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March 1.

Before Mr. Justice Pearson and Mr. Justice Straight.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) v. SHIO SINGH RAI AND ANOTHER (PLAINTIFFS).\*

*Contract—Bailment—Government Promissory Note—Contributory negligence—Master and servant*

The agent of the plaintiff delivered to the Treasury officer at Meerut nine Government Promissory notes, aggregating Rs. 48,000 in value, in order that such notes might be transmitted to the Public Debt office at Calcutta for cancellation and consolidation into a single note for Rs. 48,000, having previously indorsed the plaintiff's name on such notes at the request of a subordinate of the Treasury officer, and received a receipt for such notes under the hand of the Treasury officer. Owing partly to such indorsements and partly to the negligence of the Treasury officer such subordinate was enabled to misappropriate and negotiate two of such notes, aggregating Rs. 12,000 in value. The remaining seven of such notes were despatched to Calcutta, and a consolidated note for Rs. 31,200 was returned and delivered to the plaintiff, when the misappropriation of the two notes was discovered. The plaintiff sued Government claiming "that it might be directed to make restitution of the two notes or to deliver two other notes of equal value or their value in cash" with interest. On behalf of Government it was contended that it was not liable to the plaintiff's claim, inasmuch as the plaintiff, by his agent, had contributed to the loss of the two notes, and a master was not liable in damages for loss or injury sustained through the fraud or dishonesty of his servant without the scope of his employment. *Held* that, the two notes not having been delivered to the Treasury officer as a bailee but having been surrendered, the receipt given by that officer must be regarded as an undertaking on the part of Government to deliver a consolidated note for Rs. 48,000 in due course, and the plaintiff's suit was in reality one for damages on account of the refusal of Government to discharge its obligation, the measure of those damages being the amount by which the note for Rs. 31,200 fell short of Rs. 48,000 with interest, and such being the suit, the contention of Government was not any answer to it.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Straight, J.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellants.

Mr. Conlan, for the respondents.

The following judgments were delivered by the Court :

STRAIGHT, J.—The plaintiffs in this suit claim from the Collector of Meerut, as representing the Secretary of State for India, restitu-

\* First Appeal, No. 26 of 1879, from a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 27th November, 1878.

tion of two Government Promissory notes of the loan of 1854-55, made over to the Meerut Treasury on their behalf by their duly authorised agent on the 12th August, 1872. They further ask alternatively for other notes of equal value or for the equivalent cash with interest at four per cent. from date of last payment. The lower Court decreed the claim and the defendant now appeals.

The facts of the case, which are not disputed, appear to be as follows:—The plaintiffs are Commissariat agents carrying on business in the city of Delhi, under the style or firm of Sheo Singh Rai, Nihal Singh. On the 12th August, 1872, they sent by the hand of their gomashita, Sumair Chand, nine Government Promissory notes of the value in all of Rs. 48,000 to the Meerut Treasury office, in order that they should be forwarded thence to Calcutta for cancellation and consolidation into one note. At that time the regular Treasury Officer, Mr. Billings, was absent on leave, and one Babu Kali Charan, Deputy Collector, was holding charge in his stead. Employed in the office in the capacity of chief clerk was a certain Muhammad Husain, and it was his special duty, when securities were left there for transmission to Calcutta, to see that they were carefully packed and despatched, as speedily as possible, and to prepare the necessary forwarding letter that had to accompany them. Muhammad Husain had been for many years in the Government service, and the most perfect confidence was reposed in him by his superior officers, and those who were acquainted with him or had to come in contact with him in business matters had entire faith in his integrity and honesty. It was to this man that Sumair Chand delivered the nine Promissory notes on the 12th August, 1872. The following is his account of what then occurred: “Muhammad Husain then made a mark on the notes and then I signed for Nihal Singh: Muhammad Husain himself wrote something, or he caused some other person to write something, on the notes, and then he had the interest paid to me: on the same day he again asked me to sign the notes at another place, which he said was required to get the notes consolidated: these too I signed for Nihal Singh: then he asked me to remain outside and that he would do all that was required: after some time I was called in and Muhammad Husain gave me a receipt in

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English." The receipt here referred to was for the nine Promissory notes, and bears the signature of "Kali Charan, Treasury Officer." In ordinary course it should take from ten to fifteen days to transmit the notes to the Public Debt Office at Calcutta for cancellation and to get back the consolidated note. Subsequent to the 12th August, 1872, Sumair Chand called on two or three occasions at the Meerut Treasury to know whether his note had arrived, but on each occasion his inquiries were answered by Muhammad Husain to the effect that it had not been received from Calcutta. Somewhere about the beginning of March, 1873, Muhammad Husain absconded, and on the 31st of that month a consolidated note, which had been received from Calcutta, for Rs. 31,200, was handed to the plaintiffs, but as it should have been Rs. 48,000, as shown by the receipt of the 12th August, 1872, suspicion was necessarily at once awakened and inquiry was instituted, with the following result. Two of the nine notes made over by Sumair Chand to Muhammad Husain, numbered 017849 for Rs. 12,000, and 020102 for Rs. 5,000, had never been forwarded to Calcutta at all, but had been misappropriated by him, he taking advantage of the blank indorsement of the name of Nihal Singh by Sumair Chand to make the latter one payable to himself, by writing above that signature the words "Sold to Muhammad Husain": while, on the other, under a pretended authority from Nihal Singh, he put "Pay to the Agra Bank or order." On the note for Rs. 12,000 the Bank made Muhammad Husain an advance in August, 1872, of Rs. 8,000, and on that of Rs. 5,000 in December of Rs. 2,300, retaining them as security. With regard to the remaining seven Promissory notes, they remained in the Treasury at Meerut until the 19th February, 1873, upon which day they were sent to Calcutta for cancelment and consolidation, accompanied by a forwarding letter signed by Mr. Billings, who had returned from leave and resumed charge. At that time Muhammad Husain had made the necessary formal indorsement on these seven notes, above the name of Nihal Singh, which amounted to an acknowledgment on the part of that person, that he had "received a new note in exchange." When the misappropriation of these two notes was discovered, they were, as has already been stated, in the hands of the Agra Bank; and this fact coming to the

knowledge of Mr. Billings, he, in his capacity of a Magistrate of the first class, issued a most illegal and improper search-warrant, upon the strength of which the Bank premises were entered, and the two notes were carried away by force to the Treasury for restoration to the plaintiffs. The natural consequence of this most unwarrantable proceeding was, that the authorities of the Bank instituted a suit against Mr. Billings for restitution of the two notes and damages for their illegal seizure, and in the course of the litigation, the Secretary of State for India, and the present plaintiffs, were brought upon the record as defendants. Ultimately this Court, upon appeal by the Bank, on the 29th May, 1876, reversed the decision of the Subordinate Judge dismissing the claim of the Bank, and passed a decree in its favour, the result of which was that the two notes were restored. These two notes are the subject of the present suit, and it may be remarked that, since their return to the Bank, they have been negotiated away, and are now in the hands of third parties, whose names do not appear.

The plaintiffs came into Court with their present claim on the 17th August, 1878, and the relief asked in the plaint is that "the Government may be directed to make restitution of the two notes, or to deliver other notes of equal value or their value in cash, amounting to Rs. 17,000, with interest at four per cent. from date of last payment, *viz.*, the 1st July, 1872, to date of suit, amounting in all to Rs. 21,165". This the Subordinate Judge has decreed, and the defendant now appeals against that decision on two grounds, (i) That the plaintiffs, in the person of their agent, were guilty of contributory negligence, (ii) That a master is not liable in damages for loss or injury sustained through the fraudulent or dishonest act of his servant without the scope of his employment.

Both these points were urged at great length on the hearing of this appeal by the Senior Government Pleader, and many English and American authorities were cited, under both heads of argument. But upon a close and careful consideration of all the facts in the case, it appears to me that the contention for the appellant proceeded on a complete misconception of the real nature of the suit, for which I may add the Subordinate Judge is primarily responsible. In my judgment he was in error in dealing with the

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question between the parties as governed by the law relating to bailments. The nine Promissory notes were not made over to the Meerut Treasury for any temporary purpose, upon the accomplishment of which they were to be returned or otherwise disposed of according to the directions of the bailor. On the contrary, they were unconditionally surrendered, when they were handed over by Sumair Chand for cancellation, and the effect of their delivery to the Treasury at Meerut is the same as if they had been taken by the plaintiffs to the Public Debt Office at Calcutta and handed over there. In those individual notes, as individual notes, they retained no interest. Properly the plaintiffs might for their own protection have refused to give them up except upon receipt of the consolidated note, and I think they would have been justified in doing so; but the Government has, for its own convenience and security, established a rule that persons wishing to have old securities cancelled and consolidated are required, not only to deliver up their old securities, but to give a receipt in advance for the new one, their only document of title being the written acknowledgment of the Treasury Officer, that their securities have been received. As a matter of fact they have no option, and in order to obtain what they want, they must perforce conform to the requisitions. In my opinion the receipt given in the present case by Babu Kali Charan, the acting Treasury Officer, must be regarded as an undertaking on the part of the authorities to deliver one consolidated note for Rs. 48,000 in due course. Consequently, I do not think that there was any bailment of the two notes in the defendant for the plaintiffs, but that there was a contract entered into, the effect of which was that the plaintiffs were entitled to demand, and the defendant was bound to give, a consolidated note of the value of Rs. 48,000. The present suit is, therefore, in reality one for damages on account of the defendant's refusal to discharge his obligation, and the measure of those damages must be the amount by which the note for Rs. 31,200 falls short of Rs. 48,000, with interest. Regarding the case in this light, it is difficult to see in what way the two pleas in appeal are in any way an answer to the plaintiffs' claim. The authority of Babu Kali Charan to bind the Government is unquestioned, and if he chose to contract

it into a responsibility without proper care and caution, that is a matter which in no way affects the position of the plaintiffs. It is perfectly obvious, that Kali Charan was guilty of the greatest negligence in not verifying the nine notes, and seeing they were properly indorsed before he gave his receipt. Moreover, he was grossly careless, both in failing to lock them up in the safe, of which he had the key, and in forgetting their receipt, and in not requiring Muhammad Husain to prepare the forwarding letter for his signature, and to pack them for transmission thither. The evidence of Mr. Billings seems to me to establish the negligence of the Treasury in the most conclusive way, and had a bailment been established, or were this rightly an action of tort for the loss of the two notes, I think an overwhelming case would have been made out against the defendant. I am well aware that heads of departments and offices in a superior position in the public service are, from pressure of business, necessarily compelled to rely largely on the good faith and honesty of their subordinates, and I should never be disposed to draw the line too tightly in forming an opinion as to what, under this or that state of circumstances, they ought or ought not to have done. But reasonable and intelligent confidence is one thing, blind and careless trust is another; and while the one may fairly be accepted in explanation or excuse, the other should never be allowed in extenuation or relief from responsibility. The clerk in a bank handles unlimited sovereigns and bank notes during the hours of business, but no employer exercising the most ordinary precaution or prudence would fail to have his cash and securities locked up at the close of each day and so kept until banking hours recommenced. To do otherwise would afford unreasonable temptations, of which were the clerk to take advantage, the employer should not have the benefit to escape from the liability to third parties for any loss or damage they might thereby sustain.

In the present case the Government had the misfortune to be badly served. It had, as its representative in authority, a person who was negligent and slipshod in the discharge of his duties of control and supervision over a subordinate, who took advantage of these deficiencies to perpetrate a series of misappropriations and forgeries. Upon all the facts the inference is irresistible, that, but

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for this laxity of administration in the Meerut Treasury on the part of Babu Kali Charan, the two notes could never have been stolen, nor the forgeries committed in respect of them, and such being the case it is impossible to avoid remarking, that it is matter for regret the plaintiffs' claim should ever have been contested, much less that a countercharge of contributory negligence should have been made against them. Were it necessary to dispose of this allegation, I should have unhesitatingly come to the conclusion, that no sufficient case to establish it had been made out. A person like Sumair Chand going into a Government office can hardly be expected to anticipate that he will be made the victim of fraud and misrepresentation by the officials employed there. On many previous occasions Sumair Chand had drawn interest on Promissory notes for his masters at the Meerut Treasury through Muhammad Husain, and had also made over notes to him for consolidation and always without misadventure. It is not by what we know now, but from the state of things that existed at the time of the delivery of the notes, that the conduct of Sumair Chand must be judged, and looking at it from this point of view, I do not find any such evidence of co-operative negligence as would disentitle the plaintiffs, either as bailors or parties damaged, from recovering damages.

But, as I have in an earlier part of this judgment pointed out, this suit is properly one for breach of contract, by reason of the failure of the defendant to discharge his obligation to give a consolidation note to the extent of Rs. 48,000, and, in my judgment, the pleas in appeal to this Court, and in answer to the plaintiffs' claim in the Court below, are irrelevant and afford no answer to the case set up. The property of the plaintiffs in the nine notes was determined, when they were handed over and the receipt was given, and thereupon an implied undertaking on the part of the defendant to deliver an equivalent security after the lapse of a reasonable interval of time was to be assumed. It is clear that, to all intents and purposes, the notes had been reduced into the possession of Government, and that all right to or control over them had been parted with by the plaintiffs. Whether they were properly taken care of or not was indifferent to them, for, at any time on the presenta-

tion of their official receipt, they were entitled to demand a consolidation note for Rs. 48,000. Such being the view I entertain of the case, I am of opinion that this appeal should be dismissed with costs. But the decree must be amended from the shape in which the relief has been given by the lower Court, so as to declare the plaintiffs entitled to damages, such damages to be the amount of the two promissory notes for Rs. 12,000 and Rs. 5,000, with interest from 1st July, 1872, to date of payment.

PEARSON, J.—I concur generally and substantially in the view taken of the case by my honorable and learned colleague, and in dismissing the appeal with costs, and in amending the decree of the lower Court in the manner proposed by him.

*Appeal dismissed.*

*Before Mr. Justice Oldfield and Mr. Justice Straight.*

NARSINGH DAS (DECREE-HOLDER) v. NARAIN DAS (JUDGMENT-DEBTOR).\*

*Execution of decree—Limitation—Act XV of 1877 (Limitation Act), sch. II, arts. 171, 179 (2), 181.*

*Held* that the words "appeal" and "Appellate Court" in art 179 (2), sch. II. of Act XV of 1877, include an appeal to Her Majesty in Council.

*Held*, therefore, where an appeal had been preferred to Her Majesty in Council from a decree of the High Court dated the 18th August, 1871, and the High Court's decree was affirmed by an order of Her Majesty in Council dated the 12th August, 1876, and an application for execution of the High Court's decree was made on the 15th July, 1879, that, under art 179 (2), sch. II. of Act XV of 1877, the limitation of such application must be computed from the date of the order of Her Majesty in Council.

THE decree of which execution was sought in this case was one made by the High Court on the 18th August, 1871, on appeal from a decree of the District Judge of Benares. On the 28th January, 1874, the decree-holder applied for the execution of the High Court's decree. On the 12th August, 1876, an appeal having been preferred from the decree to Her Majesty in Council, the High Court's decree was affirmed. On the 15th July, 1879, the decree-holder made the present application for execution of the High Court's decree. The District Judge of Benares held that

\*First Appeal, No. 154 of 1879, from an order of G. E. Knox, Esq., Judge of Benares, dated the 15th October, 1879.

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