
(1878) 02 CAL CK 0014

Calcutta High Court

Case No: None

Mothoormohun Roy

APPELLANT

Vs

The Bank of Bengal

RESPONDENT

Date of Decision: Feb. 11, 1878

Hon'ble Judges: Richard Garth, C.J; Markby, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The Bank was also at one time under the impression that even during the currency of the bills, when the Bank had no present right to sue Radha Gobind upon them, they could still, under the 17th section of the Act (XI of 1876) refuse to register the transfer. But this is clearly not so. The language and the evident intention of that section points to a present debt only as conferring a right upon the Bank to refuse either to register a transfer, or to pay dividends; and this view is strongly fortified by the English case of *In re The Stockton Malleable Iron Co.* L.R. 2 Ch. D. 101, in which it was held that the words "due" and "indebted" in the Articles of Association of a trading company, which gave to the company a lien upon shares similar to that given by this Act to the defendants, must be taken to refer to debts presently payable.

2. With reference, however, to the demand of registration alleged to have been made on July 31st, it has been distinctly proved that two bills of Radha Gobind, which matured on the 14th and 22nd of July, were not (for some reason or other) included in the mortgage arrangement which was made between the Bank and Radha Gobind on the 8th, so that the amount of these bills was due to the Bank on the 31st; and the Bank was therefore clearly justified in refusing the transfer on that day.

2. The plaintiff's case, therefore, wholly depends upon the application which is said to have been made on 1st and 3rd of July.

3. After dealing shortly with the case on its merits, the learned Chief Justice continued:

We think, therefore, in substance that there is no reason to disbelieve the plaintiff as to the applications to register the transfer which were made on the 1st and 3rd of July.

4. But then arises the formidable objection which was made by the defendants in the Court below, but which it was then not necessary to consider, that the application for the registration of the transfer was made during the period when the books were closed. We consider that this objection must prevail.

5. In order to entitle the plaintiff to ask the Court for a mandatory order, directing the Bank to register the transfer, it is clear that the plaintiff must show, in the first instance, that he applied for such registration at a time and under circumstances when the Bank was enabled and bound to comply with his request.

6. It was impossible for the Bank to comply with it at a time when the books were closed, and although that reason for not registering might not have been given by the Bank when the application was made, we think that they have a perfect right to avail themselves of it now, because it is one which, in justice to their other customers and to the public, they could not, by any extraordinary exception in the plaintiff's favour or otherwise have removed, and it is one too of which the plaintiff, in common with the rest of the public, must be taken to have been aware, because the power under which the closing of the transfer books took place is conferred upon the Bank by Act XI of 1876, Section 21 (a public Act): and the fact that the transfer books would be closed on the 1st and 3rd of July was publicly notified by the Bank in accordance with the statutory direction.

7. We are of opinion, therefore, (on these reasons, that the plaintiff's case must fail; and that this appeal should be dismissed with costs on scale 2.