

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jonmenjoy Coondoo v. Watson, from the High Court of Judicature at Fort William in Bengal, delivered 1st March 1884.

Present:

LORD BLACKBURN.
SIR BARNES PEACOCK.
SIR ROBERT COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

The Respondent in this Appeal, George Alder Watson, is a Surgeon-Major in Her Majesty's Indian Army, and the Appellant is a merchant at Calcutta. On or about the 18th of October 1878 the Respondent deposited with Messrs. Nicholls & Co., described in the plaint as a firm carrying on business as bankers and financial agents in Calcutta, promissory notes of the Government of India, amounting to Rs. 37,500, for which a receipt was given to him by Nicholls & Co., headed "Safe custody receipt." One of those notes was for Rs. 20,000. This note was payable to Watson, his executors, administrators, or assigns, or his or their order, and was subsequently exchanged by Nicholls & Co. for a similar note, apparently that the interest might be received at Calcutta instead of Peshawar, where the interest on the former note was payable; but no question arises upon this.

On the 18th of October 1878 Watson executed and gave to Nicholls & Co. a power of attorney, in the following terms :—

“ Know all men by these presents, that I, George Alder Watson, Surgeon-Major, 19th Regiment Bengal Lancers, do make, constitute, and appoint William Nicholls and George Augustus Thompson, of Messrs. Nicholls & Co., financial agents, Calcutta, jointly and severally to be my true and lawful attorneys and attorney, for me and in my name, and on my behalf, from time to time to negotiate, make sale, dispose of, assign and transfer, or cause to be procured and assigned and transferred, at their or his discretion, all or any of the Government promissory notes, or other Government paper, bank shares, or shares in any public Company, and other stocks, funds, and securities of any description whatsoever, now or hereafter standing in my name, or belonging to me, or any part or parts thereof respectively. And also for me, and in my name, and on my behalf, from time to time, at their or his discretion, to contract for, purchase, and accept the transfer into my name of any Government promissory notes or other Government paper, bank shares, or shares in any public Company, and other stocks, funds, and securities of any description whatsoever, now or hereafter standing in the name or names of, or belonging to, any other person or persons. And also to receive all interest and dividends due, or to accrue due, on all or any of such stocks, funds, and securities. And for the purposes aforesaid, or any of them, to sign for me and in my name, and on my behalf, any and every contract or agreement, acceptance, or other document. And to sign, seal, and deliver for me, and as my act and deed, any and every deed which they or he may think expedient.”

This power of attorney, when produced in evidence, had on the back of it a seal of the Public Debt Office, Bank of Bengal, showing that it had been registered there, and the new note had on the back two like seals, with the same register number, showing that a power of attorney had been registered for the receipt of interest and for sale. Watson never gave to Nicholls & Co. any authority to deal with the notes except the power of attorney. The note when produced bore two indorsements, “ G. A. Watson, by his attorney, G. Aug. Thompson,” “ G. A. Watson, by his attorney, G. Aug. Thompson.” The former of these indorsements ap-

peared to apply to a receipt for a half year's interest, which was indorsed on the note.

In December 1880 a broker named Goberdhone, employed by Nicholls & Co., applied to the gomastah of the Appellant for a loan to Watson of Rs. 19,000, on the pledge of a Government security for Rs. 20,000, and subsequently brought the note for Rs. 20,000. Being asked by the gomastah under what authority the name of Watson was signed by Thompson, he said there were two seals on the paper, and from the two seals it appeared that Mr. Thompson had authority to draw interest and sell the paper, so he had full authority. The gomastah then sent the money by one Koylash Chunder Roy to the office of Nicholls & Co., telling him to inquire whether the paper was actually signed by Thompson. What then took place is stated by Koylash Chunder Roy thus:—" In the office the broker took the paper
 " from Ameer Singh's durwan, and gave it to
 " Mr. Thompson. Mr. Thompson gave that
 " paper to me, and said he wanted money on
 " that paper. I asked him if the signature on
 " the paper was his signature, and if he had
 " pledged the paper with Ameer Singh Shumar
 " Mull. He said, 'Yes.' I told him 'The paper
 " 'stands in the name of Mr. Watson, why do you
 " 'want money on this paper, and what authority
 " 'have you to sign for Mr. Watson?' Mr.
 " Thompson said, 'I have got a power of attorney.
 " 'If you wish to see the power of attorney I can
 " 'show it to you.' He said he had a power of
 " attorney from Watson to manage all his
 " business, and he had authority to receive
 " money on that paper. Then he executed a
 " promissory note, in which he signed for Mr.
 " Watson, gave the promissory note to me with
 " the Government promissory note, and took the
 " money from me." In the account books of

the Appellant the transaction was entered as a payment of Rs. 19,000, on account of pledge of Company's paper. Nicholls & Co. having failed, the Respondent brought a suit in the High Court at Calcutta, praying that the Appellant might be decreed to endorse and deliver up the promissory note for Rs. 20,000 to him, and to pay him all such interest as the Appellant might have received thereon, and that the Appellant might, if necessary, be restrained from parting with it.

The Judge before whom the case came on for disposal dismissed the suit, with costs. On appeal to the High Court in its Appellate jurisdiction this decision was reversed, and a decree was made in the Respondent's favour, from which there is this appeal to Her Majesty in Council.

It was properly admitted by the learned Counsel for the Appellant in the argument before their Lordships that the Appellant, having notice that the indorsement was under a power of attorney, was in the same position as if the power of attorney had been perused, and if that power did not authorize the indorsement he must fail. But the Counsel contended that it gave an authority to pledge the Government note, and relied upon the case of the *Bank of Bengal v. Macleod*, 5 Moore's Indian Appeals, 1, 7 Moore, P. C., 35. It is necessary to look at the facts, and argument, and judgement in this case somewhat minutely.

The action was one of detinue and debt brought by James William Macleod against the Bank of Bengal. In 1841 the Plaintiff sent from England a power of attorney, constituting and appointing Alexander Donald Macleod (his brother), and Christopher Fagan, carrying on business in Calcutta as agents under the firm of Macleod, Fagan, & Co., his attorneys, jointly and separately in their individual names, or the name of the

firm, and on his behalf, "to sell, endorse, and assign, or to receive payment of the principal, according to the course of the treasury, of all or any of the securities of the East India Company for shares in their public loans," to which he was entitled. A. D. Macleod applied to the Bank of Bengal for a loan upon his own account, and offered as a security Company's paper, No. 13397, for Rs. 5,000. This note bore the following endorsement:— "Pay to G. J. Gordon, Esq., Secretary, Union Bank, or order J. W. Macleod, by his attorney, A. D. Macleod." "Pay to A. D. Macleod, attorney to J. W. Macleod, order, G. J. Gordon, Secretary, Union Bank. J. W. Macleod, by his attorney, A. D. Macleod." The Secretary of the Bank, upon inspection of the note and the last endorsement, requested to see the power of attorney, which was shown to him. The Bank then took a further endorsement on the note from A. D. Macleod in these words:—"Pay to the Bank of Bengal, or order A. D. Macleod," and the required loan was then made by the Bank in the ordinary course of business. Two days afterwards a further loan of Rs. 17,100 was made by the Bank to A. D. Macleod, upon his depositing two other notes and endorsing them, and his statement that they were his own property.

A verdict was found for the Plaintiff, and a rule which was granted to show cause why that should not be set aside and a nonsuit entered, or why a verdict should not be entered for the Defendants, or a new trial granted, having been discharged, the Defendants appealed to Her Majesty in Council. The difference between this case and that before their Lordships may be here noticed. The power of attorney contained the word "endorse." The loan was made to A. D. Macleod on his own account, and the Bank took an endorsement on the note from him on his own account, and not as attorney for J. W. Macleod.

In this case, and in the similar case of *The Bank of Bengal v. Fagan* (the judgement being given in both cases), it was argued for the Appellants that A. D. Macleod had power to endorse the notes; that "sell, endorse, and assign" might be read either distributively or conjunctively, and the power to endorse was not auxiliary only but was the real object of the power. For the Respondent it was argued that the endorsement mentioned in the power of attorney was for the purpose of authorizing A. D. Macleod as agent for the purposes of a sale, and a power to sell did not give a power to pledge, that the word endorse was controlled by the context, and the words must be taken collectively. The following passages from the judgement delivered by Lord Brougham show the ground of the decision:—

"Thus, the main and fundamental question is, had Macleod & Co. authority to endorse under the power of attorney, which is in the same words in both cases. It is to 'sell, endorse, and assign, or to receive payment of the principal according to the course of the Treasury, and to receive the consideration money and give a receipt for the same.' It is contended for the Respondent that the words 'sell, endorse, and assign' used conjunctively cannot be used in the disjunctive, but that the only power given to endorse is one ancillary to sale, and that we are to read it as if it were power to sell, and for the purposes of selling to endorse. This construction is endeavoured to be supported by referring to the variation of 'or' for 'and' immediately following 'or to receive the money at the Treasury.' We are unable to go along with this view of the instrument. The variation is clearly owing to a new subject matter being introduced. . . . Shall we then say that a power to 'sell, endorse, and assign' does not mean a power to sell, a power to endorse, and a power to assign, and would not such a negative or exclusion be doing violence to the plain sense of the words? If we adopt this exclusive construction we must hold that these words not only give no powers to endorse without selling, but also that they give no power to sell without endorsing, and we must suppose an agent acting under such a power to be entirely crippled. . . . It appears to us that the rational and the natural construction is the one which represents a power to 'sell, endorse, and assign' as a power to sell, a power to endorse, and a power to assign—so that these acts may be done apart or together, and that the powers are conveyed conjointly and severally."

It seems to have been thought by two of the learned Judges of the High Court that it was laid down in this case, as a rule of construction, that words used in a power of attorney to express the objects of the power are always to be construed disjunctively. Their Lordships cannot agree in this view of the case. The words there may have been used disjunctively, but they do not see any reason why the rule laid down by Lord Bacon, *Copulatio verborum indicat acceptationem in eodem sensu*, which is intended to aid in arriving at the meaning of the parties, should not be used in construing a power of attorney as much as any other instrument.

The power of attorney in the present case is not in the same form as that in *The Bank of Bengal v. Macleod*. It does not contain in express words a power to "endorse." If it had, the question would have been whether there was anything to prevent it from being a power in the discretion of the donee of it to endorse the note and so convert it into one payable to bearer whenever he thought fit to do so for any purpose. But in this power the indorsement is not authorized in express words, but is authorized if it comes within the meaning of the words, "And for the purposes aforesaid to sign for me, and in my name and on my behalf, any and every contract or agreement, acceptance, or other document." The "purposes aforesaid" are these,—

"From time to time to negotiate, make sale, dispose of, assign, and transfer, or cause to be procured and assigned and transferred [there seems to be a mistake in words here, but it does not make any difference in the meaning], at their or his discretion, all or any of the Government promissory notes or other Government paper, &c., and also for me, and in my name and on my behalf, from time to time, at their or his discretion, to contract for, purchase, and accept the transfer into my name of any Government promissory notes or other Government paper, &c."

The Appellant's Counsel relied mainly upon the word negotiate, and also upon "dispose of."

In order to see what was intended by these words, they must be looked at in connection with the context, as well as with the general object of the power. This appears to their Lordships to have been to sell or purchase for Watson Government promissory notes and other securities, not to borrow or lend money upon them. If the word "negotiate" had stood alone, its meaning might have been doubtful, though, when applied to a bill of exchange or ordinary promissory note, it would probably be generally understood to mean to sell or discount, and not to pledge it. Here it does not stand alone, and, looking at the words with which it is coupled, their Lordships are of opinion that it cannot have the effect which the Appellant gives to it, and, for the same reason, "dispose of" cannot have that effect.

It did not appear when the endorsement by Thompson as Watson's attorney was made, but Nicholls & Co. did not deal with the note as having themselves become the holders of it by endorsement, as was the case in *The Bank of Bengal v. Macleod*. They borrowed the money on behalf of Watson, giving a promissory note for it signed by Thompson as his attorney, and pledged the Government promissory note as Watson's. As they had not authority to do this, the authority to sell not giving an authority to pledge, the Appellant acquired no title to the note by its delivery to him, and the High Court has properly made a decree in the Plaintiff's favour.

Their Lordships will humbly advise Her Majesty to affirm that decree and to dismiss this appeal, and the costs of it will be paid by the Appellant.
