

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the London Chartered Bank of Australia v. McMillan from the Supreme Court of New South Wales ; delivered 2nd April 1892.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

LORD HANNEN.

SIR RICHARD COUCH.

*[Delivered by Lord Morris.]*

The Appellants seek to reverse the judgment of the Supreme Court of New South Wales, dated the 8th September 1890, by which a verdict had for the Appellants, for 6,127*l.* 6*s.* 2*d.*, against the Respondent was set aside, and the verdict entered for the Respondent. The Respondent, as Colonial Treasurer, represented the Government of New South Wales. It appears that on the 5th January 1885 an agreement was come to between an Association of Banks, of which the Appellant Bank was one, and the Government of New South Wales, in which are stated the Terms and Conditions on which the several Associated Banking Companies agreed to conduct the Government business. Amongst other duties of the Banks set forth in the agreement was the following, which is contained in

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Term No. 3 of the Terms and Conditions, under the heading "Duties of the Banks":—

"To pay all cheques drawn on account of the public service, whether these be by the Paymaster of the Treasury or any public officer or other person or persons to whose credit funds shall from time to time be placed."

Clause No. 3 of the Conditions of Contract states as follows:—

"'The General Banking Account' shall be held to include the public account, the general loan account, the mint bullion account, and any other account which it may be found necessary to open during the currency of the contract, but not the departmental accounts."

The agreement further sets forth the rate of interest on balances to credit of "the general banking account," and for overdrafts which the Government might require.

An arrangement was shortly after entered into with the Banks for the deposit with them of moneys collected by the several collectors of public money in Sydney. That arrangement is disclosed by the letters which passed between the Honourable G. Eagar, on the part of the Government, and the Banking Association, and the Registrar General. The first letter is dated the 9th January 1885, addressed to the Chairman of the Associated Banks by Mr. Eagar, and is as follows:—

"Sir,

"I do myself the honour, in accordance with the understanding come to at the meeting of Managers of the Associated Banks yesterday, in the Treasury, to hand you a carefully prepared list of all the collectors of public revenue and public moneys in Sydney, showing the probable amount of their collections during the present year. When the Associated Banks have arranged amongst themselves how they desire

these officers to deposit their collections, some of whom pay into the credit of the public account daily, while others place their collections to the credit of a public account in their own names, and transfer to the Treasury weekly, I will thank you to return the list, with full details of the arrangement decided upon, in order that the various officers therein named may be informed and instructed how to dispose of their collections in future."

To that letter the Chairman of the Associated Banks replied by a letter, dated the 12th January 1885, which is as follows :—

"I have the honour to acknowledge receipt of your letter, B 15, of 9th instant, and now beg to return two of the three sheets forwarded by you, in which has been specified, as requested, the manner in which the Associated Banks have arranged to receive the deposits of the collectors of public revenue and public moneys in Sydney. The third sheet will be decided upon at the next meeting of the Associated Banks, and forwarded to you without delay."

Then came a letter of the 19th January 1885 from Mr. Eagar to the Registrar General, Ward, which is as follows :—

"Arrangements having now been completed with the Associated Banks for the division of the accounts of collectors of public revenue in Sydney, I have the honour to request that, from and after this day, you will deposit your collections daily in the London Chartered Bank to the credit of a public revenue account in your own name, and that you will pay the amount of such deposits into the Treasury weekly, in accordance with the regulations published in No. 274 of the Government Gazette of 28th June 1883."

The duty of the Registrar General, who was responsible to the Government for the collection

of the fees payable in his office, and their custody, was to pay over the amount daily into the Appellant Bank. He did so, by sending each morning to the Bank by his cashier the amount collected the day before, and at the end of each week drew his cheque upon the Bank for the amount. The cheque was in the following form: "Pay Colonial Treasurer or bearer the sum of £ , being on account of the public service." The controversy in the case has arisen in this way. For a considerable period, and especially from August 1888 to July 1889, the cashier sent by Ward to deposit the daily collections kept back some of the money so given to him to lodge, and concealed his fraud from Ward by forging the signature of a fictitious clerk of the Bank as acknowledging the receipt of the full amount of the money he should have lodged. Ward accordingly drew his cheques in favour of the Treasury for the weekly totals which purported to be lodged, and which should have been lodged. The fraudulent appropriation by the cashier amounted in July 1889 to the sum now sued for, and the question arises what, if any, liability exists on the part of the Government of New South Wales to refund that amount to the Bank.

Their Lordships are of opinion that there is no liability on the part of the Respondent for the overdraft of Ward. Neither the Treasurer nor the Government gave Ward any authority, express or implied, to overdraw at all; in fact, the lodgment each day was only for the purpose of accumulating to the end of the week the daily collections lodged. The Bank undertook the departmental business of receiving money and paying *it* out on cheques; the Bank knew that the account opened with them by Ward was simply an account for the purpose of the daily lodgment of the collections of his department,

and the transferring by his cheque of such lodgments to the Treasury weekly. Ward's cheque was the mode of transfer to the Treasury account of the money lodged by him. The Government in no way gave authority to Ward, or led the Bank to suppose that Ward had any authority to overdraw by his cheques; and the Bank knew, or should have known, that any overdraft was entirely outside the scope and object of the lodgments, and of the drawing against such lodgments. Yet the Bank allowed an overdraft on the lodgments to grow on steadily for a year, until it reached the large amount sued for, when for the first time they gave notice. Why the Bank did not on any overdraft of a substantial amount at once communicate with Ward is very extraordinary. They could not suppose that Ward was paying over to the Government, money which he had not received, and that to a large amount. Possibly they overlooked the matter, and did not consider it at all. That can be no reason or ground for fixing a liability on the Government, who have only received the amount which Ward did collect of the public money, which he purported by his cheques to have lodged with the Bank, and which the Bank, by honouring his cheques, gave the Treasury to understand that they had received in lodgment.

Their Lordships concur in the judgment of the Supreme Court. They will humbly advise Her Majesty to dismiss the appeal, and the Appellants must pay the costs.

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