***Judgment** of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Australian Joint Bank, Limited, v. Bailey, from the Supreme Court of New South Wales; delivered 18th May 1899.*

Present at the hearing :

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

In this case a question has been raised as to the true construction of a bond bearing date the 17th of September 1889 and executed in favour of the Australian Joint Stock Bank Limited by the Clarence River and North Coast Farmers' Co-operative Association Limited and by certain directors of the Association and the manager as their sureties. One of those sureties was the Respondent George Bailey who was a director of the Association.

More than two years before the date of the bond the Respondent and other persons interested in the Association as directors and shareholders had signed a letter addressed to the manager of the bank and dated the 17th of June 1887 purporting to be a continuing guarantee for over-drafts by the Association to the extent of 2,500*l.* interest and charges.

The bond of the 17th of September 1889 was a joint and several bond in the penal sum of 4,000*l.* The condition of the bond is prefaced by the following recital, "Whereas" the Asso-

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ciation "in addition to the sum of 2,500*l.* and "interest and charges secured by guarantee dated "the 17th day of June 1887 . . . are desirous "of obtaining credit advances and accommoda- "tion from" the Bank "and in order to induce" the Bank "to afford them such credit advances "and accommodation . . . it has been agreed "that all the debts interest and liabilities thence "to arise shall be secured by the above written "bond" of the Association and their sureties therein named "*with the following condition.*" Then comes the condition of the bond. Stated shortly it is to the following effect. If the Association or their sureties or any or either of them should from time to time and at all times reimburse and pay to the Bank "all monies whatsoever" which the Association should borrow from the Bank and all other monies which the Bank should advance for the accommodation of the Association "or otherwise on their account" or in which they should "in any manner whatsoever become indebted" to the Bank and further should from time to time pay to the Bank all monies which should be due and owing from the association to the Bank by reason of any such advances and transactions as aforesaid "or otherwise" according to an account current to be made up from the books of the Bank to be signed by the manager or accountant of the Bank (which account was to be taken as *primâ facie* evidence of the matters therein set forth) the bond should be void but otherwise should remain in full force and virtue. Then it was provided that the Bank should not be bound to give the full amount of the contemplated accommodation "or any larger "part thereof" than might from time to time be deemed expedient by the Bank and further that the liability of the sureties under the bond should not extend to more than the sum of 2,000*l.* interest and costs.

In the action out of which this Appeal arises the Respondent was sued both on the guarantee and on the bond. He succeeded in establishing that the guarantee was invalid as against him and then his contention was that according to the true construction of the bond his liability under that instrument was confined to advances beyond the amount which the letter of guarantee purported to cover, or in other words that the amount appearing to be due to the Bank on account current ought in the first instance to be reduced by deducting the amount which the letter of guarantee if valid would have secured.

In the Supreme Court two of the learned Judges upheld the Respondent's contention, Darley C.J. dissented.

Their Lordships have no hesitation in expressing their entire concurrence with the judgment of the learned Chief Justice.

No question of fact or of general law was in debate. It was common ground that a surety is not to be bound beyond the scope of his engagement and that the scope of the surety's engagement is to be gathered from the whole instrument in which his obligation is contained. In the present case the condition of the bond as it stands is perfectly clear. It is not suggested that in that part of the instrument any trace can be discovered of the limitation which the Respondent seeks to introduce. The question therefore is whether the recital on which the Respondent relies is so inconsistent with what follows as to make it clear that the condition of the bond must be qualified in order to carry out the plain intention of the parties.

In their Lordships' opinion there is no inconsistency whatever between the condition of the bond and the recital by which the condition is introduced. In effect the Association and their sureties say to the Bank, "The Association

"wants further accommodation. In order to "induce you to comply with their request,"— which it must be borne in mind the Bank were under no obligation to do even after the execution of the bond,—"all further advances you may be "good enough to make shall be secured by this "bond covering not only those advances but the "whole indebtedness of the Association subject "to a limit of amount in favour of the sureties." That seems to their Lordships to be the plain meaning of the language used if the instrument be read fairly from beginning to end and it is just the sort of proposal which persons wanting accommodation would naturally make to their bankers. On the other hand the arrangement which the learned Counsel for the Respondent seek to evolve from the recital in the bond is one which probably would not have been very attractive to the Bank if they had understood it.

Their Lordships agree with the learned Chief Justice in thinking that "The bond "is not a bond only for the excess of advances "over 2,500*l.* but it is to secure the repayment "of all monies according to an account "current to be made up from the books of the "Bank."

Their Lordships will therefore humbly advise Her Majesty that the order of the Supreme Court of New South South Wales of the 28th of May 1897 should be set aside with costs and the verdict for 2,299*l.* restored.

The Repondent must pay the costs of the Appeal.