Canara Bank

Vs

Canara Sales Corporation and Others

Civil Appeal No. 1777 of 1973

(G. L. Oza, V. Khalid JJ)

22.04.1987

JUDGMENT

KHALID, J. -

1. This is an appeal by certificate, against the judgment dated June 25, 1972, passed by a Division Bench of the Karnataka High Court. The first defendant-Bank is the appellant.

2. Original Suit No. 72 of 1962 was filed in the Court of Civil Judge, Mangalore, by the Canara Sales Corporation Ltd. through its Managing Director, V. S. Kudva. He died during the pendency of the suit and the suit was continued by the succeeding Managing Director of the Corporation. The suit was against two defendants : the appellant-Bank was the first defendant and the second defendant was one Y. V. Bhat who was the Chief Accounts Officer of the plaintiff, till 1961. He died during the pendency of the appeal before the High Court and his legal representatives were brought on record. When the suit was filed, the appellant-Bank was called the Canara Bank Ltd. After the nationalisation of banks it became the Canara bank which is the appellant before us.

3. The suit instituted for recovery of a sum Rs. 3,26,047.92, with the following allegations : The plaintiff is a private limited company with its head office at Mangalore. It had a current account with the appellant-Bank in its Mangalore Bunder branch. The Managing Director of the company and the General Manager of a sister concern of the company had been authorised to operate the said current account of the plaintiff with the Bank. The second defendant was attending to the maintenance of accounts of the plaintiff and was also in charge and custody of the cheque books issued by the Bank to the plaintiff. In March 1961, the second defendant was absent from duty for some time. During this process, he noticed certain irregularities in the accounts and brought this to the notice of the plaintiff. On verification, it was found that cheques purporting to bear the signature of Shri V. S. Kudva were encashed though they did not bear his signature. In other words the signature were forged. On March 25, 1961, a complaint was made by the plaintiff with the Superintendent of Police. The plaintiff appointed a firm of Chartered Accountants to conduct special audit of the company's accounts, for the years 1957-58 to 1960-61. This special audit disclosed that the second defendant had withdrawn, in all, a sum of Rs. 3,26,047.92 under 42 cheques. The suit was filed for recovery of the amount on the plea that the amounts as per the forged cheques were not utilized for the purpose of the plaintiff, that they were not authorized ones, that there was no acquiescence or ratification open or tacit on the part of the plaintiff, that the plaintiff was unaware of the fraud till the new accountant discovered it.

4. The appellant-Bank resisted the suit on the following grounds in their written statement :

(i) That the cheques were not forged ones.

(ii) Even if they were forged ones the plaintiff was not entitled to recover the amount on account of its own negligence.

(iii) There was settlement of accounts between the parties from time to time and as such the plaintiff was not entitled to reopen the same and claim the sums paid under the cheques in question.

(iv) The suit was barred by limitation.

5. The second defendant pleaded that the cheques were not forged ones and the amounts recovered by the cheques were utilized for the purpose of the plaintiff.

6. The trial court negatived the contentions of the first defendant-Bank and passed a decree for the sum claimed, with interest at 6 per cent from the date of the suit till recovery of the amount. In appeal before the Division Bench, the judgment of the trial court was confirmed.

7. The High Court certified that the case involved substantial questions of law of general public importance and granted certificate to file the appeal. It is thus that this appeal has come before us.

8. Venkataramiah, J. as he then was, who spoke for the Bench, has in his detailed judgment considered all the aspects of the case both on facts and on law and agreed with the trial court that the suit had to be decreed, repelling the contentions raised by the first defendant. The courts have concurrently found that the cheques were forged and that the second defendant was responsible for it. We do not propose to consider the question of facts in this judgment.

9. The learned counsel for the appellant, Shri Bhat argued the case at length and took us through various authorities, bearing on the question, most of which fell for consideration at the hands of the High Court also.

10. In the instant case, 42 cheques with forged signature were presented on various dates between the years 1957 and 1961. During the said period the appellant-Bank used to send to the plaintiff-respondent pass sheets containing the debit and credit entries in the current account of the plaintiff with the Bank every month and at the end of every half year ending June 30 and December 31, a letter used to be sent asking the respondent to confirm that the balance in is account with the Bank was as mentioned in the letter. Till March 1961, the correctness of the entries in the pass sheets and half yearly statements was not questioned by the plaintiff. The accounts of the plaintiff-company were being audited as required by the Companies Act by Chartered Accountants. The Bank contended that if there was misappropriation of an amount of nearly Rs. 3 lakhs by forged cheques by the second defendant this would have been detected by the Chartered Accountants and would have come to the notice of the plaintiff-company. The several entries in the books of account maintained by the plaintiff company show that all the amounts covered by the cheques in dispute had been credited in the books. The Managing Director of the plaintiff-company himself admitted that he had received the periodical statements and that he did not at any time intimate the Bank about the incorrectness either in the pass sheets or in the letters. The inaction of the part of the plaintiff-company and its Managing Director in not informing the Bank of the irregularities in the account and deliberately withholding such information from the Bank, according to the Bank, constituted negligence, disentitling the plaintiff from claiming an amount from the Bank in respect of forged cheques. Alternatively it was contended that the principle of estoppel operated against the

plaintiff from claiming the amount, on the ground of adoption or acquiescence.

11. The case of the appellant can be summarised as follows :

> After reasonable opportunities are given to the customer to examine the Bank statements, its debit entries should be deemed to be final and will not be open for reconstruction to the detriment of the bank. Of course, what is a reasonable opportunity will depend on the facts of each case.

12. In law, there can always be a settled or stated account between the banker and the customer. The question to be decided here is whether acceptance by the customer without protest of a balance struck in the pass book or statement of account constitutes a settled account. It is submitted that this aspect of the banking law has not yet been authoritatively decided by this Court and invited us to pronounce upon it.

13. On the question of estoppel it was contended that a representation may be made either by statement or by conduct; and conduct included negligence, silence, acquiescence or encouragement. If a customer of a bank, by his negligence to give timely information of forged cheques, allows amount to be drawn on such cheques, the debit will stand for the whole amount and the customer will be estopped from claiming the amount. If timely information was given, the Bank could have acted to ward off the mischief.

14. It was further contended that inaction for a long period would amount to such negligence, as would persuade a court to impute to the customer, with knowledge or at any rate constructive knowledge, to decline him relief, in an action for recovery of amounts, which would be to the detriment of an innocent party, namely the Bank.

15. For this purpose, dictionary meanings of the word 'knowledge' was brought to out notice."Knowledge may include not only actual knowledge, i.e., actual awareness of the facts relevant, but constructive knowledge, i.e. knowledge attributed by law to the party in the circumstances, whether he actually had the knowledge or not, and knowledge may be attributed to a person who has sought to avoid finding out, or has shut his eyes to obvious means of knowledge, e.g., the man who is offered valuables cheaply in circumstances which suggest that they may well have been stolen, but who refrains from enquiry."

16. Black's Law Dictionary, fifth edn. defines, "constructive knowledge" as : "If one by exercise of reasonable care would have known a fact, he is deemed to have had constructive knowledge of such fact, e.g., matters of public record." "Notice" means "bringing it to a person's knowledge."

17. Then he referred us to the Transfer of Property Act, Trusts Act, Law of Agency, etc. to contend that a person is said to have notice of a fact when but for willful abstention from an enquiry, he would have known it and that in equity a man who ought to have known a fact should be treated as if he actually does know it.

18. He then developed his submission as follows : It is accepted to be a duty of customer who knows that his cheques are being forged, to inform the bank. If he fails to give such an information, he is estopped from claiming that the cheques were forged. In law, there should be no difference in the consequence between a person having constructive knowledge and a person having actual knowledge. Thus a person having constructive knowledge of a matter, cannot be allowed to take advantage of his own negligence.

19. According to him the terms of contract between a banker and its customer can never be complete unless there is an implied condition that the customer was under a duty to examine the statement of account, particularly when the bank issues a notice that if no errors are pointed out within a specified time, the bank will proceed to believe that there are no errors. Such a notice imposes on a customer a duty to react and failure to react would amount to negligence, leading to estoppel.

20. The company's balance-sheet for four years clearly show that the auditors have examined the books and vouchers. It is in evidence (spoken to by PW 8) that the balance-sheets were adopted by the general bodies for four successive years. This shows that the statements of account, given by the Bank was accepted as such.

21. There is a duty on the part of the Company's directors to present a correct balance-sheet. Negligence to verify the obvious things, like examining the counterfoil of cheques amounts not only to estoppel but to adoption and ratification, for, no one can take shelter under one's own failure to examine the obvious. Further, the annual reports are to be treated as public documents and public are likely to rely upon its representation and defendant-Bank is, at any rate, a member of the public.

22. We have set out above, the contentions of the appellant, in detail, so as to bring into focus, the questions of law to be decided in the appeal.

23. Now we propose to consider the submissions made by the appellant to test their validity qua the Banking Law, applicable to India. It is true that there is no direct authority of this Court on this branch of the law. It is, therefore, necessary to briefly outline the confines of this branch of law.

24. The relationship between the customer of a bank and the bank is that of a creditor and debtor. When a cheque which is presented for encashment contains a forged signature the bank has no authority to make payment against such a cheque. The bank would be acting against law in debiting the customer with the amounts covered by such cheques. When a customer demands payment for the amount covered by such cheques, the bank would be liable to pay the amount to the customer. The bank can succeed in denying payment only when it establishes that the customer is disentitled to make a claim either on account of adoption, estoppel or ratification. The principle of law regarding this aspect is as follows : When a cheque duly signed by a customer is presented before a bank before a bank with whom he has an account there is a mandate on the bank to pay the amount covered by the cheque. However, if the signature on the cheque is not genuine, there is no mandate on the bank to pay. The bank, when it makes payment on such a cheque cannot resist the claim of the customer with the defence of negligence on his part such as leaving the cheque book carelessly so that third parties would easily get hold of it. This is because a document in cheque form on which the customer's name as drawer is forged, is a mere nullity. The bank can succeed only when it establishes adoption or estoppel.

25. The relationship between a bank and its customers indirectly arose before this Court in Bihta Co-operative Development Cane Marketing Union Ltd. v. Bank of Bihar ((1967) 1 SCR 848 : AIR 1967 SC 389 : 37 Com Cas 98 : (1967) 1 Com LJ 112). In that case a suit was filed by a Society registered under the Bihar and Orissa Co-operative Societies Act, 1935, and its Secretary. This Society had an account with the first defendant-Bank. Defendants and 7 were respectively its Joint Secretary and Treasurer. A sum of Rs. 11,000 was withdrawn from the account by means of a cheque, not from the cheque book of the Society, but from a loose cheque leaf surrendered by an ex-constituent of the bank. It bore the signature of defendant 7 but the forged signature of defendants 6

The suit against the bank, its manager and other employees was decreed by the trial court and confirmed by the High Court on the question relevant for our purpose but dismissed on the ground of jurisdiction. The question before us in this appeal was considered by this Court with reference to a judgment of the House of Lords in London in London Joint Stock Bank Ltd. v. Macmillan (1918 AC 777). It was argued before this Court that the decree against the bank could not be sustained since even though there was negligence on the part of the bank and its employees, the plaintiffs' Society was not altogether free from blame or negligence in that but for the part played by at least one of its employees in the matter of encashment of the cheque for Rs. 11,000, the fraud could not have been perpetrated. It was also argued that if both the parties were negligent or blameworthy, the plaintiffs' claim ought not to succeed. It was, in this connection that Macmillan case (1918 AC 777) fell for reference. Being a landmark case, we would set out the facts of that case in brief :

26. The plaintiffs Macmillan etc. brought a suit against the London Stock Bank for a declaration that the bank was not entitled to debit the plaintiffs with a cheque for 120 pounds. The plaintiff had in their employ a confidential clerk who made out cheques and got the signatures of partners. On a certain day, the clerk made out a cheque for 2 pounds and asked one of the partners to sign it, which the partner did. The next day the clerk did not turn up. The partners became suspicious and went to the bank, wen they discovered that the cheque 2 pounds was distorted by using the space on either side of the figure '2' by the clerk by insertion of additional figures 1 and 0 and thus he pocketed 120 pounds. The question before the House of Lords was whether the plaintiffs had been so negligent with regard to the cheque that their action against the bank should fail. The trial Judge found that the plaintiffs were not guilty of negligence in the mode of signing the cheque and decreed the suit. The Court of Appeal upheld this decision. The house of Lords reversed the judgment. We may usefully quote the following passages from the judgment. Lord Finlay observed : (AC pp. 789-90)

As the customer and the banker are under a contractual relation in this matter, it appears obvious that in drawing a cheque the customer is bound to take usual and reasonable precautions to prevent forgery. Crime, is indeed, a very serious matter, but every one know that crime is not uncommon. If the cheque is drawn in such a way as to facilitate or almost invite an increase in the amount by forgery if the cheque should get into the hands of a dishonest person, forgery is not a remote but a very natural consequence of negligence of this description.

The learned Lord Chancellor further observed : (AC p. 795)

Of course the negligence must be in the transaction itself, that is, in the manner in which the cheque is drawn. It would be no defence to the banker, if the forgery had been that of a clerk of a customer that the latter had taken the clerk into his service without sufficient inquiry as to his character. Attempts have often been made to extend the principle of Young v. Grote (4 Bing 253), beyond the case of negligence in the immediate transaction, but they have always failed.

According to the learned Lord Chancellor, leaving blank spaces on either side of the figure '2' in the cheque amounted to a clear breach of duty which the customer owed to the banker. The learned Lord Chancellor said : (AC p. 811)

If the customer chooses to dispense with ordinary precautions because he has complete faith in his clerk's honesty, he cannot claim to throw upon the banker the loss which results. No one can be certain of preventing forgery, but it is a very simple thing in drawing a cheque to take reasonable and ordinary precautions against forgery. If owing to the neglect of such precautions it is put to the power of any dishonest person to increase the amount by forgery, the customer must bear the loss as

between himself and the banker.

27. The principles so settled by the House of Lords was pressed into service before this Court in the above case. This Court held that the principle settled by the house of Lords could not held the bank. The accepted principle that if signatures on the cheque is genuine, there is a mandate by the customer to the bank to pay was reiterated. It was also held that if an unauthorised person got hold of such a cheque and encashed it, the bank might have had a good defence but, however, if the signatures on the cheque or at least one of the signatures are or is not genuine, here is no mandate on the bank to pay and the question of any negligence on the part of the customer, such as leaving the cheque book carelessly so that a third party could easily get hold of it would afford no defence to the bank. This Court distinguished Macmillan case (1918 AC 777), observing that if any of the signatures was forged the question of negligence of the customer in between the signature and the presentation of the cheque never arose. The suit was however, dismissed on another point and that of jurisdiction.

28. That takes us to the question as to whether there is a duty on the part of the customer to examine the pass book and inner part of cheques and to communicate to the banker within a reasonable time of the debits which he does not admit.

29. The kindred question connected with this is whether a customer is estopped from disputing the debits shown in the pass book when the pass book is returned without any comment and whether such a conduct could constitute a "stated and settled account". To answer this, it is necessary to examine the question whether the customer owes a duty to the bank to inform it about the correctness or misstatements in the entries in the pass book within a reasonable time and whether failure to do so would amount to such negligence as to non-suit him in a suit for recovery of the amount paid on a forged cheque. When does negligence constitute estoppel ? For negligence to constitute an estoppel it is necessary to imply the existence of some duty which the party against whom estoppel is alleged owes to the other party. There is a duty of sorts on the part of the customer to inform the bank of the irregularities when he comes to know of it. But by mere negligence one cannot presume that there has been a breach of duty by the customer to the bank. The customer should not be his conduct facilitate payment of money on forged cheques. In the absence of such circumstances, mere negligence will not prevent a customer from successfully suing the bank for recovery of the amount.

30. A case of acquiescence also cannot be flourished against the plaintiff. In order to sustain a plea of acquiescence, it is necessary to prove that the party against whom the said plea is raised, had remained silent about the matter regarding which the plea of acquiescence is raised, even after knowing the truth of the matter. As indicated above, the plaintiff did not, during the reluctant period, when these 42 cheques were encashed, know anything about the sinister design of the court that the plaintiff had with full knowledge acknowledged the correctness of the accounts for the relevant period, a case of acquiescence against the plaintiff would be available to the bank. That is not the case here.

31. In this judgment under appeal, the High Court has elaborately considered the law obtaining in the United States of America on this aspect. We need not exercise ourselves with the American law since the American law is different from the law that we follow. On the questions involved in this appeal, it is the law that obtains in England which had been followed by this Court and High Courts in the country. The authorities in England have more or less consistently held that there is no duty on the part of the customer to intimate the banker about any error that may be seen in the pass book

and that he will be entitled to claim any amount paid on forged cheque though there may be some negligence or inaction on his part in not being careful to discover the errors in the pass book or other documents. In the instant case, there is no evidence to show that anyone other than the second defendant knew that the forged cheques had been encashed. After the matter was discovered, immediate action was taken. Therefore, in the absence of any evidence of the plaintiff's involvement, the plaintiff cannot be non-suited on the ground of negligence or inaction.

32. Venkataramiah, J. when he rendered the judgment under appeal, laid down the law correctly, with the aid of authorities then available and on his own reasons. Now we are in a more advantageous position. We have an authority, more or less on identical facts, rendered by the Privy Council, in the decision in Tai Hing Cotton Mill Ltd. v. Liu Chong Bank ((1985) 2 All ER 947).

33. The facts of this case are similar to the case on hand; if anything, more to the disadvantage to the bank in terms of money involved than the instant case. The appellant before the Privy Council was a company, a textile manufacturer carrying business in Hong Kong. The company was a customer of the three respondent banks and maintained with each of them a current account. The banks were authorised to pay cheques on behalf of the company if signed by its Managing Director or two authorised signatories. The banks agreed to sent the appellant periodic statements which were deemed to be confirmed unless the customer notified the bank of any error therein by a specified time. Between 1972 and 1978 the accounts clerk employed by the company forged the signature of the Managing Director on 300 cheques purported to be drawn by the company for a total sum of $HK. 5.5 million. The banks paid the cheques on presentation by the clerk and debited the company's current account accordingly. The clerk was able to manipulate the accounts without any obstruction or discovery because he was in almost sole control of the receipts and payments made through the accounts. As in this case, the fraud was uncovered in May 1978, when a newly appointed accountant commenced reconciling the bank statements with the company's books. This was an exercise which had not been followed previously. The new accountant found at once that something was seriously wrong. He reported the matter to the Managing Director. The errant accountant was interrogated and he admitted the frauds. The company took action against the banks, the accountant and his wife. The trial Judge basing his decision on the fundamental premise that a forged cheque is no mandate to pay held that unless the bank established affirmatively that they were entitled to debit the customer's current account with the amounts of the forged cheques, the customer was entitled to the relief of the loss arising from the bank's payment on the forged cheques. A case was put forward before the trial Judge that the company was vicariously liable for the fraud played by its accountant. This was negatived and was not pursued. The trial Judge also rejected the submission of the banks that their terms of business which was contractual called the banking contract, should be construed as ousting the common law rule. The defence included one of estoppel raised by each of the banks. The plea of estoppel was put forward in two ways; first that the company was estopped by its negligence in management of its bank accounts from asserting that the accounts had been wrongly debited, and second, that the company was estopped by a representation to be implied from the course of conduct that the periodic bank statements were correct. The trial Judge rejected the plea of estoppel by negligence but held : (All ER p. 952)

[I]n the case of each bank the company, by failing to challenge the debits shown on the bank statements, had represented to each bank that the debits had been corrects made. He held that Tokyo and Chekiang had acted in reliance on the representations so made by their willingness to continue operating their respective accounts and to expose themselves to the risk of paying out on forged cheques. He did not find the same prejudice had been suffered by Liu Chong Hing as it only became exposed to the fraud in November 1977, the first representation to it not being made until the

company's failure to query the December 1977 statement of account. The Judge found that the chance of recovery from Leung had not been substantially disminished during the period (December 1977 to May 1978) during which it could be said that the estoppel was operative.

34. On this finding the Judge gave the company judgment against one bank, but dismissed its claims against the other two banks. The company appealed and the defeated banks cross-appealed. The Court of Appeal differed from the trial Judge on the general question. The Court of Appeal evolved a theory that the banker/customer relationship is such as to give rise to a general duty of care in the operation of it banking account and on this basis held that the company was in breach of the duty which they held it owed to the banks and must bear the loss. According to the Court of Appeal this duty arose in tort as well as in contract. There was difference of opinion among the Judges as to whether the inaction on the part of the customer in not objecting to the statement sent by the bank within the time specified would constitute conclusive evidence of the state of the account. But all of them were agreed that estoppel operated against the company by its own negligence from challenging the correctness of the bank's statements. The banks thus succeeded in the Court of Appeal. The defeated company moved the Judicial Committee of the Privy Council by filing appeals. This was how the matter reached the Privy Council.

35. The Privy Council had to decide the case in the light of the law settled by the House of Lords in the Macmillan case (1918 AC 777) and in Greenwood v. Martin's Bank Ltd. (1933 AC 51 : 1932 All ER Rep 318) The Privy Council posed two questions before it, first, whether English law recognises any duty of care owed by the customer to his bank in the operation of a current account beyond, first, a duty to refrain from drawing a cheque in such a manner as may facilitate fraud or forgery and, second, a duty to inform the bank of any forgery of cheque purportedly drawn on the account as soon as he, the customer, becomes aware of it.

36. The respondent banks while recognising the existence of both the duties indicated above contended that the law had evolved in England after 1918 and 1933 in recognising an altogether wider duty of care. This duty, according to them, required the customer to take reasonable precautions in the management of his business with the bank to prevent forge cheques being presented to it for payment. Additionally, it was contended, that even if this wider duty did not exist, at any rate the customer owed a duty to take such steps to check the periodic bank statements sent to him as a reasonable person in his position would take to enable his to notify the bank of any debit items in the account which he had not authorised. When it is accepted that the bank sent periodic statement to the customer, the bank contended that the duty and responsibility to look into such statements and to notify to the bank were necessary incidents of the contractual relationship between the customer and the bank. The source of this obligation according to the banks into be found both in the contract law as an implied term of the banking contract and in the tort law as a civil obligation arising from the relationship of banker and customer.

37. Then the Privy Council proceeded to consider the weightier submissions advanced by the bank (1) a wider duty on the part of the customer to act with diligence which must be implied into the contract and alternatively that such a duty arises in tort from the relationship between banker and customer. The Privy Council parted company with the observation by the Court of Appeal here and repelled the plea that it was necessary to imply into a contract between a banker and the customer a wider duty and that it was not a necessary incident of banker/customer relationship that the customer should owe his banker a wider duty of care. This duty is in the form of an undertaking by the customer to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. The Privy Council accepted that an obligation should be read into the

contract as the nature of this contract implicitly requires. In other words 'the term sought to be implied must be one without which the whole transaction would become futile and inefficacious'. After referring to some earlier decisions, the Privy Council rejected the implied term submission and set out the limits of the care of the customer and the functions of the banks in the following words : (All ER p. 956)

One can fully understand the comment of Cons JA that the banks must today look for protection. So be it. They can increase the severity of their terms of business, and they can use their influence, as they have in the past, to seek to persuade the legislature that they should be granted by statute further protection. But it does not follow that because they may need protection as their business expands the necessary incidents of their relationship with their customer must also change. The business of banking is the business not to the customer but of the bank. They offer a service, which is to honour their customer's cheques when drawn on an account in credit or within an agreed overdraft limit. If they pay out on cheques which are not his, they are acting outside their mandate and cannot plead his authority in justification of their debit to his account. This is a risk of the service which it is their business to offer. The limits set to the risk in the Macmillan (1918 AC 777) and Greenwood (1933 AC 51 : 1932 All ER Rep 318) cases can be seen to be plainly necessary incidents of the relationship. Offered such a service, a customer must obviously take care in the way he draws his cheque, and must obviously warn his bank as soon as he knows that a forger is operating the account.

38. The limits of the duty and the confines of contractual obligation cannot be expressed better.

39. On the question of tort also the bank could not satisfy the Privy Council as is seen from the following observation : (All ER p. 957)

Their Lordships do not believe that there is anything to the advantage of the law's development in searching for a liability in tort where the parties are in a contractual relationship. This is particularly so in a commercial relationship. Though it is possible as a matter of legal semantics to conduct an analysis of the rights and duties inherent in some contractual relationships including that of banker and customer ether as a matter of contract law when the question will be what, if any, terms are to be implied or as a matter of tort law when the task will be to identify a duty arising from the proximity and character of the relationship between the parties, their Lordships believe it to be correct in principle and necessary for the avoidance of confusion in the law to adhere to the contractual analysis : on principle because it is a relationship in which the parties have, subject to a few exceptions, the right to determine their obligations to each other, and for the avoidance of confusion because different consequences do follow according to whether liability arises from contract or tort, e.g. in the limitation of action.

40. Their Lordships of the Privy Council, summed up the law as follows : (All ER p. 957)

Their Lordships do not, therefore, embark on an investigation whether in the relationship of banker and customer it is possible to identify tort as well as contract as a source of the obligations owed by the one to the other. Their Lordships do not, however, accept that the parties' mutual obligation in tort can be any greater than those to be found expressly or by necessary implication in their contract. If, therefore, as their Lordships have concluded, no duty wider than that recognised in Macmillan (1918 AC 777) and Greenwood (1933 AC 51 : 1932 All Rep 318) can be implied into the banking contract in the absence of express terms to that effect, the respondent banks cannot rely on the law of tort to provide them with greater protection than that for which they have contracted.

41. Having rejected the plea of implied terms, indirectly constructive notice and estoppel by negligence, it was held that the company was not under any breach of duty owed by it to the banks and as such mere silence, omission or failure to act is not a sufficient ground to establish a case in favour of the bank to non-suit its customer.

42. We adopt the reasoning indicated above with great respect. Unless the bank is able to satisfy the court of either an express condition in the contract with its customer or an unequivocal ratification it will not be possible to save the bank from its liability. The banks do business for their benefit. Customers also get some benefit. If banks are to insist upon extreme care by the customers in minutely looking into the pass book and the statements sent by them, no bank perhaps can do profitable business. It is common knowledge that the entries in the pass books and the statements of account sent by the bank are either not readable, decipherable or legible. There is always an element of trust between the bank and its customer. The bank's business depends upon this trust. Whenever a cheque purporting to be by a customer is presented before a bank it carries a mandate to the bank to pay. If a cheque is forged there is no such mandate. The bank can escape liability only if it can establish knowledge to the customer of the forgery in the cheques. Inaction for continuously long period cannot by itself afford a satisfactory for the bank to escape the liability. The plaintiff in this case swung into action immediately on the discovery of the fraud committed by its accountant as in the case before the Privy Council.

43. We may, in passing, refer to a decision of this Court on the question of negligence under circumstances not strictly akin to the case on hand reported in the New Martin Coal Co. (Bengal) Pvt. Ltd. v. Union of India ((1964) 2 SCR 859 : AIR 1964 SC 152). There the suit was for recovery of certain amount representing the price of coal supplied to the respondent. Inter alia the respondent pleaded in defence of the suit that the respondent had issued and sent bills to cover the amount and the intimation cards in accordance with the usual practice in the ordinary course of dealings. The respondents it was alleged paid the amount by cheque to a person authorised by the appellant and on presentation of proper receipts. It was pleaded that the appellant's claim having been satisfied, he had no cause of action. It was established in the course of the trial that the appellant had not in fact authorised any person to issue the receipts but a certain person not connected with the appellant firm without the consent or knowledge of the appellant got hold of the intimation cards and bills addressed to the appellant, forged the documents and fraudulently received the cheque from the respondent and appropriated the amount for himself. We may usefully read the following passage relating to negligence in the context of a plea based on estoppel : (SCR p. 873)

Apart from this aspect of the matter, there is another serious objection which has been taken by Mr. Setalvad against the view which prevailed with Mukharji, J. He argues that when a plea of estoppel on the ground of negligence is raised, negligence to which reference is made in support of such a plea is not the negligence as is understood in popular language or in common sense; it has a technical denotation. In support of a plea of estoppel on the ground of negligence, it must be shown that the party against whom the plea is raised owed a duty to the party who raises the plea. Just as estoppel can be pleaded on the ground of misrepresentation or act or omission, so can such a plea can succeed, negligence must be established in this technical sense. As Halsbury has observed : "before anyone can be estopped by a representation inferred from negligent conduct, there must be a duty to use due care towards the party misled, or towards the general public of which he is one" (Halsbuy's Laws of England, vol. 15, p. 243, para 451). There is another requirement which has to be proved before a plea of estoppel on the ground of negligence can be upheld and that requirement is that "the negligence on which it is based should not be indirectly or remote connected with the misleading effect assigned to it, but must be the proximate or real cause of that result" (Ibid.,245,

para 453). Negligence, according to Halsbury, which can sustain a plea of estoppel must be in the transaction itself and it should be so connected with the result to which it led that it is impossible to treat the two separately. This aspect of the matter has not been duly examined by Mukharji, J. when he made his finding against the appellant.

44. This is how this Court understood how a plea of estoppel based on negligence can be successfully put forward. We have seen that there is no duty for a customer to inform the bank of fraud committed on him, of which he was unaware. Nor can inaction for a reasonably long time in not discovering fraud or irregularity be made a defence to defeat a customer in an action for loss. Thus the contentions put forward by the bank cannot be accepted to defeat the plaintiff. The various submissions made by the counsel for the bank based on constructive notice in the general law and on other branches of law cannot be extended to relationship between a bank and its customer.

45. On a careful analysis of the question of law, we hold that the judgment of the High Court and that of the trial Judge have to be upheld. We do so. We accordingly dismiss the appeal with costs of respondent 1.

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