

## APPELLATE CIVIL.

*Before Addison and Bhide JJ.*

MERCANTILE BANK OF INDIA, LTD., DELHI

(PLAINTIFF) Appellant

*versus*

P. S. SHEIGLE &amp; CO. (DEFENDANT) Respondent.

Civil Appeal No. 564 of 1926.

*Indian Contract Act, IX of 1872, sections 171, 172 and 176—Bailee—Rights of creditor advancing money and storing goods—higher than those of ordinary bailee—Right of—to sell the goods.*

*Held*, that the rights of a creditor who accommodates his customer by storing goods, for the purchase of which he has advanced money, are higher than those of an ordinary bailee, who has a general lien under section 171 of the Contract Act, in so far that in the former case there is an implication that the security shall, if necessary, be made effectual to discharge the obligation; and the creditor's possession is that of a pledgee under section 172 of the Act and he has the right to sell under section 176.

*Alliance Bank of Simla v. Ghamandi Lal-Jiwan Lal (1)*, referred to.

*First appeal from the decree of Sayed Abdul Haq, Subordinate Judge, 1st class, Delhi, dated the 23rd November 1925, dismissing the plaintiff's suit.*

KISHEN DAYAL and BISHEN NARAIN, for Appellant.

BADRI DAS, JIWAN LAL KAPUR, and ANANT RAM KHOSLA, for Respondent.

ADDISON J.

ADDISON J.—The defendant entered into an arrangement with the Mercantile Bank of India, the plaintiff, on the 17th July, 1920, by which the plaintiff was to purchase drafts on the defendant up

to a certain limit, accompanied by the usual shipping documents. The defendant agreed to accept them on presentation and pay them at maturity. On the 23rd June, 1920, the defendant had already deposited with the plaintiff Rs. 2,000 as margin for the retirement of the drafts. It was stated in the agreement that the insurance was to be made available for the benefit of the Bank by the deposit of the policies or otherwise and the Bank was given power to effect insurance on the goods at the expense of the defendant. Accordingly the Bank purchased a draft, of date the 13th August, 1920, for £800 on the defendant. It was accepted by the defendant on the 22nd September, 1920, as of £800 and as payable on the 20th November, 1920, at the current rate for Bank demand, with interest at 8 per cent. per annum from date of the document. Instead of paying at maturity and obtaining the documents, the defendant first wrote to the Bank to clear the goods for him and keep them at the port, and then on the 10th January, 1921, again wrote to the Bank to clear and forward the goods from the port to Delhi at defendant's expense. The Bank did so at a cost of Rs. 1,101-7-9 which defendant paid. The Bank stored the goods in their godown at Delhi and then proceeded to try to collect the money due from the defendant. The money was demanded and finally notice of sale was given both by the Bank and the auctioneer employed by them. On the 31st July, 1921, the defendant wrote to the Bank to postpone the threatened sale and stated that he was willing to pay interest and godown charges. Finally the goods were sold in September and November, 1921. The Bank then brought the present suit for Rs. 6,320-3-1, the amount of shortfall.

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The defendant pleaded that the contract was that the Bank was to open a credit account in his favour to the extent of £800, the equivalent amount in Indian currency being debited to the defendant on the 23rd June, 1920. As exchange had fallen by the due date a finding to this effect would benefit the defendant. It was further pleaded that the Bank had no right to sell and that the sale was not a *bonâ fide* one.

The trial Court held that the defendant was liable to pay for the draft in Indian money on the due date (*i.e.*, the 20th November, 1920), the rate of exchange then being  $1/6\frac{3}{4}d.$  per rupee, while interest at 8 per cent. per annum from date of the document was also found due. It further held that the terms of the contract were as given by the Bank. Instead of the defendant paying and thereafter taking over the documents, the Court went on to say, the defendant asked the Bank, who held the documents, to clear the goods and bring them to Delhi. It held, however, that this did not constitute a bailment of the goods within the meaning of section 172 of the Contract Act, though the goods were no doubt liable to be retained by the Bank as a security for its general balance of account under section 171. The Bank had thus no right to sell the goods and, having done so, had no right to recover the shortfall. On this finding the suit was dismissed after the Court had gone into the evidence as to whether the sales were *bonâ fide* and had held that they were and that they would have been good, if there had been a right of sale. Against this decision the Bank has appealed.

Ground No. 6 of the appeal was not pressed, and there is no doubt that the finding of the trial Court is right that defendant had to pay for the draft in

Indian currency at the rate of exchange on the due date. It was, however, strenuously argued on behalf of the Bank that it had the right to sell the goods and, in my judgment, this is correct. The defendant had already made it clear in his first letter that the insurance of the goods was to be available for the benefit of the Bank, in case they were lost, etc., while Rs. 2,000 were deposited as further security or margin. At the proper time the defendant found himself unable to retire the draft and get the documents from the Bank, and he therefore asked the Bank to clear the goods and bring them to Delhi. The Bank did so and put the goods into their own godown at Delhi with the knowledge and consent of the defendant. The defendant could not raise funds to pay in spite of frequent demands and notice of sale was given. No objection was taken that the Bank had no right of sale. All that the defendant asked for was that the sale should be postponed. Even this was done, but without result. In these circumstances there can be no question but that it was intended that the goods stored were in reality bailed with the Bank as collateral security for repayment of the money advanced and the possession of the Bank was that of a pledgee as defined in section 172 of the Contract Act. The Bank had thus the power to sell the goods under section 176 of the Act. The rights of a creditor who accommodates his customers by storing goods for the purchase of which he has advanced money are higher than those of an ordinary bailee who has a general lien under section 171 of the Act, in so far that in the former case there is an implication that the security shall, if necessary, be made effectual to discharge the obligation. In this view of the case there is no real distinction between the

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present suit and *Alliance Bank of Simla v. Ghatmandi Lal-Jiwan Lal* (1). I would hold that the Bank had the right to sell the goods.

The next question is whether the sales effected were good. On the whole I am in agreement with the trial Judge that they were and that the goods were sold at as high prices as could be obtained. The auction, which was advertised, started on the 20th September, 1921. It continued till the 24th September, 1921, when the barrels (there were ten of them) were knocked down to one Mohabbat Khan at Rs. 451 per barrel. This Mohabbat Khan refused to pay and take delivery though served with a notice that they would be resold at his risk on the 26th September. At the re-auction eight barrels were sold for Rs. 430 each on the 27th September, 1921. The other two barrels were sold at the same price on the 7th November, 1921. There is evidence that their sale was delayed at defendant's instance as he promised to find a buyer who would pay more. It is true that the auctioneer foolishly did away with the last page of the bidding on the 24th September when Mohabbat Khan gave his bid of Rs. 451 and substituted for it another page containing the final bid of Rs. 430 on the 27th September. But this was apparently done only to conceal the fact that Mohabbat Khan had given a bid and thereafter failed to pay up and take the goods. The evidence attempting to challenge the integrity of the auctioneer is worthless and incredible and I have no hesitation in rejecting it. I find that every effort was made to secure the best possible price. This is the only possible conclusion on the evidence taken as a whole. In parti-

(1) (1927) I. L. R. 8 Lah. 373.

cular, Abdul Rashid (P. W. 7), who went into the witness box with his books, has clearly deposed that he was only able to make the usual retail profit of four annas a lb. on the two barrels he purchased at Rs. 430 on the 7th November, 1921. This is evidence of a convincing nature. The evidence of defendant's witnesses, to the effect that dyes were selling at higher rates then, is worthless as it has been established that the price of dyes depends on their grade and whether they are admixtures or not. The defendant imported his consignment as Raja Brand but that meant nothing. Raja Brand is a particular grade or admixture sold by Pragji Surji. Dyes are imported by that firm which then makes up the Raja Brand. The defendant has given no evidence as to the grade of dye imported by him and there is thus nothing to show that the price was low. On the contrary, there was a determined effort made to obtain as much as possible for them.

The only question in this connection, as to which I have any doubt, is whether I should not allow Rs. 451 a barrel for the ten barrels, this being the offer of Mohabbat Khan, which was accepted. On the whole I think that this should be done as the evidence does not establish that the loss could not have been realised from Mohabbat Khan. I might mention that, though the auctioneer attempted at first to conceal the fact of Mohabbat Khan's bid, the Bank made no attempt to do so and this circumstance apparently was detected because the Bank put in a letter from the auctioneer on this subject.

I also think that the sum of Rs. 2,000, given as margin, should be deducted straight away.

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The sum due to the Bank may be calculated as follows :—

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	Rs.
Amount of draft @ $1/6\frac{3}{4}d.$ ...	10,240
Deduct Rs. 2,000 margin ...	2,000
Balance ...	8,240
Interest @ 8 per cent. from 13-8-20 to 27-9-21 ...	740
	8,980
Deduct value of goods on 27-9-21 @ Rs. 451 a barrel ...	4,510
Balance ...	4,470
Add godown rent and auction expenses ...	190
	4,660
Add interest @ 8 per cent. from 28-9-21 to date of suit 13-2-22 ...	140
	4,800
Deduct balance due to defendant in current account ...	366
	4,434

I would therefore accept the appeal and decree the sum of Rs. 4,434, with proportionate costs thereon in both Courts. I would also allow simple interest at 6 per cent. per annum on the sum of Rs. 4,434 from date of suit (13th February, 1922), till date of realisation, also interest at 6 per cent. on the costs

of the trial Court from date of decree till date of realisation and on the costs of this Court from to-day till date of realisation.

BHIDE J.—I agree.

N. F. E.

BHIDE J.

*Appeal accepted.*

**APPELLATE CIVIL.**

*Before Shadi Lal C. J. and Abdul Qadir J.*

PREMAN (DEFENDANT) Appellant

*versus*

HARDIT SINGH AND OTHERS

(PLAINTIFFS)

SURAIN SINGH AND OTHERS

(DEFENDANTS)

} Respondents.

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*March 31.*

Civil Appeal No. 357 of 1929.

*Colonization of Government Lands (Punjab) Act, V of 1912, section 19—whether applicable to an acquisition by one on behalf of others.*

The defendant, having entered into a contract with the plaintiffs by which the former was to bid at an auction held by Government for the sale of a plot of land, the land if purchased to be treated as the property of all the parties to the contract in certain defined shares, purchased the land from the Government for a sum to be paid by instalments and had his name accordingly recorded as the tenant of that land until full payment of the purchase money and interest. The suit brought by plaintiffs to enforce their title to the land under the agreement was resisted on the ground that under section 19 of the Colonization of Government Lands (Punjab) Act, V of 1912, the rights or interests vested in a tenant under the Act cannot be transferred without the consent in writing of the Commissioner or of such officer as he may by written order empower in this behalf; and that any transfer made without such consent in writing is void.