

(1880) 03 AHC CK 0002

Allahabad High Court

Case No: None

Sheo Singh Rai and
Another

APPELLANT

Vs

The Secretary of State
for India in Council

RESPONDENT

Date of Decision: March 1, 1880

Citation: (1880) ILR (All) 756

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Straight, J.

The plaintiffs in this suit claim from the Collector of Meerut as representing the Secretary of State for India, restitution of two Government Promissory notes of the loan of 1854-55, made over to the Meerut Treasury on their behalf by their duly authorised agent on the 12th August 1872. They further ask alternatively for other notes of equal value or for the equivalent cash with interest at four per cent. from date of last payment. The lower Court decreed the claim and the defendant now appeals.

2. The facts of the case, which are not disputed, appear to be as follows:--The plaintiffs are Commissariat agents carrying on business in the city of Delhi, under the style or firm of Sheo Singh Rai, Nihal Singh, On the 12th August 1872, they sent by the hand of their gomashta, Sumair Chand, nine Government Promissory notes of the value in all of Rs. 48,000 to the Meerut Treasury office, in order that they should be forwarded thence to Calcutta for cancellation and consolidation into one note. At that time the regular Treasury Officer, Mr. Billings, was absent on leave, and one Babu Kali Charan, Deputy Collector, was holding charge in his stead. Employed in the office in the capacity of chief clerk was a certain Muhammad Husain, and it was his special duty, when securities were left there for transmission to Calcutta, to

see that they were carefully packed and despatched, as speedily as possible, and to prepare the necessary forwarding letter that had to accompany them, Muhammad Husain had been for many years in the Government service, and the most perfect confidence was reposed in him by his superior officers, and those who were acquainted with him or had to come in contact with him in business matters had entire faith in his integrity and honesty. It was to this man that Sumair Chand delivered the nine Promissory notes on the 12th August 1872. The following is his account of what then occurred: "Muhammad Husain then made a mark on the notes and then I signed for Nihal Singh: Muhammad Husain himself wrote something, or he caused some other person to write something, on the notes, and then he had the interest paid to me: on the same day he again asked me to sign the notes at another place, which he said was required to get the notes consolidated: these, too, I signed for Nihal Singh: then he asked me to remain outside and that he would do all that was required: after some time I was called in, and Muhammad Husain gave me a receipt in English." The receipt here referred to was for the nine Promissory notes, and bears the signature of "Kali Charan, Treasury Officer." In ordinary course it should take from ten to fifteen days to transmit the notes to the Public Debt Office at Calcutta for cancellation and to get back the consolidated note. Subsequent to the 12th August 1872, Sumair Chand called on two or three occasions at the Meerut Treasury to know whether his note had arrived, but on each occasion his inquiries were answered by Muhammad Husain to the effect that it had not been received from Calcutta. Somewhere about the beginning of March 1873, Muhammad Husain absconded, and on the 31st of that month a consolidated note, which had been received from Calcutta, for Rs. 31,200, was handed to the plaintiffs, but as it should have been Rs. 48,000, as shown by the receipt of the 12th August 1872, suspicion was necessarily at once awakened and inquiry was instituted, with the following result. Two of the nine notes made over by Sumair Chand to Muhammad Husain, numbered 017849 for Rs. 12,000, and 020102 for Rs. 5,000, had never been forwarded to Calcutta at all, but had been misappropriated by him, he taking advantage of the blank indorsement of the name of Nihal Singh by Sumair Chand to make the latter one payable to himself, by writing above that signature the words "Sold to Muhammad Husain": while, on the other, under a pretended authority from Nihal Singh, he put "Pay to the Agra Bank or order." On the note for Rs. 12,000 the Bank made Muhammad Husain an advance in August 1872, of Rs. 8,000, and on that of Rs. 5,000 in December of Rs. 2,300, retaining them as security. With regard to the remaining seven Promissory notes, they remained in the Treasury at Meerut until the 19th February 1873, upon which day they were sent to Calcutta for cancellation and consolidation, accompanied by a forwarding letter signed by Mr. Billings, who had returned from leave and resumed charge, At that time Muhammad Husain had made the necessary formal indorsement on these seven notes, above the name of Nihal Singh, which amounted to an acknowledgment on the part of that person, that he had "received a new note in exchange." When the misappropriation of these two notes was discovered, "they were, as has already been stated, in the hands of the

Agra Bank; and this fact coming to the knowledge of Mr. Billings, he, in his capacity of a Magistrate of the first class, issued a most illegal and improper search-warrant, upon the strength of which the Bank premises were entered, and the two notes were carried away by force to the Treasury for restoration to the plaintiff's. The natural consequence of this most unwarrantable proceeding was, that the authorities of the Bank instituted a suit against Mr. Billings, for restitution of the two notes and damages for their illegal seizure, and in the course of the litigation, the Secretary of State for India, and the present plaintiffs, were brought upon the record as defendants. Ultimately this Court, upon appeal by the Bank, on the 29th May 1876, reversed the decision of the Subordinate Judge dismissing the claim of the Bank, and passed a decree in its favour, the result of which was that the two notes were restored. These two notes are the subject of the present suit, and it may be remarked that, since their return to the Bank, they have been negotiated away, and are now in the hands of third parties, whose names do not appear.

3. The plaintiffs came into Court with their present claim on the 17th August 1878, and the relief asked in the plaint is that " the Government may be directed to make restitution of the two notes, or to deliver other notes of equal value or their value in cash, amounting to Rs. 17,000, with interest at four per cent., from date of last payment, viz., the 1st July 1872, to date of suit, amounting in all to Rs. 21,165." This the Subordinate Judge has decreed, and the defendant now appeals against that decision on two grounds, (i) That the plaintiffs, in the person of their agent, were guilty of contributory negligence, (ii) That a master is not liable in damages for loss or injury sustained through the fraudulent or dishonest act of his servant without the scope of his employment.

4. Both these points were urged at great length on the hearing of this appeal by the Senior Government Pleader, and many English and American authorities were cited, under both heads of argument. But upon a close and careful consideration of all the facts in the case, it appears to me that the contention for the appellant proceeded on a complete misconception of the real nature of the suit, for which I may add the Subordinate Judge is primarily responsible. In my judgment he was in error in dealing with the question between the parties as governed by the law relating to bailments. The nine Promissory notes were not made over to the Meerut Treasury for any temporary purpose, upon the accomplishment of which they were to be returned or otherwise disposed of according to the directions of the bailor. On the contrary, they were unconditionally surrendered, when they were handed over by Sumair Chand for cancelment, and the effect of their delivery to the Treasury at Meerut is the same as if they had been taken by the plaintiffs to the Public Debt Office at Calcutta and handed over there. In those individual notes, as individual notes, they retained no interest. Properly the plaintiffs might for their own protection have refused to give them up except upon receipt of the consolidated note, and I think they would have been justified in doing so; but the Government has, for its own convenience and security, established a rule that persons wishing to

have old securities cancelled and consolidated are required, not only to deliver up their old securities, but to give a receipt in advance for the new one, their only document of title being the written acknowledgment of the Treasury Officer, that their securities have been received. As a matter of fact they have no option, and in order to obtain what they want, they must perforce conform to the requisitions. In my opinion, the receipt given in the present case by Babu Kali Charan the acting Treasury Officer, must be regarded as an undertaking on the part of the authorities to deliver one consolidated note for Rs. 48,000 in due course. Consequently. I do not think that there was any bailment of the two notes in the defendant for the plaintiff's, but that there was a contract entered into, the effect of which was that the plaintiffs were entitled to demand, and the defendant was bound to give, a consolidated note of the value of Rs. 48,000. The present suit is, therefore, in reality one for damages on account of the defendant's refusal to discharge his obligation, and the measure of those damages must be the amount by which the note for Rs. 31,200 falls short of Rs. 48,000, with interest. Regarding the case in this light, it is difficult to see in what way the two pleas in appeal are in any way an answer to the plaintiffs' claim. The authority of Babu Kali Charan to bind the Government is unquestioned, and if he chose to contract it into a responsibility without proper care and caution, that is a matter which in no way affects the position of the plaintiffs. It is perfectly obvious, that Kali Charan was guilty of the greatest negligence in not verifying the nine notes, and seeing they were properly indorsed before he gave his receipt. Moreover, he was grossly careless, both in failing to lock them up in the safe, of which he had the key, and in forgetting their receipt, and in not requiring Muhammad Husain to prepare the forwarding letter for his signature, and to pack them for transmission thither. The evidence of Mr. Billings seems to me to establish the negligence of the Treasury in the most conclusive way, and had a bailment been established, or were this rightly an action of tort for the loss of the two notes, I think an overwhelming case would have been made out against the defendant. I am well aware that heads of departments and officers in a superior position in the public service are, from pressure of business, necessarily compelled to rely largely on the good faith and honesty of their subordinates, and I should never be disposed to draw the line too tightly in forming an opinion as to what, under this or that state of circumstances, they ought or ought not to have done. But reasonable and intelligent confidence is one thing, blind and careless trust is another; and while the one may fairly be accepted in explanation or excuse, the other should never be allowed in extenuation or relief from responsibility. The clerk in a bank handles unlimited sovereigns and bank notes during the hours of business, but no employer exercising the most ordinary precaution or prudence would fail to have his cash and securities locked up at the close of each day and so kept until banking hours recommenced. To do otherwise would afford unreasonable temptations, of which, were the clerk to take advantage, the employer should not have the benefit to escape from the liability to third parties for any loss or damage they might thereby sustain.

5. In the present case the Government had the misfortune to be badly served. It had, as its representative in authority, a person who was negligent and slipshod in the discharge of his duties of control and supervision over a subordinate, who took advantage of these deficiencies to perpetrate a series of misappropriations and forgeries. Upon all the facts the inference is irresistible, that, but for this laxity of administration in the Meerut Treasury on the part of Babu Kali Charan, the two notes could never have been stolen, nor the forgeries committed in respect of them, and such being the case it is impossible to avoid remarking, that it is a matter for regret the plaintiffs' claim should ever have been contested, much less that a countercharge of contributory negligence should have been made against them. Were it necessary to dispose of this allegation, I should have unhesitatingly come to the conclusion, that no sufficient case to establish it had been made out. A person like Sumair Chand going into a Government office can hardly be expected to anticipate that he will be made the victim of fraud and misrepresentation by the officials employed there. On many previous occasions Sumair Chand had drawn interest on promissory notes for his masters at the Meerut Treasury through Muhammad Husain, and had also made over notes to him for consolidation and always without misadventure. It is not by what we know now, but from the state of things that existed at the time of the delivery of the notes, that the conduct of Sumair Chand, must be judged, and looking at it from this point of view, I do not find any such evidence of co-operative negligence as would disentitle the plaintiffs, either as bailors or parties damnified, from recovering damages.

6. But, as I have in an earlier part of this judgment pointed out, this suit is properly one for breach of contract, by reason of the failure of the defendant to discharge his obligation to give a consolidation note to the extent of Rs. 48,000, and, in my judgment, the pleas in appeal to this Court, and in answer to the plaintiffs' claim in the Court below, are irrelevant and afford no answer to the case set up. The property of the plaintiffs in the nine notes was determined, when they were handed over and the receipt was given, and thereupon an implied undertaking on the part of the defendant to deliver an equivalent security after the lapse of a reasonable interval of time was to be assumed. It is clear that, to all intents and purposes, the notes had been reduced into the possession of Government, and that all right to or control over them had been parted with by the plaintiffs. Whether they were properly taken care of or not was indifferent to them, for, at any time on the presentation of their official receipt, they were entitled to demand a consolidation note for Rs. 48,000. Such being the view I entertain of the case, I am of opinion that this appeal should be dismissed with costs. But the decree must be amended from the shape in which the relief has been given by the lower Court, so as to declare the plaintiffs entitled to damages, such damages to be the amount of the two promissory notes for Rs. 12,000 and Rs. 5,000, with interest from 1st July 1872, to date of payment.

Pearson, J.

7. I concur generally and substantially in the view taken of the case by my honorable and learned colleague, and in dismissing the appeal with costs, and in amending the decree of the lower Court in the manner proposed by him.