

ORIGINAL CIVIL.

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

LAKHAMSEY LADHA & Co., APPELLANTS (PLAINTIFFS) v. LAKHMI-
CHAND PADAMSEY, RESPONDENTS (3RD DEFENDANTS).*

1916.

November 5.

Contract Act (IX of 1872) SECS. 178, 179—Goods consigned by up-country merchant to muccadam and agent for sale in Bombay—Pledge of goods by the agent—Principal known of the pledge and receiving money raised by pledge from agent—Pledgee entitled to entire moneys due on pledge—Pledgee's claim not limited to the interest of the pawner in the goods pledged—Custom of up-country cotton merchants.

The plaintiffs, up-country cotton merchants, consigned cotton until the 29th of September 1913 to their usual consignees and agents for sale in Bombay, D. H. and Co. In the course of their dealings the plaintiffs frequently called upon D. H. and Co. to remit money to them in large sums on the security of the cotton in their hands and D. H. and Co. used to raise money by pledge of the plaintiffs' cotton to the 3rd defendants' firm. The plaintiffs' representatives in Bombay knew of this course of dealing. On the 30th September 1913, D. H. and Co. were adjudicated insolvents. The accounts at that date showed that the 3rd defendants had advanced Rs. 83,000 to D. H. and Co. against which they held 757 bales of the plaintiffs' cotton and that D. H. and Co. had remitted to the plaintiffs Rs. 50,000. The plaintiffs sued to recover their cotton from the 3rd defendants unencumbered by the loans raised on the security thereof, alleging that D. H. and Co. were merely their warehousemen and *muccadums* and as such had no right to create any charges on their cotton.

At the trial the plaintiffs contended that in any event D. H. and Co. had no authority to charge the plaintiffs' cotton beyond Rs. 50,000 which was the sum remitted by them to the plaintiffs.

Held, that the plaintiffs having urged D. H. and Co. to pledge their cotton when necessary and having known through their representatives of the manner in which their cotton was being dealt with, the 3rd defendants were entitled to claim the entire moneys advanced by them on the pledge of the plaintiffs' cotton.

Section 179 of the Indian Contract Act does not limit the scope of section 178 but saves a pledge to the extent of the pledgor's own interest notwithstanding the presence of invalidating conditions falling under one of the provisions to section 178. In other words whenever he has an interest the person in possession of the goods or documents has unconditional authority to charge at least that interest.

*O. C. J. Appeal No. 3 of 1916.

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SUIT for possession of goods.

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The plaintiffs, Lakhamsey Ladha & Co., were up-country merchants carrying on business in cotton at Gadag in the Dharwar District. The 1st defendants, Damji Hirji & Co., acted since the year 1907 A. D. as Muccadums of the plaintiffs and until the 29th of September 1913 were the plaintiffs' usual consignees and agents for sale in Bombay. The course of dealings between the plaintiffs and the 1st defendants was as follows :—The plaintiffs consigned fully pressed bales of cotton from Gadag to Bombay and had the Railway Receipts made out in their names both as consignors and consignees. Such Railway Receipts were sent by the plaintiffs to the 1st defendants with authority to them to endorse the same on behalf of the plaintiffs and with further authority to receive the goods covered by them. The plaintiffs usually required the 1st defendants to remit moneys to them or to accept and pay the hundies drawn by them on the 1st defendants' firm on the security of the goods covered by the Railway Receipts. The 1st defendants occasionally advanced moneys of their own but in most cases they raised moneys on the security of the goods covered by the Railway Receipts by endorsing the same in favour of the shroffs who lent moneys. On some occasions the 1st defendants borrowed moneys from the shroffs in Bombay in anticipation of the Railway Receipts arriving in Bombay promising the shroffs to endorse the said Railway Receipts when the same were received in Bombay. The plaintiffs' representatives in Bombay knew of the above course of dealing.

On the 29th of September 1913, the 3rd defendants Lakhmichand Padamsey or persons claiming under them held 757 bales of the plaintiffs' cotton against which advances had been made by them to the 1st defendants.

The 1st defendants were adjudicated insolvents on 30th September 1913. The accounts between the plaintiffs and the 1st defendants at that time showed a balance of Rs. 50,000 owing to the 1st defendants but on the other hand the 1st defendants had to account to the plaintiffs for the 757 bales.

The 3rd defendants' advances to the 1st defendants against these bales on the 30th September 1913 amounted to Rs. 83,000 or thereabouts.

The plaintiffs filed two suits to recover possession of their cotton bales from the 3rd defendants unencumbered by the loans raised on the security thereof by the 1st defendants. The first of these (No. 894 of 1913) was filed on 1st October 1913 to recover 190 bales consigned on the 15th September 1913. The second suit (No. 901 of 1913) was filed on 2nd October 1913 to recover 667 bales which remained unsold on 29th September 1913 out of the bales sent out to the 1st defendants from time to time. The plaintiffs averred that the 1st defendants acted merely as the warehousemen and Muccadums of the plaintiffs and sold the goods on behalf of the plaintiffs after obtaining consent of the plaintiffs or their agent in Bombay.

The 3rd defendants contended that the 1st defendants acted as Muccadums and commission agents as well as factors for sale of the plaintiffs' goods, that as such commission agents and factors they had authority to enter into contracts for the sale of ready cotton as well as for forward delivery and otherwise deal with the said goods, and that as a matter of fact they entered into contracts on behalf of the plaintiffs and otherwise dealt with the said goods to the knowledge of the plaintiffs, and in particular pledged the same with these defendants, remitting most of the monies so raised to the plaintiffs themselves at Gadag.

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Since the filing of the first suit, the 3rd defendants sold 559 bales and after crediting the net sale proceeds thereof against the amount due to them there was still due and owing to them by the plaintiffs the sum of Rs. 17,000. As against that amount the 3rd defendants claimed to hold as security 11 bales of cotton remaining in their hands as well as the sale proceeds of 190 bales of which delivery was taken by the plaintiffs under an order of the Court on 2nd October 1913.

The 3rd defendants further pleaded a special custom in paragraph 7 of the written statement as follows :—

“ These defendants will if necessary contend that by custom of the trade in Bombay well-known to the plaintiffs the said Damji Hirji & Co. as the plaintiffs' agents and factors for sale were entitled to raise money on the security of the said goods ”

Lastly, the 3rd defendants submitted that the plaintiffs having held out the 1st defendants as their agents with authority to raise moneys on their goods they were estopped from questioning the security created in favour of the 3rd defendants by the 1st defendants.

The suit was decided by Davar J. who held that the pledge of the plaintiffs' goods was valid and binding as the 1st defendants were commission agents and factors for sale and as such entitled to raise moneys on the security of the plaintiffs' goods. The following is the material portion of his Lordship's judgment :—

DAVAR, J.—...Lakhamsey Ladha & Co. have filed these two suits to recover their bales of cotton unencumbered by the loans raised on the security thereof on the basis that Damji Hirji was merely their Muccadum who held their cotton as merely their factor for the purposes of

sale and had no right to create any charges on their bales. In their plaint they completely ignore Lakhmichand Padamsey & Co.'s dealings with them in cotton, and pretend that they know nothing about their having taken large loans from Lakhmichand Padamsey on the security of their cotton.

Lakhmichand Padamsey on the contrary have put in their written statements whereby they allege that not only was it well-known in the market that Damji Hirji dealt with their goods in the ordinary way in which Muccadums dealt with by raising moneys on the security of their constituent's goods, but they go further and allege that in April 1913 their principal Munim Dulabhji had an interview with the plaintiffs' partner Lakhamsey Ladha in which it was arranged that Lakhmichand Padamsey should continue to finance plaintiffs' goods, and continue to advance moneys to Damji Hirji on the security of their goods and that Damji Hirji on that assurance continued to take advances from Lakhmichand Padamsey on the security of Lakhamsey Ladha's goods. They further allege that not only did they continue to do this on the assurance given to them by Dulabhji, but altered their method of book-keeping so far as the title in their books was concerned by putting in the additional words "Lakhmichand Padamsey through Damji Hirji."

The defendants Lakhmichand Padamsey are the only defendants in the suit, and have called their Munim Dulabhji in support of their case as set out by them in their written statements. The plaintiff Lakhamsey Ladha has been called in support of the plaintiffs' denial of this special contract. I am inclined on the evidence before me to hold that Lakhamsey Ladha's clean denial of their interview is false, but I am also inclined to hold that Dulabhji's statement that it amounted to a contract holding themselves responsible

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for all advances on their goods is also a statement not warranted by the conversation. There is no doubt that some such interview as deposed to by Dulabhji did take place, in which Dulabhji expressed a desire to curtail their advances to Damji Hirji if the partners in that firm continued to quarrel amongst themselves, and Lakhamsey Ladha begged that they should not so modify their advances on their goods so as to hamper Damji Hirji in dealing with them. This does not amount to a positive contract between either side, and the question in dispute must be decided on other grounds.

The defendants in their written statement set up a custom. That custom is set out in paras. 6 and 7 of their written statements. When the pleadings were read and the issues raised, Mr. Strangman conceded the custom as far as it was pleaded and never raised any objection to the issue as it was framed, but when it came to a question of evidence, it did not prevent him from raising some ingenious conundrums in his cross-examination. Under the circumstances I restricted the evidence to the custom strictly as pleaded, with the result that the question of custom became more or less an absolutely unimportant one.

In Bombay there is no question that up-country merchants send in their cotton for sale through well-known Muccadums, some of them stand in need of financing, and against Railway Receipts they draw according to their arrangements from 70 to 90 per cent. of the value of the goods consigned. There are, however, other merchants who stand in no need of such financing and who merely send in their goods for the purpose of sale. There is no question on the evidence before me that the relations between the plaintiffs and Damji Hirji were of the former character. The plaintiffs had Meghji Poonja here to look after

their business and had Manek Hunsraj for most of the time attending to their godowns. The fact that Meghji Poonja and Manek Hunsraj ignore all knowledge of Damji Hirji's manipulation of the plaintiffs' goods with the defendants and of those goods being taken to the Allahabad Bank's godowns, is absolutely false. They knew perfectly well that their firm drew against their goods, and it is idle to pretend that the drawing was on a current account. They equally well knew that Damji Hirji raised money on the security of Lakhamsey Ladha's goods by pledging them with Lakhmichand Padamsey who were largely financed by the Allahabad Bank. The denial of this knowledge on the part of Meghji Poonja and Manek Hunsraj is, I find, false to their knowledge. It is quite clear from the correspondence that Lakhamsey Ladha & Co. drew on their security of the goods and not on a mere current account. Their statement in correspondence is clear and definite and has remained unexplained. When asking for money they say there may be difficulties in raising moneys in the market, but what difficulty can there be against goods? Plaintiffs have never explained, nor been able to explain what they meant by this, and the only clear and definite explanation is the one that the defendants have sought to put on their transactions. Meghji Poonja and Manek Hunsraj knew perfectly well that their goods were financed by Damji Hirji with the defendants' firm, who in their turn financed them by sending them openly to the godowns of the Allahabad Bank. The Allahabad Bank had their Babus and Chuprasis in charge of their godowns, and it is the idlest of pretences to say that Manek Hunsraj and Meghji Poonja did not know that their goods were financed by being pledged by Damji Hirji with the defendants and by the defendants with the Allahabad Bank.

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This case falls distinctly within the provisions of section 178 of the Contract Act....

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I hold that the pledge of the plaintiffs' goods and the Railway Receipts covering those goods is valid and binding, and refer the matter to the Commissioner to ascertain and report how much is due on those pledges to the defendants. The sale proceeds in the hands of the Receiver will first be appropriated towards the payment due to the defendants on those pledges. If there should be a surplus, the same should be paid over to the plaintiffs.

The plaintiffs appealed.

Strangman with *Kanga*, for the appellants.

Desai with *Setalvad*, for the respondent.

SCOTT, C. J.—The plaintiffs are up-country cotton merchants who consign cotton to Bombay for sale. Damji Hirji & Co. were, until the 29th of September 1913, their usual consignees and agents for sale in Bombay.

The plaintiffs, as the correspondence shows, frequently called upon Damji Hirji & Co. to remit money to them in large sums the security being the plaintiffs' cotton in their hands.

Damji Hirji & Co. used to raise money by pledge of this cotton to the 3rd defendants' firm.

On the 29th of September 1913, the 3rd defendants or persons claiming under them held 757 bales of the plaintiffs' cotton against which advances had been made to Damji Hirji & Co.

The accounts between the plaintiffs and Damji Hirji & Co. at that time showed a balance of Rs. 50,000 owing to Damji Hirji & Co. but on the other hand Damji Hirji & Co. had to account to the plaintiffs for the 757 bales.

The 3rd defendants' advances against these bales amount to Rs. 83,000 or thereabouts.

The contest in this suit is for the amount by which the 3rd defendants' advances exceed the sum due in account by the plaintiffs to Damji Hirji & Co. The learned Judge in the trial Court held that the plaintiffs' representatives knew that the firm of Damji Hirji & Co. were raising money on their goods by pledging them to the defendants who in turn pledged them with the Allahabad Bank and that the case fell clearly within section 178 of the Indian Contract Act as a valid pledging of goods in the possession of a mercantile agent.

The argument for the appellants is this : section 179 takes the case of a pledgor with an interest in the subject of the pledge out of the operation of section 178 and limits the authority to pledge to the extent of the interest in the goods. Damji Hirji & Co. had a lien on the cotton consigned to them to the extent of Rs. 50,000 or thereabouts in which the accounts showed the plaintiffs to be indebted to them. Therefore, they had no authority to charge the cotton beyond Rs. 50,000. The plaintiffs' counsel has with this premiss attempted to show that the evidence only shows a recognition by the plaintiffs of Damji Hirji and Company's authority to pledge the cotton to recoup themselves the advances, *ex hypothesi* Rs. 50,000, already made to the plaintiffs.

In my opinion the proposition of law upon which the argument is based cannot be maintained. Section 179 does not limit the scope of section 178 but saves a pledge to the extent of the pledgor's own interest notwithstanding the presence of invalidating conditions falling under one of the provisions to section 178. In other words whenever he has an interest the person in possession of the goods or documents has unconditional authority to charge at least that interest.

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Upon the evidence the learned Judge was right. It justifies the finding that the plaintiffs' representatives knew the manner in which their cotton was being dealt with by Damji Hirji & Co. and made no objection and that consequently they approved of the pledging. The correspondence further justifies the conclusion that the plaintiffs urged Damji Hirji & Co. to pledge their cotton when necessary.

In this state of the evidence it is hopeless for the plaintiffs' counsel to contend that the circumstances raised any presumption that the pledgor was acting improperly, even though his account shows that he knew the plaintiffs to be the owners of the cotton. It is unnecessary in this view of the case to consider the evidence as to the alleged interview between Meghji the plaintiff's and Dulabhdas the 3rd defendants' representative.

The appeal must be dismissed with costs.

Solicitors for appellants: Messrs. *Captain & Vaidya*.

Solicitors for respondents: Messrs. *Edgelow, Gulabchand, Wadia & Co.*

Appeal dismissed.

G. G. N.
