

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Michael Macauliffe v. Charles Wilson, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 26th November 1898.*

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Present:

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The Appellant in this case became a shareholder in the Himalaya Bank in 1886, several years before the transactions which are the subject of this Appeal. The Respondent had become a Director of the Bank in 1885 and continued to be one until it stopped payment on the 8th July 1891 and went into liquidation. On the 16th of May 1893 the Appellant brought a suit against the Respondent alleging in his plaint that the Respondent strongly advised him to buy shares in the Bank as a good investment and said the Bank had a large reserve fund, was on a thoroughly sound footing, and that the Directors had declared and paid the usual dividend of 10 per cent.; that the Respondent had been for years a Director of the Bank and for years, certainly since 1887, had issued or permitted the issue of false half-yearly reports and had issued false balance sheets that alleged the existence of a reserve fund of Rs. 70,000 in 1885, and that every half-year the sum of

Rs. 5,000 had been added to the reserve fund, whereas no reserve fund ever existed; that the balance sheets purported to show that each half-year a profit of about 19 per cent. on the capital had been made whereas no profit had been made; that in July 1890 the Respondent issued a balance sheet and subsequently issued a Directors' report both of which he knew to be false; that on the 28th of August 1890 the Appellant on the faith of the false statements of the Respondent, made both as a Director and as a private individual, was induced to purchase 100 shares for which he paid Rs. 11,000 on the 10th of September 1890; that on the 31st of October 1890 the false report and balance sheet for the half-year ending the 30th of June 1890 was laid before the shareholders and the *ad interim* dividend of 10 per cent. declared and paid on the 1st of August 1890 was on that day confirmed the Respondent using the Appellant's proxy for that purpose; that about the end of November 1890, by reason of the false representations made by the Respondent, the Appellant was induced to purchase 47 more shares for which he paid Rs. 5,170 on or about the 27th of November 1890. The Respondent pleaded that he did not induce the Appellant to make the purchases and did not make any false statement or misrepresentation. The suit was heard by the Subordinate Judge of Dehra-Dun who on the 31st July 1893 made a decree in favour of the Appellant. On appeal to the High Court for the North-Western Provinces this decree was reversed and the suit was dismissed. Although the Courts differed in the result they were agreed as to some of the facts in the case and as their Lordships will treat concurrent findings of fact as binding upon the parties it is unnecessary to consider the evidence which is only applicable to them. Both Courts have found that the

balance-sheets issued since 1887 were false. But they agree that the Respondent is not responsible for them. The High Court says there is not sufficient evidence to show that the balance sheets issued previous to that of 1890 were false to his knowledge. The Subordinate Judge found expressly that he was not responsible for those balance sheets. They were prepared by Moss the manager of the Bank who was absent in Australia when that for the half-year ending on the 30th of June 1890 was prepared. It was indeed admitted by Mr. Mayne who appeared for the Appellant that previous to April 1890 the Directors were acting upon representations made to them by Moss. The important part of the case is the issuing the balance sheet and report for the last half-year and declaring and paying the dividend on the 1st of August. Both Courts have found that the verbal representations alleged to have been made by the Respondent were not proved. The evidence of the Appellant of these representations has not been believed by either of the Courts. The case of the Appellant must therefore rest upon what was done after April 1890.

It appears in the minutes of a meeting of the Directors of the Bank on the 10th of July 1890 of which the Respondent was chairman that the Directors had gone through the accounts of the Bank and that the state of its affairs had become known to them. In the minutes of a meeting on the 16th of the same month the Respondent being the chairman it is stated that "the half-yearly balance sheet ending 30th June 1890 having been duly approved of it was decided to declare the usual *ad interim* dividend of 10 per cent. per annum, and that the usual notice be inserted in the newspapers." And both Courts have found that the Respondent knew that balance sheet to be false.

With regard to the 100 shares bought on the 10th September 1890 the material question is whether the Appellant in buying them was acting upon a representation contained in the balance sheet ending on the 30th June 1890 or made by the declaration of the *ad interim* dividend and was thereby induced to buy those shares. *Barry v. Croskey*, 2 J. & H. 23, *Peek v. Gurney*, 6 L. R. E. & I. App. 412. The Appellant was examined as a witness in support of his case and in considering the value of his evidence it should be observed that as regards the verbal representations said to have been made by the Respondent neither of the Courts below has believed his evidence. He said (Rec. p. 14) "On 10th September I bought 100 shares at Rs. 110 each. I produce the scrip. I subsequently bought more scrip in the end of November—47 shares at the same price from the Defendant. The scrip is in the possession of the Mussoorie Bank. In purchasing these I was influenced by the considerations mentioned before, by the half-yearly report for the half year ending 30th June 1890 Exhibit B dated 31st October 1890." In cross-examination (p. 22) being questioned as to a letter of his to the Respondent of the 17th September 1891 in which he said "You signed the Directors' report for the half-year ending 30th June 1890 declaring a dividend at the rate of 10 per cent. per annum and stating that the net profits were Rs. 19½ per cent. and a fraction. By this report the public were deceived as to the state of the Banks and I myself was led to buy 147 more shares from you." And asked why he was led by the balance sheet of the 30th June 1890 to purchase 147 shares he answered "The No. 147 was a mistake for 47, and the mistake of writing 147 was a clerical error . . . . The balance sheet of 30th

“ June 1890 did not influence me in buying the “ shares.” In the printed record before their Lordships there is between the words “ the ” and “ shares ” the words (paper torn). It is not necessary to quote the whole of his evidence on this matter. In their Lordships’ opinion the effect of it is that he was not induced to purchase the 100 shares by the balance sheet of the 30th June 1890 or the declaration of the *ad interim* dividend.

As to the 47 shares the case is different. The evidence relating to that purchase is mainly documentary. It appears in the Appellant’s deposition that before the 8th September 1890 there had been a negotiation for the purchase of the 100 shares, and on that day the Appellant wrote to the Respondent “ I have sold those 100 shares “ to Wright & Co. and they pay transfer charges, “ and I have also sold 200 other shares to our “ friend at Sialkot, so if Moss ” (the Manager of the Bank) “ will lend me Rs. 10,000 we can do a “ large business.” On the 3rd October he wrote another letter to the Respondent in which after speaking about the payment for the 100 shares he said “ I suppose Mr. Moss has returned by this. “ Have you asked him at what rate he can lend “ me money, say Rs. 5,000? If he lend it at 8 per “ cent. I will buy 46 more shares in the Himalaya “ Bank from you at the same price.” On the 20th November he wrote to the Respondent “ I do not understand that I only receive divi- “ dends on the 47 shares from the 1st of January “ 1891. It is only two months since I bought “ the 100 shares from you without any such “ understanding and as the dividends for the “ current half-year will not be paid till March or “ April I cannot consent to any such condition “ of the purchase of the 47 shares as you now “ propose nor should I have gone to so much “ trouble in raising a loan for their purchase if

“ you had said that was what you meant. I  
 “ explained to you that I could only buy  
 “ Himalaya shares on favourable terms. The  
 “ Bank has now a very bad name as evidenced  
 “ by the large extra security required by the  
 “ Mussorie Bank and by other indications also.”

He does not notice the half-yearly balance sheet, which he said in his deposition he received in October, or the *ad interim* dividend, as having induced him to buy the shares. And on the 27th November he wrote “ You state that  
 “ I am to draw dividends for the current half-  
 “ year so the matter is settled between us.”

A more important letter is one which the Appellant wrote to the Respondent on the 11th March 1891. It is as follows :—

“ Dear Wilson,—What are the strange rumours which I  
 “ hear again respecting the Himalaya Bank ? I heard things  
 “ against it last year but they were denied by you and the  
 “ other Directors and so I myself was led not to believe them.  
 “ At the same time you sold me a large number of shares at  
 “ less than the market price. *Capital* has I am told a very  
 “ damaging paragraph against the Himalaya Bank in which it  
 “ is stated that its paper is being hawked about in the streets  
 “ of Calcutta. I do not know what all this means.

“ Of course I knew very well last year that the Bank  
 “ had become exceedingly unpopular, and had lost numerous  
 “ constituents under Mr. Greenway’s management but I was  
 “ hoping that it would come round after Mr. Moss’ return.

“ Banks generally go to grief and indeed can only go to  
 “ grief either by speculation or by large bad debts. Now I do  
 “ not think that there is anybody robbing the Himalaya Bank  
 “ and its operations being necessarily on a small scale I have  
 “ not heard nor can I conceive that it has had any serious  
 “ losses, and I do not understand the rumours I hear except in  
 “ so far as that the Bank’s business is not good at present.

“ I would request the favour of your enlightening me and  
 “ giving me your advice as to whether I ought to sell out and  
 “ if so at what rate ? You were quite right in selling and I  
 “ cannot blame you if the worst comes to the worst ; but  
 “ I think you ought to give me your candid advice now that  
 “ matters appear to have become serious.”

This letter is not consistent with the Appellant having been induced to buy either the 100 or the 47 shares by the half-yearly balance sheet of

June 1890 or the publication of the *ad interim* dividend. Their Lordships think that if he had been so induced there would have been some allusion in it to them.

It has been seen that his evidence about the verbal representation was not believed by the Courts below, and their Lordships cannot consider his evidence where he says that in purchasing the 47 shares he was influenced by the half-yearly report dated 31st October 1890 as sufficient proof of it or infer it from his knowledge of the reports. In their opinion he has failed to prove that, in buying the shares he acted upon or was induced by any false representation for which the Respondent is liable and they will humbly advise Her Majesty to affirm the decree of the High Court and dismiss the appeal. The costs of it will be paid by the Appellant.

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