Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Bank of Upper Canada v. *Bradshaw and others, from Canada; delivered on the 26th June*, 1867.

Present:

LORD CAIRNS.
LORD JUSTICE TURNER.
SIR EDWARD VAUGHAN WILLIAMS.
SIR RICHARD T. KINDERSLEY.

THEIR Lordships having heard the able and elaborate argument addressed to them at the Bar in this Appeal, and having had the opportunity of examining the careful Judgments which have been delivered by the Superior Court and the Court of Queen's Bench of Lower Canada, are prepared to state the reasons upon which they will humbly report their opinion to Her Majesty.

On the first question raised on behalf of the Appellants their Lordships have not heard the Respondents' Counsel. This question relates to the claim arising out of the moneys of the Bank advanced by Bradshaw to the Quebec and Lake Superior Mining Company. The Court of Queen's Bench of Canada have awarded to the Appellants a specific sum in respect of that claim, namely, a sum equal to the balance due to the Bank from the Mining Company on the banking account of the latter, but the Appellants contend that in addition to the sum awarded to them, a sum in respect of interest from the time when the account of the Lake Superior Mining Company was closed up to the time of action brought, should also be awarded. Now this specific claim for interest was not made distinctly in the Court below, nor is it made at all upon the case of the Appellants before their Lordships. Their Lordships notwithstanding have considered

the argument in support of the claim, and they are of opinion that the claim is founded upon a fallacy. It may well be that in an action founded upon contract in respect of the dealings between the Bank and its customer, the Lake Superior Mining Company, there would have been a claim by virtue of contract upon one side or the other for interest. But the present claim is not founded on contract: it is a claim by the Bank against its own Agent for damages in respect of a loss said to have accrued through his conduct. Their Lordships might have entertained some doubt, if the question had been before them whether the Bank was entitled to the sum which actually was awarded, the balance, namely, of the account of the Lake Superior Mining Company, and whether the proper measure of damages might not rather have been the sum of £500 advanced by the Manager to the Lake Superior Mining Company, in which he was a shareholder and a director, minus any repayment on account of that sum to the Bank. That question, however, is not before their Lordships, and upon the question which is before them their Lordships are not prepared to depart from or to increase the amount of damages awarded by the Court below. It would in any case require clear proof that the Court below had proceeded upon a principle entirely erroneous, to induce their Lordships upon a question of damages to alter the amount awarded. Their Lordships are not prepared to say that the Court below ought to have gone beyond the sum which they have awarded here in respect to the damages which are claimed.

The next point argued was the claim arising upon the account of the Canada Grand Trunk Telegraph Company. The nature of that claim is this:—It appears that Mr. Bradshaw, the manager of the Appellant's Bank, was a shareholder to the amount of £100 in an incorporated company called The Grand Trunk Telegraph Company. He was also one of the Directors of that company. It is stated in the evidence that he was not a managing director, and took little or no part in the management of the Company. The head office of the Telegraph Company was at Toronto. Several of the shareholders lived in and about Quebec.

Calls were payable upon the shares of the Company, and the branch of the Bank of the Appellants at Quebec was made the agent for the purpose of collecting those calls. Schedules of the calls were sent down, and printed receipts, already signed, to be handed to the shareholders as they paid their calls. Payments were made running over a great number of months, in respect of the first and second and third calls, and from time to time drafts or cheques were drawn by the Telegraph Company upon the Bank at Quebec in respect of the moneys received by the Bank. While the calls were thus coming in, and while the habit of business was as described, a draft or cheque was drawn by the Telegraph Company, for £500, and that draft was paid, and the payment of that draft caused the account to be, for the time being, overdrawn. If the calls had continued to be paid as they had been in course of payment, the amount by which the account was overdrawn would have been liquidated; but owing to some suspension in the works of the Telegraph Company, the shareholders declined to continue to pay their calls, and the account remained overdrawn. It is stated that the shareholders, or most of them, are solvent, and that their calls might still be recovered. Now it is alleged that by reason of the interest of Mr. Bradshaw as a shareholder and director of the Company, it was beyond his power and authority to have allowed the account to become overdrawn by payment of this note for £500. It is said either that he should have given no accommodation to the Company, or at all events that before doing so he should have told the Bank that he was interested in the Company, a fact which it is alleged the Bank did not know. And it is contended that he should be made liable for the deficiency upon this account. Their Lordships are desirous in no way to qualify or to abridge the doctrine of law prevailing in almost all systems of jurisprudence, that any one standing in the position of an agent cannot be allowed to put his duty in conflict with his interest, and they are certainly not prepared to rest the application of the doctrine on the amount of the interest, adverse to that of his employer, which the agent may be supposed to have. But it is to be

observed that in the present case the dealings between the Bank and their customer were dealings in which the customer was not Mr. Bradshaw, but an incorporated company, Mr. Bradshaw being a shareholder in that company, distinct in point of law from the company itself. It is also to be observed that Mr. Bradshaw had been appointed to manage the business of the Bank in the midst of a community consisting of individuals and of incorporated trading companies similar to the Telegraph Company, in which companies Mr. Bradshaw might or might not hold shares. Now their Lordships entertain no doubt that if any case of bad faith or fraud were shown to occur in dealings between the manager and corporations in which he was a shareholder, dealings of that kind could not be supported. But their Lordships think that the just conclusion to be drawn from the facts and from the course of business in the present case, is that it was within the power of Mr. Bradshaw, as manager of this Bank, to deal in the ordinary and proper course of banking business, not merely with the individuals, but also with the trading corporations of the place in which he was placed as manager, and to deal in that way with the trading corporations, even although he himself might hold shares in any one of them. And if that be the true view of the position and authority of Mr. Bradshaw, it cannot, their Lordships think, be denied that the advance made to the Telegraph Company upon the account that I have described, was entirely a legitimate act in the course of the ordinary business of the Bank. Their Lordships, therefore, preserving entirely intact the general rule as to the conduct and duty of agents, are not prepared to hold that Mr. Bradshaw exceeded his power or authority in dealing with the Telegraph Company in the way that has been described.

The next and the largest question in the case is with reference to the dealings in the account of Mr. Wilson. The first of those dealings in respect of which the judgment of the Court below has been impugned, is as to the drafts which have been called in course of the argument the Lindsay drafts. Those drafts were two in number; they were drafts drawn by Wilson upon his agent,

Lindsay; Wilson trading at Quebec,—his agent Lindsay, at Montreal; and were drafts in respect of real transactions, for Lindsay was receiving from time to time moneys of Wilson which it was the object of Wilson to have the benefit of at Quebec: they were discounted by Mr. Bradshaw, as the manager of the Bank, and discounted for Wilson. At the time of the discount of these drafts the evidence shows that Wilson enjoyed unblemished and undiminished credit in the mercantile community of Quebec, and that he was a person who had been and who continued to be in a very extensive business. Now it was stated on behalf of the Appellants very fairly in their argument, that so far as vicissitudes of trade were concerned, and so far even as any error of judgment might be imputed to Bradshaw, they did not desire upon those grounds to challenge his acts and conduct. But it was said that these drafts upon Lindsay were drafts which in some way had been used or had been intended to facilitate the purchase of a ship called the "Princess Royal;" that in that ship Wilson and Bradshaw, the Respondent, were jointly interested; and that therefore in discounting these drafts Bradshaw, the Respondent, was virtually providing, by means of the funds of his employers, facilities for his own speculation in conjunction with Wilson. This must depend upon the evidence in the case, and their Lordships can find no evidence whatever in any way connecting these drafts with the "Princess Royal," her purchase, or her employment, except the statement occurring in the evidence of Wilson himself, where he says with regard to these two drafts on Lindsay that they have been drawn to facilitate the payment of the "Princess Royal," and of another boat to which he refers. There is not in the facts which are otherwise proved as to the payments for the "Princess Royal," anything which supports, and there is much which is at variance with this statement of Wilson; and their Lordships, with regard to the testimony of Wilson, are obliged to assent to the view taken by both branches of the Court in the Colony, that upon any question in this case depending upon the unsupported testimony of Wilson, that testimony cannot be relied upon. Their Lordships also are

obliged to observe that it having been in the power of the Appellants to examine Mr. Bradshaw while he was yet alive, and Mr. Bradshaw having been, as was stated to us, called upon a *subpœna*, but not examined, their Lordships would be slow upon any charge against the conduct of Bradshaw's depending upon the unsupported testimony of one witness, to hold that charge proved in a case where no opportunity had been given to Bradshaw, the Respondent, to explain or to deny the charge. Their Lordships, therefore,—the evidence failing entirely to connect the drafts of Lindsay with any dealings in which Bradshaw was personally interested,—are of opinion that the discount of those drafts was merely an ordinary banking transaction in the course of the business of which Bradshaw was manager, and that no claim can be made against him in respect of that discount.

The next point urged on behalf of the Appellants was a claim in respect of a draft for £1100, the draft which has been termed in argument the Wenham draft, the proceeds of which upon discount were carried to the account of Wilson, and were applied by Wilson in part payment of the price of the "Princess Royal," in which, as has been already stated, Wilson and Bradshaw had some joint interest. Now, if it were shown that Bradshaw was aware of the purpose for which this draft was drawn and discounted, and if, further, any loss had accrued to the bank in respect of the discount of this draft, their Lordships can see that a claim might have been made against Bradshaw in respect of that loss. But their Lordships find that on the one hand no evidence has been given that Bradshaw was aware of the purpose for which this draft was to be applied, and on the other hand (and this alone would be sufficient for the opinion which their Lordships have formed) the sum credited to Wilson on account in respect of this draft was almost immediately, or very shortly afterwards, paid and satisfied by the ordinary appropriation of the payments in, upon the other side of the account of Wilson and the bank. No loss, therefore, can be said to have accrued to the bank in respect of this sum.

The next item referred to by the Appellants is the M'Donald and Logan notes and cheque of the 23rd of July, the 1st of August, and the 9th of June, 1855, respectively. Here, again, so far as these notes and cheque were discounted and cashed upon the faith of the names upon them, their Lordships are of opinion that the transaction was one of an ordinary and proper character; Wilson being, as has been already stated, in large business and full credit; M'Donald and Logan being also in credit and business at that time. And the observations which have been made with reference to the Lindsay drafts apply also to the paper of M'Donald and Logan. If it were shown that there was any connection between the discount of this paper and any transaction in which Bradshaw was personally interested, and loss had accrued, a claim might have been made against Bradshaw; but no evidence has been adduced which satisfies their Lordships, or raises in their Lordships' minds any suspicion, that the discount of this paper was connected with any such transaction. The argument in point of fact as to these items at last resolved itself into this, that there must be a presumption that Bradshaw, the manager of the bank, was in some manner in the power of Mr. Wilson, from the circumstance that a notarial letter addressed to him by Wilson, subsequent to the date of these drafts, insisting that Bradshaw was still under liability to him in respect to joint transactions, must be accepted as proof of the statements in that letter. Their Lordships are of opinion that to draw such a presumption from such a letter would be much too violent; and the more so, because no evidence has been adduced to show that in point of fact the statements in that letter were not repudiated, or were not objected to on the part of Bradshaw.

The last and remaining item is in respect of the sum appearing to the debit of Wilson upon the statement of his account with the bank at the close of the management of Mr. Bradshaw. That account was overdrawn. It had become overdrawn by reason of an advance of £500 by Bradshaw to Wilson. The circumstances under which that advance took place are fully detailed in the evidence

of Mr. Ross, the legal adviser at that time of the bank. Mr. Ross states that certain security was under his advice taken at that time from Wilson to the bank; that one of the terms of the arrangement with reference to the security was that the Respondent should, on the part of the bank, advance the sum of £500. Mr. Ross states that he was of opinion that that was a wise and judicious arrangement; that it was made under his sanction; and that he approved of it at the time the arrangement was made. There is no suggestion that at that time Mr. Bradshaw had any personal interest in any dealings with which Wilson was concerned. Their Lordships see no reason to think that this was otherwise than a prudent and legitimate advance made by Bradshaw for the benefit of Wilson.

Upon the whole, their Lordships think that the Case of the Appellants has entirely failed, and they will humbly recommend Her Majesty to dismiss the Appeal with costs.