

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Ram
Pertab and others v. Marshall, from the
High Court of Judicature at Fort William in
Bengal; delivered 16th December 1898.*

Present :

LORD ASHBOURNE.

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[Delivered by Sir Richard Couch.]

The Appellant Ram Pertab is the son and legal representative of Babu Girdhari Lal a banker, deceased, carrying on business at Mozufferpore in Behar. In January 1890 Girdhari Lal began to act as banker to the Meah Chapra Indigo Factory in Tirhoot. In the accounts it is called Indigo Concern. At that time the Honourable Francis Russell Byng was the proprietor and manager of the Factory, having an absolute right to a half-share in it, and being the lessee of the remaining half-share. The Respondent Mr. Marshall is the brother-in-law of Mr. Byng, and he held a mortgage of the half-share of which Mr. Byng was the owner. From the 7th January 1890 to the 31st October 1891 Girdhari Lal whom it will be convenient to call the Bank supplied funds for carrying on the Factory upon tankhas (orders) drawn by the manager on the Bank. The Concern was financed by Messrs. Gisborne & Co. Calcutta, Mr. Byng used to draw hundis upon them and these were made over to the Bank

which obtained the proceeds of them and credited them in the account with the Concern. Monthly accounts of receipts and disbursements used to be sent by the Bank to the indigo factory in duplicate. One of these used to be signed by the gomastha of the Bank; this used to be retained in the factory, and the other, sent without any signature, used to be signed by the manager and sent back to the Bank. These accounts were put in evidence. The first relied on at the hearing of the appeal is for February 1890 and is headed "Jumma-khuruch account of "money of the Meah Chapra Concern, per- "gunnah Bisara as per tankhas signed by "Mr. Francis Russell Byng manager and pro- "prietor of the said Concern through the "banking firm of Babus Jit Mal and Girdhari "Lal, mahajuns of Mozufferpore." It shews a balance due from the Concern to the Bank of Rs. 11,395. 12. 6 and at the end there is a statement signed by Mr. Byng that this is correct. Their Lordships observe that the account begins with a balance of Rs. 7,975. 5 due to the Bank on an account for January 1890, headed in the same manner, but not signed by Mr. Byng as correct. For this reason apparently, their attention was not called to it in the argument. The accounts continue to be headed and attested by Mr. Byng in this way up to and including that for December 1890. The headings of the accounts for January, February and March 1891 are altered. Mr. Byng being no longer called proprietor but only manager of the Meah Chapra Concern. He ceased to be the manager about the end of March 1891, and Mr. Amman became the manager, his name appearing in the accounts which were attested by him down to and including October 1891.

Mr. Marshall was examined upon interrogatories under a commission and in answer to the 7th interrogatory he said "My connection with

“ the concern after the 1st November 1890 was
 “ that of proprietor of Mr. Byng's 8 annas (half
 “ share) and I leased the other 8 annas . . . I
 “ acquired Byng's 8 annas through an agreement
 “ made on my behalf by Messrs. Gisborne & Co.
 “ of Calcutta . . . The agreement was made in
 “ January 1891 and dated back 1st November
 “ 1890. By the same agreement I became
 “ lessee of the other 8 annas.” In his answer to
 another interrogatory he said that he acquired
 Byng's 8 annas by obtaining a release of his
 equity of redemption under the mortgage to
 him. Gisborne & Co., who held a second
 mortgage, joined in the deed for the purpose of
 completing his title.

The first debit item in the account for January
 1891, in which Mr. Byng is for the first time
 only described as manager, is a balance of
 Rs. 19,897. 15. 9, brought forward from the
 account for December 1890. On the credit side
 there is, under the date 10th January 1891,
 “ five hundis for Rs. 25,000 drawn on Gisborne
 “ & Co. by Mr. Byng in favour of the bank.”
 As to this entry Ram Sahai said that the munib-
 gomashtha (principal clerk) of the Bank deposed
 that he applied about the account to Mr. Byng,
 personally and by letters; Mr. Byng replied that
 arrangements were being made for the outlay of
 the year following, and that the Bank's money
 would be repaid when the arrangements were
 completed; that on the 7th January 1891 he got
 five hundis for Rs. 25,000 from Rasdhari Lal a
 clerk of the factory, who gave them, saying
 “ Mr. Byng has given these hoondis to you, saying,
 “ mahajun was getting alarmed. Now there will
 “ be a balance in my favour.” Rasdhari Lal deposed
 that he was a clerk in the Meah Chapra Indigo
 Factory from 1883 to 16th September 1893, that
 in January 1891 he took hundis for Rs. 25,000,

from the factory by order of Mr. Byng and gave them to Ram Sahai; that Ram Sahai asked for what these hundis had been given, and he said, "You have old balance due to you; deduct it and give me what I want." Mr. Byng had directed him to say he wanted Rs. 8,000; Ram Sahai gave him that sum, and he took it to the factory. The money was mostly required to pay rent to the maliks, also for other expenses. Mr. Byng, who was examined by interrogatories, deposed that he did not give any authority to the Bank to take any of the proceeds of the hundis for Rs. 25,000 in payment of any money due by him in respect of prior season's operations or borrowings by him on account of working previous to 31st October 1890.

The account for October 1891 showed a balance due to the bank for principal and interest of Rs. 25,058. 11. 1½ and on the 27th May 1892 Girdhari Lal brought a suit against Mr. Marshall to recover Rs. 19,179. 8. 0 the balance after giving credit for Rs. 7348. 3. 7½ received on the 1st May 1892. The defence was that the Rs. 7,385. 2. 4½ was the balance due on account of the concern for advances and payments from 31st October 1890 to 31st October 1891 and the Defendant had paid that on the 1st May 1892; that the Plaintiff had wrongfully appropriated part of the Rs. 25,000 to the payment and satisfaction of the balance of Rs. 17,673. 8. 9; and that Byng had no authority from the Defendant to permit the Plaintiff to make that appropriation.

Now the real case is not, as is said in the Defendant's written statement, that the claim in the suit is in fact for that balance. It is for the sum due on the whole account from February 1890, and the Defendant is seeking to set aside the appropriation and to apply the amount of

that balance in satisfaction of what would be due on the accounts from 31st October 1890 after the payment of the Rs. 7,385. 2. 4½. If the Bank was not entitled to make the appropriation, the Rs. 17,673. 8. 9 remained the money of Marshall and should be applied towards payment of what was due from him on the accounts from October 1890. If nothing had been due on those accounts he would have had to sue to recover back the money. This may be important in considering the evidence in the case. It was admitted that the munibgomastha who conducted the business of the Bank acted in good faith. He might honestly and reasonably have believed from the previous transactions that the Rs. 25,000 were intended to be applied in the same manner as the payments had been applied in the previous accounts. The course of business was rather between the Bank and the Indigo Factory than between it and the actual proprietor. It was not proved that the Bank had any intimation of the change of the proprietorship, except what appeared in the heading of the accounts. Nor was there any evidence of the terms of the agreement under which Marshall became the proprietor. There may have been, probably was, some notice of the debts or liabilities of the concern. Their Lordships cannot agree with the High Court when they say that the burden was on the Plaintiff to prove this agreement by obtaining discovery and inspection of documents. If Mr. Byng was careless, as he said in his evidence he was, in signing the accounts as correct and Mr. Marshall was negligent in not examining the accounts copies of which were at the factory, the loss ought not to fall on the Bank. Having regard to the nature of the transactions between the Bank and the Indigo Factory, and to the

only information which the Bank had of the change of proprietorship (Mr. Byng continuing to be manager) their Lordships think the munibgomastha might reasonably suppose that Mr. Byng had authority, and that in the honest belief of that fact he continued to make the advances. They will humbly advise Her Majesty to reverse the decree of the High Court to dismiss the Appeal to the High Court with costs and to affirm the decree of the First Court. The Respondent will pay the costs of the Appeal.
