Privy Council Appeal No. 83 *of* 1927.

Allahabad Appeal No. 14 *of* 1924.

Firm Tejpal-Jamna Das - - - - - - *Appellant*

v.

Ernest V. David, Official Receiver, and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST MAY, 1928.

Present at the Hearing:

VISCOUNT SUMNER.
LORD ATKIN.
SIR LANCELOT SANDERSON.

[*Delivered by* VISCOUNT SUMNER.]

On the 4th August, 1919, the firm Piare Lal-Basant Lal, of Cawnpore, was adjudged insolvent. A receiver had been appointed, and he had, in the course of his enquiries, learned that 35 bales of cloth, believed to be identified as the property of that firm, were at the godown of the present appellants, who are the firm Tejpal-Jamna Das. He thereupon went there and attached them. At a subsequent date the present appellants made an application in the Court of the Judge of Small Causes at Cawnpore to have the bales remaining after some had been sold and the proceeds of those sold adjudged to them under a charge alleged to have been created by the insolvent firm. Evidence was called at considerable length and the matter came to judgment. By that time it seems to be fairly clear that the case put forward by the appellants, as the Court understood it, was that, after dealings between the parties had continued for some time upon the basis of advances being made without any specific pledge, a time came when the bales were taken as a pawn and further bales were pawned from time to time. That, there-

fore, pointed to some specific date, at which and to some arrangement under which for the first time the bales delivered were charged as a security. For various reasons the Judge found that the case was not made out, and he dismissed the application.

The matter then went on appeal to the District Judge of Cawnpore, and, when he came to give judgment, he cleared the ground by various comments on the judgment of the first Judge, and stated as the question for his decision whether the lower Court was right in holding that the appellant firm was in possession of the goods as pledges and not merely on behalf of the insolvent firm, and, after an elaborate discussion, he arrived at the conclusion that the appeal ought to be allowed.

The case then passed upon second appeal to the High Court at Allahabad, which after again fully considering its judgment, remitted the case to the District Judge in order that he might deal with and find the facts upon six questions, two of which, if answered as they were ultimately answered, would dispose of the case and make it unnecessary to consider the further issues.

When the matter was remitted, another Judge had taken the place of the former District Judge. He went into the case under such disadvantages as resulted from his not having had it in hand from the first, but he found explicitly that the goods seized by the Official Receiver were not pledged by the insolvent firm to the appellant firm at all, and that sundry letters, which, if they were genuine, would have formed the strongest corroboration of the case that the goods had been so pledged, were brought into existence at a date later than that which they bore, for the purpose of supporting the case of the appellants.

Upon the District Judge's report, the High Court found with some regret that there was no question of law upon which they could review his decision; that his findings of fact disposed of the matter; and that the appellants' claim must fail. They did, however, subsequently give leave to appeal, and the appeal is now before their Lordships' Board *ex parte*. Their Lordships have had the advantage of the full assistance of both the appellants' counsel, and they have considered the matter with great care. It is quite true that the relations of the parties were such as made probable some such arrangement as was alleged, for when monies are advanced to importers for the purpose of their trade and the goods are placed in the godown of the lenders, it would be an exceedingly likely course of business that the goods should be regarded as security for the advances and that the lenders should take charge of or at any rate keep control over the realisation of the goods and should reduce the advances out of the proceeds when received. It is, however, an arrangement which, though not difficult to prove under certain circumstances, still has to be proved, and in this case the claimants, if they had a special charge over the property, had to show it, and have failed to do so.

Their Lordships are quite satisfied that, when the case came before the High Court in the first instance, the learned Judges might well have been puzzled, as they admitted they were puzzled, by the way in which the first District Judge had expressed himself, because he had never in terms decided that the pledge relied on was created at all. He never even decided in terms that the letters, which it was said supported the story of the pledge, were genuine. He embarked upon a discussion about the onus of proof, which might be not incorrect as regards some of the issues raised by the Official Receiver, but which seems to their Lordships to be unfounded as regards the issue raised by the appellants. He apparently overlooked the fact that, before starting upon this discussion, he had not said whether he decided or did not decide that the supposed contemporary letters were genuine or not, and he never found in terms that the charge relied on was established to his satisfaction. Whether it would have been possible to say that, as he allowed the appeal, his mode of dealing with it tacitly involved his so finding, is another matter, but, considering that his findings constitute the foundation of the subsequent proceedings, which related only to questions of law, it was of importance that they should be quite specifically stated. The High Court were, in their Lordships' opinion, quite warranted in asking for clear directions as to what it was that he intended to find, and they did so in perfectly clear and explicit terms. When the question was explicitly answered by another District Judge, the difficulty was removed, but with it were removed the appellants' chances of success. It is impossible for their Lordships to enter into a discussion now as to the probability that such a charge existed. By a finding which binds them, as it bound the High Court at Allahabad, it has been held that it has not been proved, and there the matter must end.

Their Lordships will humbly advise His Majesty that this appeal must be dismissed.

In the Privy Council.

FIRM TEJPAL-JAMNA DAS

v.

ERNEST V. DAVID, OFFICIAL RECEIVER, AND OTHERS.

DELIVERED BY VISCOUNT SUMNER.

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