

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Markby.

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and Feby. 11.

MOTHOORMOHUN ROY (PLAINTIFF) *v.* THE BANK OF BENGAL
(DEFENDANTS).

*Bank of Bengal Act (XI of 1876), ss. 17, 21—Registration of Transfer—
Right of Bank to refuse to register.*

The Bank of Bengal is entitled to refuse to register a transfer of shares when the application is made during the time the transfer books of the Bank are closed under the powers given by s. 21, Act XI of 1876, and after a public notification in accordance therewith.

Though the Bank may not have given this reason for not registering at the time of the application being made, they are entitled to avail themselves of it subsequently, when a suit is brought to compel them to register the transfer.

Section 17 of Act XI of 1876, which entitles the Bank of Bengal to refuse to register the transfer of shares until payment of any debts due by the person in whose name the shares stand, refers only to debts which are presently payable; therefore, where *R.* was indebted to the Bank, and gave bills as security therefor,—*held*, the Bank would not be entitled to refuse under s. 17 to register the transfer during the currency of the bills.

APPEAL from a decision of Macpherson, J., dated the 10th of August, 1877. The suit was brought by the plaintiff, a merchant in Calcutta, to obtain an order directing the defendants to register the transfer of a stock certificate in the defendants' Bank for Rs. 17,458-8-8, which had been pledged to the plaintiff by one Radha Gobind Shaw to secure certain advances. The plaintiff's case was, that he applied to the Bank to register this transfer about the 14th of June, 1876, and he was then told by the Bank officers that, before the certificate could be registered, it must be endorsed by Radha Gobind Shaw, or his duly constituted attorney. Upon this, the plaintiff obtained from Radha Gobind a power-of-attorney, dated the 27th of June, empowering one Otool Behary Dhur to make the transfer of the certificate to him; that the transfer was accordingly made, and that the plaintiff sent it to the Bank to be registered on the 1st of July; but that the officers of the Bank then refused to register it, on the ground that Radha Gobind Shaw was indebted to them in a large amount, and as long as his debt remained unpaid, the transfer could not be registered.

On the 3rd of July, the plaintiff stated, he caused another application to be made to the Bank, to know why the transfer could not be registered; and was informed that so long as Radha Gobind Shaw was indebted to the Bank they could not register it. And again, on the 31st of July, he alleged that, having ascertained that Radha Gobind Shaw had made an arrangement with the Bank, by which the payment of his debt to them was postponed to a future day, he again applied to the Bank to have the transfer registered, but was refused upon the same ground as before.

The plaintiff's contention was, that the Bank was bound to register the transfer upon the application made on the 1st of July, because, although Radha Gobind Shaw had no doubt, given bills to the Bank to a large amount, none of these bills had then arrived at maturity; and he further contended that they were bound to register the transfer on the 31st of July, although in the meantime the bills had arrived at maturity, because an agreement had then been made between Radha Gobind Shaw and the Bank, on the 8th of July, by which he pledged property to a large amount to secure the payment of the bills, and that the payment was postponed by that agreement till the 1st of October following, so that on the 31st of July there was no debt due from him to the Bank which they could at that time have enforced.

The case of the defendants was, that with regard to the applications alleged to have been made on the 1st and 3rd of July, the plaintiff's case was entirely untrue. They admitted that, early in July, the plaintiff's son applied for the dividends due upon the stock standing in Radha Gobind's name, and was refused upon the ground that Radha Gobind was indebted to the Bank; but they stated that no application was made to register this transfer till the 31st July, and that although they admit that an arrangement was made with Radha Gobind Shaw on the 8th of July, by which the payment of most of the bills was postponed till the 1st of October, 1876, there were two bills which became due on the 22nd and 24th of July for Rs. 5,000 each, which were not included in that arrangement, and that consequently, on the 31st of July, there was a debt of

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Rs. 10,000 due from Radha Gobind to the Bank, the payment of which the latter might then have enforced.

The defendants further alleged, with reference to the applications said to have been made on the 1st and 3rd of July, that even assuming the plaintiff's case were true, the transfer was not made or tendered to the Bank for registration in such a form as the Bank were bound to recognize; and, moreover, that, from the 1st to the 15th of July inclusive, the Bank transfer books were closed in accordance with the provisions of s. 21 of their Act (XI of 1876), and that, consequently, the Bank were not bound, and according to their usual course of business, were not in a position, to register the transfer during that period.

The case came on for hearing before Macpherson, J., who found on the evidence that the plaintiff had failed to prove that any demand for transfer was made until the end of July; and holding that when such demand was made Radha Gobind Shaw was indebted to the Bank, and that the Bank was entitled to refuse to transfer, dismissed the suit with costs on scale 2.

From this decision the plaintiff appealed.

Mr. J. D. Bell, Mr. Branson, and Mr. Bonnerjee for the appellant.

The *Advocate-General*, (Mr. Paul), Mr. Evans, and Mr. Stokoe for the respondents.

The following cases were referred to in argument. As to there being a debt to the Bank during the currency of the bills: *In re Stockton Malleable Iron Company* (1); *In re The London, Birmingham, and South Staffordshire Banking Company* (2). As to the right of the Bank to justify its refusal to transfer on the ground of the books being closed, though that objection was not raised by them when the application for transfer was made: *Ousely v. Plowden* (3). As to the mode of transfer: *Hibblewhite v. M'Morine* (4).

(1) L. R., 2 Ch. D., 101.

(2) 34 Beav., 332.

(3) 1 Boulnois, 145.

(4) 6 M. and W., 200.

The judgment of the Court was delivered by

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GARTH, C. J., who (after stating both the plaintiff's and defendants' cases as set out above, and the grounds on which the defendants relied as entitling them to refuse to transfer, continued.)—The Bank was also at one time under the impression that even during the currency of the bills, when the Bank had no present right to sue Radha Gobind upon them, they could still, under the 17th section of the Act (XI of 1876) refuse to register the transfer. But this is clearly not so. The language and the evident intention of that section points to a *present debt only* as conferring a right upon the Bank to refuse either to register a transfer, or to pay dividends; and this view is strongly fortified by the English case of *In re The Stockton Malleable Iron Company* (1), in which it was held that the words 'due' and 'indebted' in the Articles of Association of a trading company, which gave to the company a lien upon shares similar to that given by this Act to the defendants, must be taken to refer to debts presently payable.

With reference, however, to the demand of registration alleged to have been made on the 31st of July, it has been distinctly proved that two bills of Radha Gobind, which matured on the 14th and 22nd of July, were not (for some reason or other) included in the mortgage arrangement which was made between the Bank and Radha Gobind on the 8th, so that the amount of these bills was due to the Bank on the 31st; and the Bank was therefore clearly justified in refusing the transfer on that day.

The plaintiff's case, therefore, wholly depends upon the application which is said to have been made on 1st and 3rd of July.

(After dealing shortly with the case on its merits, the learned Chief Justice continued):—

We think, therefore, in substance that there is no reason to disbelieve the plaintiff as to the applications to register the transfer which were made on the 1st and 3rd of July.

But then arises the formidable objection which was made by the defendants in the Court below, but which it was then not necessary to consider, that the application for the registration of

(1) L. R., 2 Ch. D., 101.

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the transfer was made during the period when the books were closed. We consider that this objection must prevail.

In order to entitle the plaintiff to ask the Court for a mandatory order, directing the Bank to register the transfer, it is clear that the plaintiff must show, in the first instance, that he applied for such registration at a time and under circumstances when the Bank was enabled and bound to comply with his request.

It was impossible for the Bank to comply with it at a time when the books were closed, and although that reason for not registering might not have been given by the Bank when the application was made, we think that they have a perfect right to avail themselves of it now, because it is one which, in justice to their other customers, and to the public, they could not, by any extraordinary exception in the plaintiff's favour or otherwise, have removed, and it is one too of which the plaintiff, in common with the rest of the public, must be taken to have been aware, because the power under which the closing of the transfer books took place is conferred upon the Bank by Act XI of 1876, s. 21 (a public Act): and the fact that the transfer books would be closed on the 1st and 3rd of July was publicly notified by the Bank in accordance with the statutory direction.

We are of opinion, therefore, for these reasons, that the plaintiff's case must fail; and that this appeal should be dismissed with costs on scale 2.

Appeal dismissed.

Attorneys for the plaintiff: Messrs. *Swinhoe and Co.*

Attorneys for the defendants: Messrs. *Chauntrell, Knowles, and Roberts.*