

1893 Revenue Officer was not therefore justified in treating him as such, and in determining what is the proper rent he should pay.

THE  
SECRETARY  
OF STATE  
FOR INDIA  
IN COUNCIL  
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The Revenue Officer in these cases, in assuming the functions of a Resumption Court, and in calling upon the defendant to prove the validity of the *lakhiraj* title set up by him, has, I presume, proceeded upon the authority of a rule promulgated by the Board of Revenue and printed in the Settlement Manual, page 20, and which is as follows :—

“20. When the record-of-rights is being made under the Tenancy Act, and any question arises regarding the validity of claims to hold land rent-free, the Settlement Officer must adjudicate on the question according to law as a civil suit.”

This is said to have had the authority of the Local Government ; but we do not find that it was passed in the manner required by sections 189 and 190 of the Act.

Upon all these grounds I am of opinion that the question referred to the Full Bench must be answered in the negative.

J. V. W.

## PRIVY COUNCIL.

P. C.\*  
1893  
May 16,  
June 17.

DELHI AND LONDON BANK, LIMITED (PLAINTIFF), AND  
A. OLDHAM AND OTHERS (DEFENDANTS).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Plaint—Verification of plaint—Civil Procedure Code, 1882, ss. 51 and 435—Principal officer of a Corporation or Company—Verification of plaint by acting Manager.*

The Manager at Lucknow of the local branch of the Delhi and London Bank was authorized by a power-of-attorney under the seal of the Company in London, to sue for debts due to the Bank, and to substitute any person for himself, besides doing other acts of management.

A power-of-attorney, executed by him as manager, appointing the accountant of the Bank to be its attorney in Lucknow, did not contain express authority to the person so empowered to sue for debts due to the Bank. The accountant conducted, under this power, the chief business of the branch, and while he was so conducting it this suit was instituted

\* Present : LORD WATSON, SIR R. COUCH, and the HON'BLE G. DENMAN.

against defendants, of whom some objected that he was not authorized to sign and verify the plaint.

*Held*, that section 51, Civil Procedure Code, regulating proceedings by or on behalf of ordinary plaintiffs, did not apply, but that section 435 was applicable, the acting manager appointed as above mentioned being a principal officer of the Bank Corporation within the meaning of that section.

APPEAL from a decree (5th January 1891) of the Judicial Commissioner of Oudh, affirming a decree (31st March 1890) of the District Judge of Lucknow.

On this appeal no fact was in dispute, but it questioned the correctness of the ground on which the Courts below had dismissed the suit, *viz.*, that it had not been instituted by any person authorized to sign and verify the plaint on behalf of the Bank.

On the 2nd May 1889 the plaint was filed to recover from Major A. Oldham, R. N. Hodges, and two others, Rs. 21,275 on a joint and several promissory note. The plaint was signed and verified by A. Lawson, stated to be "Acting Manager of the Bank." On the 20th December, the second defendant filed the objection that the suit could not proceed, because Lawson was not a principal officer of the Bank, and was not otherwise authorized to sue. The third defendant took a similar objection. It was replied that Lawson held a power-of-attorney as manager of the branch authorizing him in all respects. The memorandum and articles of association of the Bank registered in London, under the Companies' Act, 1862, were produced, showing separate clauses whereby the directors were authorized to sue, and to defend suits, as well as to appoint managers, and to determine their duties. By a general power-of-attorney to managers, of 23rd July 1884, the directors appointed, amongst others, W. A. N. Langdon to be the attorney, or agent, of the Company at Lucknow. This document contained express authority to sue on behalf of the Company. It also authorized him to substitute any person to act in his place. On the 23rd November 1887, Langdon appointed Alexander Lawson, who was then accountant to the Bank, to be its attorney for the purpose of executing, discounting, and negotiating mercantile documents, demanding money and giving receipts. No power to sue was given in express terms to Lawson, to whom the management was made over.

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The District Judge dismissed the suit on the ground that the power-of-attorney, under which alone Lawson was authorized to represent the Bank, did not give him power to sue. This decree was affirmed by the Judicial Commissioner, who held that Lawson was not entitled to sue either under the power-of-attorney from Langdon, or under section 435 of the Civil Procedure Code, as the principal officer of a Corporation. On the Bank's appeal,

*Mr. R. V. Doyne*, for the appellant:—If there was a want of power to institute the suit, and if there was a want of authority to verify the plaint, those defects were to be distinguished the one from the other. There was, however, no want of authority. The plaintiff Company was registered under the English Act of 1862, and the law here applicable was section 435 of the Civil Procedure Code, for, within the meaning of that section, Lawson had become the principal officer of a Corporation. He was acting as the agent and manager of the Company, and not merely as agent of the manager who appointed him. The learned Counsel referred to the Contract Act (IX of 1872), section 188. The officer of the Bank who at the time had the management of its affairs in Lucknow, and who was to be presumed to be cognizant of the facts, had verified the plaint, and that was verification enough. The suit was the Bank's; and the latter now asked that it might be decided that it had authorized this suit, and that the plaint had been duly verified.

*Mr. R. B. Finlay, Q.C.*, and *Mr. J. D. Mayne* for the respondent *R. N. Hodges*:—Section 435, Civil Procedure Code, would not give effect to the proceedings of a person who had no real authority to sue or to verify the plaint, and in this case there was no signature to the plaint of a person authorized to sue or to verify it. The whole of Lawson's authority was to be gathered from what Langdon had signed as a power to him. The document given by Langdon did not comprehend an authority to Lawson either to sue, or to verify the plaint. Lawson was not authorized to do these acts, or either of them, as a principal officer of the Corporation: for this, in fact, he was not. The result was that the suit in point of law was not brought by the Bank.

*Mr. R. V. Doyne* replied.

On a subsequent day, 17th June, their Lordships' judgment was delivered by

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HON'BLE GEORGE DENMAN.—This was an appeal from a decision of the Judicial Commissioner of Oudh, affirming a decree of the District Judge of Lucknow, whereby a suit was dismissed on the ground that A. Lawson, who had signed and verified the plaint, was not a person duly authorized to do those acts or either of them.

The plaint was filed on the 2nd May 1889, and by it the appellants sought to recover from the respondents Rs. 21,275, said to be due to them on a promissory note.

The plaint was signed as follows: "(Signed) A. Lawson, Acting Manager, Delhi and London Bank, Limited, Lucknow."

The verification was in these words, "I, Plaintiff above named, do hereby declare that what is hereby stated is true to my knowledge and belief. (Signed) A. Lawson, Acting Manager, Delhi and London Bank, Limited, Lucknow."

On the 20th September 1889, the respondent Hodges petitioned the District Judge that the plaint might be rejected or returned for amendment on several grounds not now material, and (in paragraphs 1 and 2 of his petition) on the grounds (1) that A. Lawson was not a principal officer, but a mere cashier of the Bank, and not otherwise authorized to sign and verify the plaint; (2) that acting as manager during a temporary illness, or otherwise, of an acting manager or manager, would not without a special power empower A. Lawson to sign and verify the plaint.

There was no dispute about the facts. It was admitted that the plaintiff Bank was a Corporation within section 435 of the Code of Civil Procedure.

That section, so far as it is applicable to the case, is in these words: "In suits by a Corporation . . . the plaint may be subscribed and verified on behalf of the Corporation . . . by any Director, Secretary or other principal officer of the Corporation . . . who is able to depose to the facts of the case."

The plaintiff Bank had its head office in London, with branch offices at several places in India, including Lucknow. At Lucknow before the 23rd November 1887, one Langdon was manager at the branch Bank at that place, and had been so from July 1884.

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He acted under a power-of-attorney under the seal of the Company which, in addition to words empowering him to establish an agency for "carrying on the business of the said Company as bankers," contained, amongst other words, enumerating several of the most obvious duties usually discharged by the manager of a branch bank, a power to "ask, demand and receive and (if necessary) sue for and recover from whomsoever it may concern, all debts and sums of money, goods, property and effects whatsoever, which are or shall be due owing or belonging to the said Banking Company on account thereof at . . . . Lucknow." Then followed express words authorizing Langdon to commence and prosecute actions and suits in respect of any matter relating to the concerns of the Company at Lucknow. It also contained a power to Langdon to substitute and appoint any person to act under or in the place of him in all or any of the matters aforesaid, "the said Banking Company hereby agreeing to ratify and confirm whatsoever the said Langdon or his substitute shall lawfully do or cause to be done in or about the premises by virtue of these presents."

On the 23rd November 1887, Langdon executed a power-of-attorney, by which, after reciting several of the powers contained in the power of the 23rd July 1884, it was witnessed that Langdon thereby appointed Lawson, "Accountant to the said Banking Company in Lucknow, to be the attorney of the said Banking Company in Lucknow," amongst other things, "to ask, demand and receive all debts, &c." (as in the power to Langdon), but this document omitted the words "and, if necessary, to sue for and recover" and the other express power to sue. It however contained these words, "And generally to act in and about the premises in the same manner, and as fully and effectually as the said Banking Company, or the said Langdon might or could do, and as the said Alexander Lawson might or could have done if he had been appointed the attorney of the said Banking Company in and by the said deed poll or power-of-attorney in the stead of the said Langdon."

The decisions now appealed from proceed upon the ground that the omission of the express power to sue in the later document was fatal to the validity of the proceeding, as showing that Lawson was not a person "duly authorized to sign and verify

the plaint" within the meaning of section 51 of the Code of Civil Procedure.

That section, after enacting that the plaint is to be signed by the plaintiff and his pleader, if any, and verified by the plaintiff or some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, provides "That if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf."

Their Lordships are of opinion that section 51 of the Code, which regulates proceedings taken by or on behalf of ordinary plaintiffs, does not apply to such a case as the present, but that this case must be decided with reference only to section 435, which expressly applies to Corporations, and that the sole question is whether Lawson when he signed and verified the plaint was one of the persons described in section 435 by the words "other principal officer of the Corporation."

If he was, their Lordships see no reason whatever to doubt that he was within that section a person who was "able to depose to the facts of the case."

Lawson's position at the time of the action being brought, *vis.*, on the 2nd May 1889, appears to have been this. He was acting under the power-of-attorney of the 23rd November 1887, being accountant to the Company in Lucknow. Langdon, the manager, was away in Cashmere; Banks, whose position is not explained, but who appears to have been a leading officer of the Bank in Lucknow, was ill with small-pox; Lawson, having the large powers expressly conferred upon him by the power-of-attorney of November 1887, was apparently in sole authority; at all events he was conducting the chief banking business of the branch in Lucknow. In the absence of any evidence that any one else was at the time in question doing any act of management, their Lordships think it fair to presume that he was the person of all others best able to depose to the facts of the case, the action being in respect of transactions depending upon documents which would necessarily be accessible to him at the time.

In these circumstances their Lordships are of opinion that Lawson was then, as he described himself, acting manager of the Bank

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at Lucknow, and that as such he was a "principal officer of the Corporation" entitled to subscribe and verify the plaint within the meaning of section 435 of the Code, and that the suit was properly instituted. They will therefore humbly advise Her Majesty that the decrees of the Lower Courts dismissing the suit be reversed, and the suit be remanded to the Court of the District Judge to be re-admitted, and that the respondent R. N. Hodges be ordered to pay the appellant's costs in both Courts from the date of his objection to the plaint and the costs of this appeal.

*Appeal allowed.*

Solicitors for the appellant: MESSRS. *Lynn and Holman.*

Solicitors for the respondent R. N. Hodges: MESSRS. *Walker and Rowe.*

C. B.

*P.C.\**  
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 March 16,  
 June 24.

TASADDUK RASUL KHAN (OBJECTOR) v. AHMAD HUSAIN  
 AND ANOTHER (PETITIONERS).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

*Sale in execution of decree—Civil Procedure Code, 1882, ss. 274, 287, 289, 290 and 311—Material irregularity—Proof of substantial injury.*

The non-compliance with the requirement of section 290 of the Civil Procedure Code that before sales of immovables in execution of decree thirty days should intervene between proclamation and sale, is a material irregularity within the meaning of section 311. But its effect is not to make the sale a nullity without proof of substantial injury thereby to the judgment-debtor. As to this the latter section requires affirmative evidence.

APPEAL from a decree (16th March 1891) of the Judicial Commissioner, reversing a decree (14th October 1890) of the District Judge of Lucknow.

The appellant was an execution creditor of the respondents, and at the sale, on the 20th March 1890, in execution of the decree, dated 12th October 1889, of which the amount was Rs. 26,712, he purchased for Rs. 57,376 the properties to which these proceedings related, villages in the Bara Banki district. The respondents,

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