

ORIGINAL CIVIL.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Blackwell.

THE MERCANTILE BANK OF INDIA, LIMITED (ORIGINAL DEFENDANT No. 5), APPELLANTS v. F. M. CAEIRO AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1928
March 26

Forged endorsement—Debentures of the Bombay Port Trust—Renewal of the debentures by an endorsee in good faith—New debentures issued for the same amount—Renewed debentures endorsed bona fide to a third party—Third party's title valid.

The plaintiffs, who owned 14 debentures of the Bombay Port Trust, entrusted them to defendant No. 1 for collection of interest. Defendant No. 1 forged the plaintiffs' endorsements and pledged them with a bank defendant No. 2 to secure a loan advanced to him. The bank defendant No. 2 *bona fide* got them renewed and new debentures for the same amount were issued in the name of defendant No. 2. Subsequently, another bank, defendant No. 5, advanced moneys to defendant No. 1 with which the loan of defendant No. 2 was paid off. The new debentures were endorsed by defendant No. 2 to defendant No. 5. The plaintiffs sued to recover these debentures :

Held, on appeal, following *Mercantile Bank of India v. Mascarenhas*⁽¹⁾ that the plaintiffs could not recover them from defendant No. 5.

THE plaintiffs were owners of fourteen debentures of the Bombay Port Trust of the value of Rs. 10,000. They entrusted these to one Fernandes defendant No. 1 for collection of interest. The defendant No. 1 had the plaintiffs' signatures forged between 1915 and 1920 and endorsed them to the Alliance Bank of Simla, defendant No. 2 to secure a loan. Defendant No. 2 acting *bona fide* lodged the documents for renewal and new debentures were issued in their names for the same amount. In 1921, the Mercantile Bank of India, defendant No. 5, gave a loan to defendant No. 1, with which he paid off the amount due to defendant No. 2. Defendant No. 2 duly endorsed the new debentures in favour of defendant No. 5. Defendant No. 5 returned three of the debentures to defendant No. 1 who sold two of them to defendant No. 3 and one to defendant No. 4. Two debentures were paid off on maturity by the Port Trust and defendant No. 5 credited the amount to

*O. C. J. Appeal No. 33 of 1927 : Suit No. 404 of 1925.

⁽¹⁾ (1928) 52 Bom. 792.

1928
 MERCANTILE
 BANK OF
 INDIA, LTD.
 v.
 CAEIRO

defendant No. 1. The plaintiffs sued to recover the debentures or their value. Defendant No. 5 disputed their liability. The cause was heard by Kemp, J., who passed a decree ordering defendant No. 5 to deliver the debentures together with the proceeds of the two other debentures to the plaintiffs. He relied on the decisions in *Lee v. Zagury*,⁽¹⁾ *Hunsraj v. Ruttonji*⁽²⁾ and *Banku Behari Sikdar v. Secretary of State for India*.⁽³⁾

Defendant No. 5 appealed.

B. J. Desai, with *C. K. Daphtary*, for the appellants.

Taraporewala, with *Purshottamdas Tricumdas*, for the respondents.

MARTEN, C. J. :—As regards Appeal No. 33, this closely resembles the facts in Appeal No. 32 of 1927. Accordingly our judgment in Appeal No. 32 must be treated as embodied in our judgment in this appeal.

But the difference is this. We are dealing here with Port Trust debentures instead of the Improvement Trust debentures and they are issued under the Bombay Port Trust Act, 1879, sections 39 and 42, but on similar terms. Further, looking at the list of debentures, Exhibit A to the plaint, we are not concerned with the last three, viz., new debentures Nos. 11541, 11539 and 11538, because the Mercantile Bank did not hold them at the date of the suit. Then, as regards new debentures Nos. 13342 and 13341, the proceeds of those debentures were recovered by the Bank before the suit. Consequently the Bank are now being sued for the proceeds. That leaves us then with a suit for the return of 9 new debentures and the proceeds of two others.

Now here, like in Appeal No. 32, all the old debentures were renewed by the Alliance Bank and it was the new debentures which were endorsed over to the Mercantile

⁽¹⁾ (1817) 8 Taunt. 114.

⁽²⁾ (1899) 24 Bom. 65.

⁽³⁾ (1908) 36 Cal. 239.

Bank. There is, however, this difference, that in the present case the new debentures are for the same sum as the old debentures, and not for consolidated amounts, as was the fact in the former case. Further, as a detail one finds that the word "cancelled" is endorsed more frequently in the Port Trust debentures both in ink and by perforations. On the other hand in the new debenture there is a distinct reference to the renewal, e.g., the words "renewal of No. 7515" in the specimen before us.

Stress was laid by counsel for the plaintiff on this fact, and he adopted the argument already used in the former appeal, that this renewal must be looked at merely as a new piece of paper, more especially as the renewal was due to the fact that all the places for interest in the old document were filled up. But after giving full consideration to what has been urged before us on behalf of the plaintiffs, we think our decision in the former case governs our decision in the present case, and that accordingly the Mercantile Bank are entitled to retain these documents.

I would add this that there is in our opinion an advantage in having what is generally known as a clean piece of paper. In other words, there is a distinction between a promissory note full of endorsements, and a promissory note which is a clean document payable only to A or order or only bearing A's endorsement. The effect then of our decision is that a person in the position of the Mercantile Bank in the present case is not obliged before he becomes the holder of one of the new debentures to enquire into the title of the old debentures, nor to call for their production, and search through all the old debentures and possibly earlier still. In this connection I may notice that old debenture No. 7515 is itself stated to be a renewal of No. 4321. So if the

1928
MERCANTILE
BANK OF
INDIA, LTD.
v.
CAEIRO
Marten, C. J.

1928

MERCANTILE
BANK OF
INDIA, LTD.v.
CABERO

Marten, C. J.

plaintiff was correct it would not be safe to stop merely at the old suit debenture, for the earlier title should have been enquired into also.

The result will be that the appeal in this case will also be allowed, and the suit dismissed as against these particular defendants, viz., the Mercantile Bank. There has been no appeal by any of the other defendants. There will be a similar order as to costs as in Appeal No. 32. The direction in the decree that the Bank should hand over those new debentures will be discharged.

Appeal allowed.

J. S. K.

ORIGINAL CIVIL.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Blackwell

1928
March 27

THE MERCANTILE BANK OF INDIA, LTD., APPELLANTS AND DEFENDANT
No. 3 v. CAPT. VINCENT LAWRENCE D'SILVA AND ANOTHER, RESPONDENTS AND PLAINTIFFS.*

Negotiable Instruments Act (XXVI of 1881), sections 4, 5, 9, 58—Promissory note—Forgery—Debentures of Bombay Improvement Trust—Forged endorsement—Renewed debentures issued to a bona fide holder—Holder's title—Debentures of Bombay Municipality—Bombay Municipal Act (Bom. Act III of 1888), sections 106, 108, 110—Municipal debentures not negotiable instruments—Custom of market.

The plaintiffs, who owned thirteen debentures of the Improvement Trust and one debenture of the Bombay Municipality, entrusted them to defendant No. 1 for collection of interest. Defendant No. 1 forged the plaintiffs' signatures on the debentures, endorsed them in favour of defendant No. 2 and pledged them with the Alliance Bank of Simla (defendant No. 2) to secure a loan. Defendant No. 2 surrendered them for renewal and ten new debentures were issued by the Bombay Improvement Trust in their name. Out of the remaining three Bombay Improvement Trust debentures one was renewed in the name of defendant No. 1, who endorsed it in favour of the plaintiffs, and the remaining two were issued in the name of the plaintiffs. Plaintiffs' endorsements on these three new debentures were forged by defendant No. 1 and were transferred by him to defendant No. 2 for value. The new Municipal debenture was made payable to "the Alliance Bank their successors and assigns or their order." Defendant No. 1 obtained a sum of money from the Mercantile Bank of India (defendant No. 3) to pay off defendant No. 2, and

*O. C. J. Appeal No. 34 of 1927 : Suit No. 405 of 1925.