Privy Council Appeal No. 27 of 1926.

The Bank of N. T. Butterfield and Son, Limited - - - *Appellants*

v.

Isaac Golinsky - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF BERMUDA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH JUNE, 1926.

Present at the Hearing:
VISCOUNT HALDANE.
LORD ATKINSON.
LORD DARLING.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the Supreme Court of Bermuda. There were two fully paid shares in the appellant Bank, which shares had been seized under a writ of execution, and they were claimed by the respondent and by one Foote, and also by the Bank, so far as its lien for alleged indebtedness was concerned.

A summons was taken out under which an order was made that the title to the shares should be determined by the Court, the respondent to be the plaintiff as regards his claim and the appellant Bank and Foote the defendants. The purpose of the summons was to decide, under the circumstances to be referred to, which of these three parties had the better title to the shares. The decision of the Court below has been that the respondent, Golinsky, has the better title.

Golinsky's title arose in this way: he was an equitable assignee from one Moniz, assignee of a security for £350 and interest, and what he claimed was that his title to the £350 and interest came first. His assignment was made on the 28th November, 1924,

from Moniz to himself. It was not registered in the appellant Bank register, but it was a good assignment in equity.

Then later on there were judgments against Moniz and there were various proceedings, not material to discuss, and finally, on the 29th May, 1925, the appellant Bank obtained judgment in an action against Moniz for a sum of over £1,000, and a writ of *fi. fa.* was issued against his chattels. Under that writ the Provost Marshal General of the Court seized the two shares which are the subject of these proceedings.

There is no evidence at all to show whether, at the time of the assignment of the 28th November, 1924, Moniz, the holder of the two shares, was indebted to the appellant Bank, and therefore their Lordships have to take it that they are dealing with this case on the footing that the title set up by the Bank is a title based upon their rights under their statute and Bye-laws, in respect of liabilities that have subsequently emerged.

Turning to these, they are said to show that, at any rate subsequently to the assignment to the respondent, the Bank became creditors of Moniz and recovered judgment, and have a lien or right to payment out of the two shares, which is paramount to anybody else's title. The respondent, Golinsky, has not been registered and his title is not one of which they are bound to take notice further than this, that a Court of Equity would enforce it as amounting to a good right to a transfer if the equity existed in Golinsky.

Turning now in the first place to the statute of the Bank (Act 11 of 1904) under which the Bank was incorporated, the relevant section is Section 22, which provides that in the event of a seizure of the shares of the shareholder under an execution the shares and all dividends due on them are only to be available for so much as remains " beyond the amount of the then existing liabilities of the Bank, direct and collateral, whether payable at the time of such notice or at any future time." That is a kind of provision which was not unfamiliar in the old classes of banks, but it is sufficient to say that we have nothing to do with it here, because there is no evidence of any liability of the Bank which could be available to bind the shares.

Then turning to the Bye-laws the only two of importance are first, 44, which says : " The Directors may decline to register any transfer of a share made by a shareholder who is indebted to the Bank "—no question arises as to that—then 57, which says: " The Directors may deduct from the dividends payable to any shareholder all sums of money due by him to the Bank on account of calls or otherwise." There is no question of deduction from dividends here ; therefore that article does not apply.

Their Lordships are therefore thrown back upon the general law, and the general law is this : that where there has been a transfer in equity, even although there has been no registration of the legal title, then, as shown, for example, in the judgment of the House of Lords in the case of the *Bradford Banking Company,*

Limited, v. *Henry Briggs, Son & Company, Limited* (L.R. 12 App. Cas. 29), the equitable assignee is entitled to say: I have got an equitable property which you cannot cut down by making any advance to or purchase from my assignor. I am, in equity, the person entitled, and unless you can set up a legal estate against me without notice you cannot defeat that equitable title.

On that principle the learned Judges in the Court below came to the conclusion that Golinsky, the respondent, had got a good equitable title to these shares which could not be defeated by anything done until he was restricted in it by notice of somebody else's title subsequently obtained. After he had notice it would not have been open to him to expand his security or acquire further equitable title in derogation of the title of which he had notice, but until that happened he remained secure in possession of what he had already got.

On that principle the learned Judges in the Court below determined this appeal, and their Lordships think that they so decided rightly, and they will therefore humbly advise His Majesty that this appeal be dismissed.

In the Privy Council.

THE BANK OF N. T. BUTTERFIELD AND SON, LIMITED

v.

ISAAC GOLINSKY.

DELIVERED BY VISCOUNT HALDANE.

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