Privy Council Appeal No. 68 of 1918.

Haridas Ranchordas and another - - - - - *Appellants*

v.

The Mercantile Bank of India, Limited - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1919.

Present at the Hearing:

LORD SHAW.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 20th November, 1916, of the High Court at Bombay, which confirmed a decree of that Court made in a suit which was instituted in that Court in its ordinary civil jurisdiction on the 27th May, 1915, by the Mercantile Bank of India, Limited, against Haridas Ranchordas, Ludha Dossa, and Bhanji Madhavji. The Mercantile Bank of India, Limited, is the respondent here. Bhanji Madhavji, named as a defendant to the suit, was not served and has, it is said, disappeared. The appellants here are Haridas Ranchordas and Ludha Dossa.

The defendants, under the name of Dharamsay Jaitha & Co., carried on business at Bombay as cotton merchants, their bankers were the plaintiff Bank, and the suit was brought by the Bank to recover from them a balance due by the defendants to the Bank and interest on that balance. The defendants Haridas Ranchordas and Ludha Dossa filed a written statement and counterclaim in which they claimed an account, and damages for the dishonour on the 1st August, 1914, by the Bank of two cheques drawn by their firm upon the Bank. Their Lordships are informed by counsel that by the Rules of the High Court at

Bombay relating to suits in its original civil jurisdiction counter-claims are permitted.

The trial Judge ordered that the suit as against the defendant Bhanji Madhavji should stand adjourned and on the claim of the Bank made a decree against the defendants Haridas Ranchordas and Ludha Dossa as two of the partners in their firm of Dharamsay Jaitha & Co. and also in their individual capacities for Rs. 39,025, 10 annas for the debt (including compound interest with monthly rests), with future simple interest from the date of the decree until payment, and by his decree dismissed the counter claim. The High Court in appeal made a decree confirming that decree of the trial Judge. From that decree of the High Court this appeal has been brought.

The questions now in dispute are (1) Was the Bank entitled to charge compound interest with monthly rests on the amounts from time to time overdrawn by the defendants, and (2) was the Bank entitled to refuse to honour the two cheques. To understand these two questions it is necessary briefly to refer to the course of dealing between the Bank and the defendants' firm. For several years, at least from 1906, the Bank had allowed the defendants' firm to overdraw their account. The practice was that annually on the 1st December the defendants, in the name of their firm and individually, signed a letter in a printed form addressed to and given to the Bank, and in accordance with those letters the Bank allowed the defendants' firm to overdraw their account. The last of such letters was given to the Bank on the 1st December, 1913, and so far as it is material it was as follows :—

> " In consideration of your allowing us an overdraft to the extent of, but not exceeding at any one time, Rs. 10 lacs in current account it is hereby agreed that all moneys advanced and hereafter to be advanced in pursuance of these presents (hereinafter referred to as 'the said overdraft' or 'such overdraft') shall be advanced upon the terms and conditions hereinafter mentioned :—
>
> " 1. The said overdraft shall be repayable within twelve months from this date and/or at your option on demand being made therefor.
>
> " 2. Interest shall be charged at 7 per cent. per annum and shall be calculated on the daily balance due to you in respect of the said overdraft, till 30th June, 1914, and thereafter till 1st December, 1914, at 5 per cent. per annum.
>
> * * * * * * * * *
>
> " 4. As security for the said overdraft we hereby agree to pledge with you all cotton pressed and unpressed at present stored in your godowns and/or Jethas and/or which may hereafter be stored by us in your godowns and/or Jethas.
>
> " 5. Notwithstanding anything hereinbefore contained you shall be under no obligation to advance any moneys except against the deposit of cotton by us from time to time as provided by clause 4 hereof and in no case shall such advances exceed Rs. 10 lacs outstanding at any one time and such advances shall not exceed seventy-four and a half per cent. (74½%) on the net market value of the cotton for the time being deposited in your godowns and/or Jethas against which cotton such advances shall from time to time be made.

" 6. If at any time a margin of twenty-five and a half per cent. (25½ %) on the net market value of the cotton stored in your godowns and/or Jethas shall not be fully maintained you are to have full right to dispose of the cotton stored in the said godowns and/or Jethas and apply the proceeds thereof towards making up such margin and/or claim on us for any such margin and/or for any balance due in respect of the same after the disposal of the cotton in pursuance hereof.

* * * * * * * * *

" 10. A register shall be kept by you of all cotton deposited in and/or removed from any godown and/or Jetha in pursuance of this agreement and such register shall be open to our inspection at any time during the usual business hours : no cotton shall be removed from the said godowns and/or Jethas except on a delivery order or orders signed by you.

* * * * * * * * * "

Whatever may be the strict construction of clause 2 of that letter the Bank invariably struck a balance of its customers' accounts on the last day of each month and charged interest on the amount of that balance. The interest so charged was added to the monthly balance and the resultant balance, which included the interest, was carried forward to the debit of the customer as the balance due on the 1st of the following month. The passbook of the defendants with the Bank shows clearly that that was the way in which interest was computed and charged in their account with the Bank. The defendants never, until after the 1st August, 1914, raised any objection to that principle of charging them compound interest or to compound interest being charged by the Bank on their overdrafts. It was the course of business to which it must be taken that the defendants agreed. As long ago as 1813 Lord Ellenborough in *Brace* v. *Hunter*, 3 Campb. 466, held that the fact that the defendant in that case had not objected to a charge of compound interest in accounts which for several years he had annually received from the plaintiff afforded sufficient evidence of a promise by him to pay interest in that manner. In addition to the evidence afforded by the passbooks to which their Lordships have referred, there is the uncontradicted evidence of the manager in Bombay of the Bank that the defendants knew that their account was charged by the Bank with compound interest with monthly rests and had never objected to that course of business.

The trial Judge, on a very careful consideration, found that there was not the slightest doubt that the defendants knew that the Bank was charging compound interest and agreed to that interest being charged in that way with monthly rests, and made the decree upon the claim against the defendants Haridas Ranchordas and Ludha Dossa which has been already mentioned. He rightly held that Section 92 of the Indian Evidence Act did not prevent the Bank from proving that agreement as to compound interest. The High Court in the appeal taking the same view of the facts as the trial Judge confirmed that decree, and their Lordships agreeing with the findings of the Courts below on the question of interest are of opinion that the decree of the High Court should be affirmed.

The counterclaim relates to the dishonour by the Bank on the 1st August, 1914, of two cheques drawn by the defendants upon the Bank and presented for payment on that day. On the 1st August, 1914, the overdraft of the defendants' firm amounted to Rs. 5,81,454. On the 31st July, 1914, the Bank issued a notice to the defendants' firm that the Bank was not advancing further against cotton and would be obliged by the defendants reducing "the present advance." That notice was not received by the defendants until after office hours on the 1st August, 1914. On the 1st August, 1914, the Bank held as security for the overdraft cotton which at the market rates at the end of July, 1914, as deduced from the daily circulars of Messrs. P. Chrystal & Co., represented Rs. 8,45,065, or, less the 25½ per cent. margin, Rs. 6,29,574. On the 25th July, 1914, in the cotton market, prices at Bombay began to fall owing to political events in Europe. In their daily cotton report of the 30th July, 1914, Messrs. P. Chrystal & Co. made the following remark: "There is practically no business in the local market pending developments in Europe." In their daily cotton report of the 31st July, 1914, Messrs. P. Chrystal & Co. remarked: "The local market is demoralised on account of grave political situation." On the 1st August, 1914, Messrs. P. Chrystal & Co. in their daily cotton report remarked, "The local market is practically closed. Quotations are only nominal." Those remarks of Messrs. P. Chrystal & Co. were fully justified by the facts then known, and under the circumstances existing on the 1st August, 1914, the realisable value of the cotton then held by the Bank as security for the overdraft was not sufficient to cover the then overdraft; the evidence shows that there was then practically no market. Their Lordships agree with the Courts below that the Bank was justified in refusing to increase the overdraft by honouring the cheques. It is to be observed that the Bank could at any time have demanded repayment of the whole overdraft. It is proved that after the 1st August, 1914, the Bombay cotton market got gradually worse, and that there were very few purchasers of cotton at Bombay during August, 1914, and only in small lots. In August, 1914, there was a large stock of about 500,000 bales of unsold cotton in Bombay. The trial Judge by his decree rightly dismissed the counterclaim and the High Court in Appeal confirmed that decree.

Before concluding this judgment their Lordships think it right to say that they see no reason for questioning the propriety of action of the solicitor for the defendants in the suit.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the costs of this appeal.

In the Privy Council.

HARIDAS RANCHORDAS AND ANOTHER

v.

THE MERCANTILE BANK OF INDIA, LIMITED.

DELIVERED BY SIR JOHN EDGE.

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