

Sheth Mafatlal Gagalbhai - - - - - *Appellant*
v.
Sheth Jivanlal Girdhardas and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 4TH JUNE, 1929.

Present at the Hearing :

LORD TOMLIN.
LORD SALVESEN.
SIR JOHN WALLIS.

[*Delivered by* LORD TOMLIN.]

This is an appeal from a decree of the High Court of Judicature at Bombay dated the 23rd February, 1926.

By this decree the High Court affirmed, with a variation as to costs, a decree of the Subordinate Judge of Ahmedabad dated the 31st July, 1924, whereby a suit of the appellant against the respondents was dismissed.

The appellant's claims in the suit were :—

(a) For a declaration of his right to a four annas share of the profits which the respondents and others had made by working the properties of the Ahmedabad New Spinning and Manufacturing Company (which will be referred to hereafter as the old Company) under a lease from the holders of debentures in that company, and for payment by the respondents of that share of those profits when ascertained ;

(b) For a declaration of his right to a one and a half annas share of the commission earned by the respondents and others as agents of the Ahmedabad New Textile Mills Company, Limited (which will be referred to hereafter as the new Company) and of his right to payment of that share by the respondents, and for

payment by them of that share in the commission earned to date of suit.

The claim is based upon an oral agreement of partnership alleged to have been made on the 30th July, 1915.

The events which led up to the alleged agreement are as follows :—

The old company was formed in 1894, and in 1909 raised a loan of 5 lacs by the issue of 1,000 mortgage debentures of Rs. 500 each, secured by a trust deed. Jeynarayan Hindumal Dani was a trustee for the debenture-holders ; he was also managing director of the Bombay Merchants' Bank, Limited. The Bank held debentures for Rs. 1,25,000. A further part of the issue, viz., Rs. 2,25,000, was held by one Motilal.

In or about March, 1911, the old company made default upon the debentures, and the trustees of the trust deed, in exercise of the powers conferred by such deed, took possession of the properties of the old company, including its spinning mill.

In May, 1914, the trustees let the mill to one Dolatram. The lease or tenancy agreement to Dolatram has not been produced, but apparently his tenancy expired on the 25th February, 1915.

On the 21st November, 1914, the trustees, according to the appellant's case, agreed to let to him the mill for a year from the expiration of the tenancy of Dolatram at a rent which would not exceed a maximum of Rs. 36,000 per annum. This agreement has not been produced and the terms of it have not been proved.

About the same time the appellant made an offer to buy the Bank's debentures, and on the 28th November, 1914, this offer was considered by the Board of Directors of the Bank, and Dani was authorised by the Board to negotiate for the sale of the debentures provided half of the consideration was paid in cash at once and the other half within six months from the date of the arrangement.

Two letters, one from Dani to the appellant, dated the 21st November, 1914, and the other from the appellant addressed to the Bank, dated the 29th November, 1914, purport to contain the terms of an agreement made between the appellant and the Bank, whereby the appellant is expressed to become the purchaser of the Bank's debentures with the accrued interest due thereon for Rs. 1,41,000, to be paid in cash or the transference of the debentures.

It appears from the appellant's own evidence and from the evidence of Ramanbhai, who was Dani's lawyer, that the arrangement embodied in these two letters was by virtue of an oral agreement between the appellant and Dani, only to be operative if the appellant got possession of the mill, and that for this reason Ramanbhai retained the letters.

In December, 1914, some of the debenture-holders became aware of what was going forward, and believing that Dani in his arrangements with the appellant was sacrificing the interests

of the debenture-holders to the interests of the Bank, addressed a letter to the trustees protesting against the leasing of the mill to the appellant.

Notwithstanding this protest, Dani and the appellant attempted without success to secure the assent of Dani's co-trustees to a modification of the appellant's agreement for a lease by making the tenancy term run, in the event of Dolatram not giving up possession on the 25th February, 1915, from the date when he should in fact give up possession; certain expenses being, however, paid by the appellant. A document embodying these terms was signed by Dani and the appellant. The other trustees did not sign it.

In the meantime, an order was made for the compulsory winding up of the old company, and a liquidator was appointed.

After his appointment the liquidator, in the name of the old company, launched a suit at Ahmedabad against the trustees of the debenture trust deed for a declaration that the debenture loan was not binding on the old company and for recovering possession of the properties of the old company from the trustees.

On the 20th February, 1915, the liquidator obtained a temporary injunction restraining the trustees from entering into any agreement with the appellant or handing over possession of the properties of the old company to the appellant or to anyone either as tenant or otherwise.

A temporary injunction to a similar effect was also obtained for a short time by a debenture-holder in another suit.

When the 25th February, 1915, arrived, Dolatram refused to go out of possession of the mill. Subsequently the liquidator invited tenders for the purchase of the properties of the old company.

On the 21st March, 1915, a tender was submitted to the liquidator by the respondent Jivanlal, acting for himself and the respondent Mangaldas. It was in effect an offer to buy the properties of the old company for Rs. 7,25,000, of which Rs. 5,50,000 were to be applied in satisfying the claims of the debenture-holders.

On the 29th March, 1915, the tender of the respondent Jivanlal was accepted and sanctioned by the Court subject to a valid arrangement being effected with the debenture-holders.

At the end of July, 1915, no arrangement had been made by the respondents with the debenture-holders, and Dolatram was still in possession of the mill.

The next material event is the critical one in the case.

On the 30th July, 1915, a conference took place between the appellant and the respondents. One Nathubhai, a pleader, was also present. It is alleged by the appellant that an oral agreement was on that occasion reached between himself and the respondents. Upon that alleged oral agreement he is now suing.

At that conference a draft of terms was prepared by Nathubhai in pencil, and after alterations had been made in the draft

in ink the appellant signed it. The respondents did not sign it. The draft remained in the possession of Nathubhai.

The draft was in the following terms :—

“ I, Sheth Mafatlal Gagalbhoj, residing in Dariapur, in the City of Ahmedabad, passing the writing, to Parikh Jivanlal Girdharlal, residing in Sankdi Sheri Nanabhai Munshi's Pole, in the City of Ahmedabad, give in writing this agreement that—

“ I have taken over the working of the Mills of the Ahmedabad New Spg. & Mfg. Co., Ltd., from the Trustees of the Debenture-holders of the Company, Messrs. Jayanarayan Hindumal Dani and Ambalal Harivalabhdas, on a lease or *Bhulu Khata*, dated 21st November, 1914.

“ Moreover, I have executed a document in favour of the said Trustees whereby I am to pay to them on my receiving possession of the Mills in pursuance of my lease the expenses incurred by them on account of the said Mill, and I am to recoup the same from the amounts payable by me.

“ I have taken you as a partner on the following conditions, in all my rights and liabilities under the said lease. Our said partnership is to be under the name of Sheth Mafatlal Gagalbhai and Company.

“ (1) I have purchased for Rs. 1,41,000 the debentures of the said Mill held by the Merchants' Bank of the face value of Rs. 1,25,000, with all the rights to interest, etc., accrued in respect thereof, and the condition is that I am to pay the said amount on (my) getting possession of the Mill. You should pay this amount, which shall be paid on account of our partnership, on getting possession of the Mill; and the balance due to the trustees out of the amount spent by them is to be paid by me in pursuance of my agreement with them, on obtaining possession of the Mill, and to be recouped by me from the amounts payable to the Trustees under the lease. You have to pay that amount on getting possession of the Mill and recoup that from the amounts payable to the Trustees. You are entitled to charge in the partnership accounts interest at the rate of 6 per cent. per annum on both the said amounts which you will advance on account of the partnership; and the said interest is to be treated as expenses in the accounts of the working of the Mill and to be recovered by you as such.

“ (2) You are to provide all the funds necessary for working the said Mills; and you are entitled to charge thereon interest at the rate of 6 per cent. per annum; and that amount (of interest) is to be treated as expenses in the accounts of the working of the Mills.

“ (3) You are to conduct the entire management of the (working of) the Mill, and I am not to interfere therein in any manner.

“ (4) In consideration of your locking your funds as provided in clauses 1, 2, 3 above for working of the Mill, etc., as also in consideration of your working the Mill, you are to be paid from surplus remaining after deducting 2½ per cent. for charity of the net profits earned by our partnership in the proportion of six annas in a rupee of 16 annas.

“ Yours is the authority to dispose of the amount of the 2½ per cent. set apart from the net profits for charitable purposes as stated above.

“ (5) After setting apart as provided above 2½ per cent. for charity and six annas as your special (share) out of the net profits of our partnership, you are to receive six annas as your share, and I am to receive four annas as my share out of the remaining ten annas. In case there be loss to the partnership, *i.e.*, in the working and in respect of the purchase of debentures as well as in the capital and interest, etc., as also in the monies which are to be advanced to the trustees as mentioned above, the said loss is to be borne by you in the proportion of ten annas in the rupee and by me in the proportion of four annas, calculating ten annas as equivalent to a rupee.

"(6) The amount to be treated as the net profit will be the amount remaining after the treating as expenditure the interest of the money advanced by you or borrowed from you for working of the Mill, for labour, stores, coal, ground rent, taxes and management, as well as the Adat which may have to be given to any Shroff other than the firm of Sheth Girdharlal Jethabhai—as also the interest on the money required for the purchase of the Debentures, as well as the interest on the monies to be advanced to the Trustees for the remaining amount spent by them, as well as all necessary expenses in connection with the working, as also repairs to the machinery for keeping it in working condition, as well as in replacing broken parts, as also in making repairs to or alterations in the buildings, and such net profits should be divided according to the respective shares every year, and if there be any loss to the partnership as stated above it should be recouped every year in the above proportion.

"(7) You have given a tender for the purchase of the New Spg. Mill; in case the purchase is sanctioned and you get possession of the Mill in pursuance of the purchase you are bound to form a Joint Stock Company; and you have agreed to give to me $1\frac{1}{2}$ annas share as commission out of the amount calculated at the rate of 3 pies per pound of yarn and cloth manufactured in the Mill, treating the said amount as 16 annas; and as you have agreed to that condition, I have agreed to this partnership. Therefore you should enter my name as a sharer in commission along with yours in the deed when you form a Joint Stock Company on completion of your purchase of the Mill; and you are to execute in my favour a document according to law relating thereto."

On the same 30th July, 1915, a letter dated the 31st July, 1915, was written by Jivanlal to the Liquidator, asking in effect that the sanction of the Court to the acceptance of his tender might be made public, a course which up to that time had apparently not been taken.

Some of the terms of this letter are difficult to reconcile with any view of this case. In the course of it the writer said, "As regards Mill properties, Mr. Mafatlal Gagabai" (*i.e.*, the appellant), "of this city has obtained a lease from the trustees. I have, however, taken over the working from him as his partner." Jivanlal also included in the letter an offer to take a lease of the mill himself at a rent of Rs. 16,259 per annum over and above the Rs. 36,000 to be given to the trustees under the appellant's lease.

This proposal of Jivanlal to take a lease seems to have received the approval of the District Judge on the 6th August, 1915, and about the same date the temporary injunction which had been obtained by the Liquidator was dissolved. The Liquidator's suit was not proceeded with.

Having regard to the conclusion to which their Lordships feel bound to come in this case, the subsequent events do not require to be elaborately stated. It is enough to say:—

(1) That possession of the mill was not obtained from Dolatram until the 24th February, 1916.

(2) That the respondents agreed to purchase the debentures for Rs. 2,25,000 held by Motilal.

(3) That the debenture-holders did not sanction the grant of any lease to the appellant under the agreement of the 14th November, 1914, but approved the grant to one Manival, a

nominee of the respondents, of a lease on terms more favourable to the debenture-holders than the terms contained in the agreement of the 21st November, 1914.

(4) That on the 24th February, 1916, a lease upon these more favourable terms was accordingly granted by the trustees for the debenture-holders to the respondents and others.

(5) That the respondents acquired from the Bank the latter's debentures at the same price as that mentioned in the letters which had passed between the appellant and Dani, but upon terms different as to time of payment.

(6) That the respondents worked the mill under the lease until the completion of the purchase of the properties of the old company by the new company as next hereafter mentioned.

(7) That the new company was formed by the respondents to take over and took over the properties of the old company upon the terms of Jivanlal's tender.

(8) That the respondents constituted themselves and others managers of the new company for a term of 99 years at a commission shared in certain proportions between themselves and their co-adventurers.

(9) That the appellant was given no part in any of these transactions nor any share in the profits of working the mill under the lease or in the commission payable by the new company.

The appellant launched the present suit on the 13th October, 1917. As already stated, he has failed in both the Courts below.

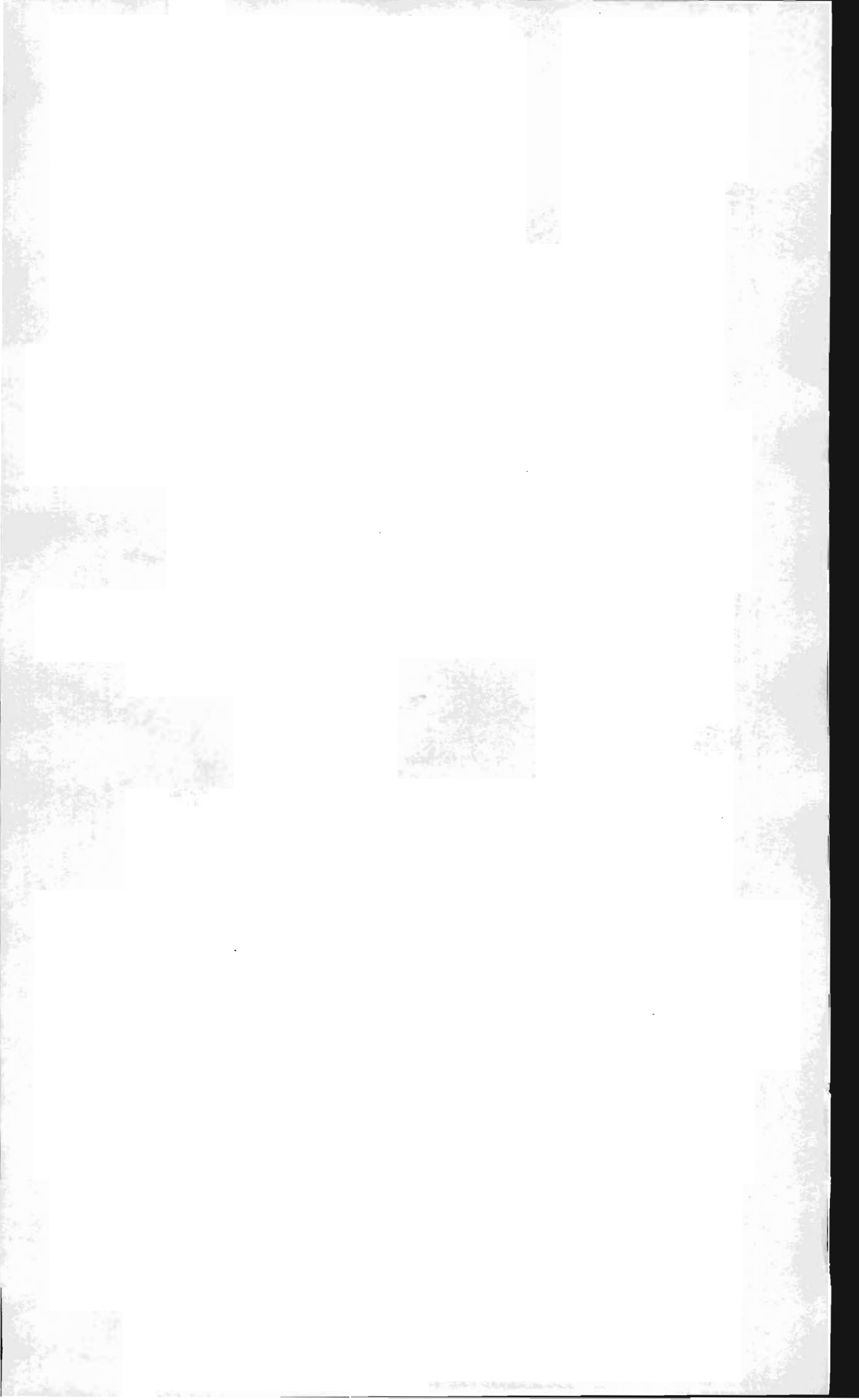
Before their Lordships' Board the appellant did not press his first claim in the suit, as no profits resulted from the working of the mill under the lease granted by the trustees.

Their Lordships are satisfied that there have been in the Courts below the following concurrent findings of fact, namely (1) that if there was any concluded agreement at all reached upon the 30th July, 1915, between the appellant and defendants, such agreement was only to operate if and when possession of the mill was given to the appellant under his agreement for a lease of the 21st November, 1914, and (2) that this condition precedent to the operation of such agreement, if any, was not fulfilled.

Their Lordships are further satisfied that there was evidence upon which these findings could have been reached, and that there does not exist in the case any circumstance which would justify their Lordships in reviewing these findings having regard to the practice of their Lordships' Board, as stated by Lord Dunedin in *Robins v. National Trust Company* [1927], A.C. 515. In their Lordships' judgment the appellant's case must be dealt with on the basis of these findings and must fail.

In this aspect of the case it becomes unnecessary for their Lordships to express any opinion upon any of the other questions debated before the Board in the course of the appeal. Their Lordships will humbly advise His Majesty that the appeal should be dismissed.

The appellant will pay the costs of the appeal.



In the Privy Council.

SHETH MAFATLAL GAGALBAI

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DELIVERED BY LORD TOMLIN.

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