

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

SHAW WALLACE AND COMPANY (PLAINTIFFS)

Appellants

versus

AMRITSAR NATIONAL BANK } Respondents.
(IN LIQUIDATION) AND OTHERS, }

1926

Feb. 1.

Civil Appeal No. 1809 of 1925.

Trust—money realised by the branch of a Bank on bills handed to the Bank for collection and remittance—Liquidation of Bank—Cestui que trust's rights to preference—extent of.

In accordance with the principles underlying the rule laid down in *Hallett's Estate case* (1) on the sale, whether rightful or wrongful, of his trust property, the *cestui que trust* is not only entitled to the proceeds so long as they are identifiable, but, if the trust money is unidentifiable owing to the trustee having mixed the trust money with his own money, the *cestui que trust* has a charge to the extent of his trust property on mixed funds or on the property purchased therewith.

Thus, where a branch of the respondent Bank had received bills from the appellants (who were not its constituents) for collection and remittance of the proceeds and, after collection but prior to remitting, the Bank suspended payment:

Held, that the appellants having employed the Bank as a whole in a fiduciary capacity, were entitled to a prior charge on the balances held by the Bank as a whole at the date of suspension of payment, and on all monies advanced by the Bank after the date when it recovered the monies due on the appellants' bills.

Held further, however, that there is no authority for the appellants' claim to priority to be charged on the *general* assets of the Bank.

Held also, that as between the *cestui que trust* themselves the rule to be followed is that enunciated in *Clayton's case* (2),

(1) (1879) 13 Ch. D. 696.

(2) (1816) 1 Mer. 572.

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i.e., the item entrusted to the Bank at the latest date is the item to be paid out first to the *cestui que trust* concerned.

Miscellaneous first appeal from the order of A. L. Gordon-Walker, Esquire, District Judge, Lahore, dated the 27th April 1925, holding that the appellants have a charge on the balances held by the Montgomery and Karachi branches of the Amritsar National Bank, Ltd., etc., etc.

MACKAY AND OBEDULLA, for Appellants.

MADAN GOPAL, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL, J.—This appeal arises out of the liquidation proceedings of the Amritsar National Bank, and the sole question for decision is whether the appellant firm is entitled to priority over the ordinary creditors of the Bank in respect of an amount of Rs. 8,900 collected for the appellant by the Montgomery Branch of the Bank but not paid to the appellant at the time when the Bank closed its doors. The learned District Judge holds that the appellant-firm was not an ordinary creditor of the Bank, but that a fiduciary relation existed between the appellant and the Bank; that the appellant, holding the position of *cestui que trust*, consequently has a charge on the balances held by the Montgomery and Karachi Branches of the Bank as they were at the date when the Bank suspended payment. The learned Judge included the balance of the Karachi Branch as well as of the Montgomery Branch on the ground that a portion of the appellant's money had been remitted by the Montgomery to the Karachi Branch.

The main contention in appeal is that the appellant-firm has a charge, not merely on the balance of

the Montgomery and Karachi Branches, but on the balance held by the Bank at the date of suspension in all its branches including the headquarter's office.

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Inasmuch as the appellant-firm trusted and employed not merely a branch of the Bank but the Bank as a whole, it is quite clear to us that it is entitled to charge its claim upon the balances wherever lying on the date of the suspension of payment, and after considerable argument this point has been conceded by the respondent. It has been conceded also by the respondent that the appellant's charge extends not only to the cash balance at the disposal of the Bank as a whole on the date of suspension of payment, but also to all moneys advanced by the Bank after the date when it recovered the moneys due on the appellant's bills. With this further concession the appellant, however, is not satisfied and contends that his charge extends over all the assets of the Bank.

Whether the respondent by agreeing to accept a charge on all moneys advanced by the Bank after the date of the recovery of the moneys due on the appellant's bills is making any substantial concession is very doubtful, for it is probable that after the date indicated the bank was doing little more than pay out claims. With regard to appellant's further claim that he should be granted priority to the full amount of his debt, to be charged on the general assets of the Bank, we can find no authority for the claim. The right of a *cestui que trust* as regards trust property is clear. If the sale was rightful and the proceeds of the sale are identifiable, the *cestui que trust* can take them. Even if the sale was wrongful, he can still take the proceeds of the sale provided he can identify them. When the proceeds are not identifiable, as in the case where the trustee has

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mixed trust money with his own money, the *cestui que trust* is still entitled to a charge on the property purchased for the amount of the trust money laid out in the purchase. Those are the rules laid down by the Master of the Rolls *In re Hallett's Estate* (1). The principle underlying them is that the trust property so long as it can be identified never becomes the property of the trustee.

If these principles be applied to the facts of this case it follows that the *cestui que trust* is entitled to a prior charge on the balances at the disposal of the Bank at the date of suspension, because the law presumes that the bankrupt has expended his own money first and has not touched the trust money, if at all, until the last pice of his own money has been expended. From the foregoing it would appear that the plaintiff-firm along with all other *cestui que trust* has a charge in respect of its claim on the balance held by the Bank at the date of suspension and also, if the aggregate of such balances falls below the total of trust moneys for which the Bank is responsible, upon such other assets as were acquired by the Bank from the date when the cash balance of the Bank fell below the aggregate of the trust moneys.

It is not contested that, as between the various *cestui que trust* themselves, the rule to be followed is that enunciated in *Clayton's case* (2), that is, the item entrusted to the Bank at the latest date is the item to be paid out first to the *cestui que trust* concerned.

For the foregoing reasons we accept this appeal and grant the appellant-firm a prior charge on the balances held by the Bank as a whole at the date of

(1) (1879) 13 Ch. D. 696.

(2) (1816) 1 Mer. 572.

suspension of payment and on all monies advanced by the Bank after the date when it recovered the monies due on the appellant's bills.

As appellant has not been successful in the whole of his claim we direct that parties bear their own costs.

N. F. E.

Appeal accepted in part.

REVISIONAL CRIMINAL.

Before Mr. Justice Martineau.

HANS RAJ, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 1625 of 1925

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Feb. 2.

Extradition Act, XV of 1903, section 7—Warrant issued by Political Agent of a Native State against a resident in British India—Responsibility for legality of.

The responsibility for the legality of a warrant issued under section 7 of the Extradition Act rests with the officer by whom it was issued, and the Magistrate to whom it is addressed is not required to make any inquiries.

Giyān Chand v. King-Emperor (1), followed.

Where therefore a warrant of arrest was issued against the petitioner at Gujranwala for an offence under section 420, Indian Penal Code, by the Political Agent in Indore State and sent to the District Magistrate at Gujranwala for execution, it was not the latter's duty to ascertain whether a *prima facie* case existed against the petitioner.

Application for revision of the order of the District Magistrate, Gujranwala, dated the 23rd September 1925, executing the warrant of arrest upon the petitioner