did not appoint him and whom he need not obey and by whom he could not be dismissed, while it was impossible to suppose that the relation of agent and principal existed between him and the court. The inference, therefore, was that it must be the intention that he shall act in pursuance of his appointment on his own responsibility and not as an agent, because otherwise nobody would be responsible for his acts.

A similar view was expressed by Vaughan-Williams L. J. in *In re Glasdir Copper Mines, Limited* (2), where the learned Lord Justice observed, referring to the case just cited, "I think "that these cases further establish that such a "receiver, although appointed for the benefit of the "debenture-holders, is not the agent to contract, "either of the court or of anybody else, but is a "principal." Lastly, in *Parsons* v. *Sovereign Bank of Canada* (3), I find it stated (per Viscount Haldane L. C.) :—"A receiver and manager appointed, as were "those in the present case, is the agent neither of the "debenture-holders, whose credit he cannot pledge, "nor of the company, which cannot control him. He "is an officer of the court put in to discharge certain "duties prescribed by the order appointing him." The principle is well established and an argument that the defendants can only be sued, if at all, for breach of warranty of authority has no application. Nor by reason of any limitation placed upon their powers is there any analogy to the case of persons under a disability. A receiver who enters into a contract beyond his powers may find himself in difficulties as may anyone who as a principal enters into a contract which he is not in a position to carry out. No such considerations arise in this case, and any questions to which the want of sanction may give rise are matters as between the receivers and the court

(1) [1895] 1 Q. B. 276.
(2) [1906] 1 Ch. 365, 378.
(3) [1913] A. C. 160, 167.

which appointed them, which it may be will indemnify the receivers if they have acted *bona fide*, as I see no reason to doubt.

The plaintiff is entitled to recover against the defendants and the defendants no doubt will be able to obtain an indemnity by an order of the Subordinate Judge at Dhanbad enabling them to recoup themselves out of the assets if they are called upon to satisfy the decree, for I understand they have duly accounted for the money received for the coal sold to other persons.

There has been exhibited a copy of the receivers' accounts filed in the court of the Subordinate Judge and also an abstract of such accounts which shows that the total amount of coal sold to other persons by the defendants in breach of the contract in suit is 10,462 tons 9 cwts. This quantity differs by about 1,000 tons from the quantity which the defendants would be prepared to admit. The question of rate has not been considered. That may be agreed pending the completion of the decree and the Registrar informed. If not agreed I direct a reference to ascertain the rate.

The learned Advocate-General has accepted 9,035 tons as the total quantity, which leaves the rate as the only question outstanding. The defendants must pay the costs of the suit.

Attorneys for plaintiffs: *Dutt & Sen.*

Attorneys for defendants: *Sanderson & Co.*

S. M.