

(1928) 03 BOM CK 0034

Bombay High Court

Case No: None

The Mercantile Bank of India,
Limited

APPELLANT

Vs

F.M. Caeiro

RESPONDENT

Date of Decision: March 26, 1928

Acts Referred:

- Bombay Port Trust Act, 1879 - Section 39, 42

Citation: 114 Ind. Cas. 389

Hon'ble Judges: Amberson Marten, C.J; Blackwell, J

Bench: Division Bench

Judgement

1. As regards Appeal No. 33, this closely resembles the facts in Appeal No. 32 of 1927. Accordingly our judgment in Appeal No. 32 must be treated as embodied in our judgment in this appeal.

2. But the difference is this. We are dealing here with Port Trust debentures instead of the Improvement Trust debentures and they are issued under the Bombay Port Trust Act, 1879, Sections 39 and 42, but on similar terms. Further, looking at the list of debentures, Ex. A to the plaint, we are not concerned with the last three, viz, new Debentures Nos. 11541, 11539 and 11538, because the Mercantile Bank did not hold them at the date of the suit. Then, as regards new Debentures Nos. 13342 and 13341, the proceeds of those debentures were recovered by the Bank before the suit. Consequently the Bank are now being sued for the proceeds. That leaves us then with a suit for the return of nine new debentures and the proceeds of two others.

3. Now here, like in Appeal No. 32 See 114 Ind. Cas. 383.--[Ed.] all the old debentures were renewed by the Alliance Bank and it was the new debentures which were endorsed over to the Mercantile Bank. There is, however, this difference, that in the present case the new debentures are for the same sum as the old debentures, and

not for consolidated amounts, as was the fact in the former case. Further, as a detail one finds that the word "cancelled" is endorsed more frequently in the Port Trust debentures both in ink and by perforations. On the other hand, in the new debenture there is a distinct reference to the renewal, e.g. the words "renewal of No. 7515" in the specimen before us.

4. Stress was laid by Counsel for the plaintiff on this fact, and he adopted the argument already used in the former appeal, that this renewal must be looked at merely as a new piece of paper, more especially as the renewal was due to the fact that all the places for interest in the old document were filled up. But after giving full consideration to what has been urged before us on behalf of the plaintiffs, we think our decision in the former case governs our decision in the present case, and that accordingly the Mercantile Bank are entitled to retain these documents.

5. I would add this that there is, in our opinion, an advantage in having what is generally known as a clean piece of paper. In other words, there is a distinction between a promissory note full of endorsements, and a promissory note which is a clean document payable only to A or order or only bearing A's endorsement. The effect then of our decision is that a person in the position of the Mercantile Bank in the present case is not obliged before he becomes the holder of one of the new debentures to enquire into the title of the old debentures, nor to call for their production, and search through all the old debentures and possibly earlier still. In this connection I may notice that old Debenture No. 7515 is itself stated to be a renewal of No. 4321. So if the plaintiff was correct it would not be safe to stop merely at the old suit debenture, for the earlier title should have been acquired into also.

6. The result will be that the appeal in this case will also be allowed, and the suit dismissed as against these particular defendants, viz., the Mercantile Bank. There has been no appeal by any of the other defendants. There will be a similar order as to costs as in Appeal No. 32 See 114 Ind. Cas. 383. The direction in the decree that the Bank should hand over those new debentures will be discharged.