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In the Privy Council.

No. 27 of 1930.

ON APPEAL FROM THE APPELLATE DIVISION  
OF THE SUPREME COURT OF ONTARIO.

BETWEEN

T. H. HANCOCK - - - - - (*Defendant*) *Appellant*

AND

IMPERIAL BANK OF CANADA - - - (*Plaintiff*) *Respondent.*

CASE FOR THE APPELLANT.

1. This is an Appeal from a judgment of the Second Appellate Division of the Supreme Court of Ontario (Chief Justice of the Second Divisional Court, and Riddell, Masten, Orde, and Fisher, JJ.) dated the 8th March 1929, affirming a judgment of Chief Justice Meredith in the Supreme Court of Ontario, dated the 7th December 1928, in favour of the Respondent in an Action brought by the Respondent against the Appellant for \$23,775.00 and costs. RECORD. p. 74. p. 71.

2. The litigation between the Respondent and the Appellant resulted from the giving of a guarantee dated the 17th April 1923 extended in amount by two subsequent instruments dated respectively 1st March 1924 and 17th November 1925, by Mr. William Garlock junior and the Appellant to the Respondent Bank, whereby the Mr. William Garlock junior and the Appellant guaranteed the liabilities to the Respondent Bank of a limited Company, known as Garlock Machinery Limited. p. 77. p. 86. p. 108.

3. There are four main questions to be determined in the Appeal, as follows :—

(a) Whether the guarantees so given by Mr. William Garlock junior and the Appellant were qualified by a letter dated the 20th April 1923, addressed by Mr. William Garlock junior to the Appellant, covered and accompanied by a letter of the same date from the solicitors of record for the Respondent; p. 80. p. 80.

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(b) Whether the Appellant was released from liability under the guarantee sued upon by reason of a material change in the dealings between the Respondent Bank and Garlock Machinery Limited, detrimental to the Appellant without his knowledge and consent;

(c) Whether the Appellant was released from liability under the guarantee sued upon by reason of the concealment by the Respondent Bank of the material change in the dealings between the Respondent and Garlock Machinery Limited at the time the Respondent took steps to obtain from the Appellant the last extension of the said guarantee; 10

(d) Whether the learned Trial Judge erred in refusing to receive evidence that a large part of the claim made against the Appellant by the Respondent was in respect of the discount of fictitious debts and the assignment of fictitious accounts not representing bona fide sales by Garlock Machinery Limited.

4. In or about the month of April, 1923, the Appellant was requested by one William Garlock junior to guarantee advances made by the Respondent Bank to Garlock Machinery Limited secured by the assignment of bona fide book debts and the endorsement and transfer to the Respondent Bank of bona fide bills of exchange accepted by purchasers from Garlock Machinery Limited. 20

p. 89, l. 10 - 15. 5. Garlock Machinery Limited was not a manufacturing Company; but were agents for or jobbers in machinery, requiring credit only against actual sales made by them before they were required to pay for the subject matter of the sale.

6. On the 17th April 1923 there was presented to the Appellant a guarantee bond to be executed by the Appellant and the said William Garlock junior, guaranteeing the due payment and discharge of all liabilities to the Respondent Bank of Garlock Machinery Limited "whether incurred before or after the date hereof, and whether incurred by the Customer alone or jointly with others, and whether as principal or surety, and whether such liabilities are matured or not, and whether absolute or contingent, including liabilities in respect of advances and cheques, bills or other negotiable or non-negotiable instruments, drawn, accepted, endorsed or guaranteed by the Customer, and in respect of interest, commissions and banking charges." The guarantee was limited to the sum of \$10,000. and interest on that amount at six per cent. per annum from the time notice in writing was served requiring the guarantors to pay. 30

p. 11, l. 1 to 43. 7. The Appellant on reading the terms of the guarantee bond informed Mr. William Garlock that the guarantee was wider in its terms than the guarantee he had agreed to give and requested him to secure from the Solicitors to the Respondent Bank, Messrs. Bain, Bicknell, Macdonell & Gordon, a letter stating that the guarantee was limited to advances made by the Respondent Bank to Garlock Machinery Limited in respect of the assignment of bona fide book debts and the endorsement and transfer 40

of bona fide Bills of Exchange accepted by purchasers from Garlock Machinery Limited. RECORD.

8. Mr. William Garlock informed the said firm of Solicitors, through their Managing Clerk, Mr. Willes Bertram Stirrup, of the Appellant's request, and the said Mr. Stirrup prepared for Mr. William Garlock a draft letter to be sent by him to the Appellant and forwarded it to Mr. William Garlock with a covering letter, dated the 20th April 1923. Mr. William Garlock on the 20th April 1923 sent a letter to the Appellant in the terms of the said draft, together with the covering letter from and upon the letterhead of the solicitors of record herein for the Respondent Bank. pp. 57-59.  
p. 80, l. 16-40.  
p. 80, l. 1-10.  
p. 12, l. 12-22.
9. The said letter so sent by Mr. William Garlock to the Appellant contained the following passage:—"Further, the guarantee which we have signed with the Imperial Bank is given for the purpose of discount only". p. 80, l. 25.
10. During the same month of April 1923 the Appellant in the course of a telephone conversation with the Manager of the King and Spadina Branch of the Respondent Bank, informed the Manager that the guarantee which he had signed was for discounts only. p. 14, l. 33-44.
11. At the end of the year 1923 the Appellant agreed to an extension of the said guarantee of the 17th April 1923, and on the 1st March 1924 the Appellant signed a second guarantee bond for \$15,000. p. 15, l. 20-43.  
p. 86, l. 1.
12. On the 17th November 1925 the Appellant signed a third guarantee bond for \$25,000. The terms of such third guarantee bond were substantially different from those of the first and second instruments. p. 16, l. 21-39.  
p. 41, l. 22-3.
13. The credit extended to Garlock Machinery Limited was beyond the authority of the Manager of the King and Spadina Branch of the Respondent Bank; the said advances were made in pursuance of what is known as an "authorized credit", namely, one submitted in writing approved by the General Manager of the Respondent Bank. p. 35, l. 10-17.
14. Throughout the currency of the Appellant's guarantee as evidenced by the first two instruments hereinbefore referred to, the only authorized credit obtained by Garlock Machinery Limited was in respect of advances made by the Respondent Bank, secured by accepted Bills and assigned accounts, representing bona fide sales; but in the month of November 1925, Garlock Machinery Limited under the guidance of the Branch Manager of the Respondent Bank, applied for and obtained a line of credit on their own name, unsupported by trade bills or assigned accounts, for the sum of \$5,000; and a further line of credit against bona fide sales secured by the assignment of trade bills and book accounts, of \$20,000. The unsupported or accommodation line of credit was subsequently increased to \$8,000. p. 36, l. 31-36.  
p. 42, l. 5-25.  
p. 38, l. 1-19.  
p. 40, l. 14-20.
15. Concurrently with the application for the extended and different line of credit, the Manager of the King and Spadina Branch of the Respondent Bank required its customer, Garlock Machinery Limited, to obtain from the Appellant a further guarantee bond in the sum of \$25,000; and did not communicate to the Appellant the change in the nature of the dealings p. 41, l. 1-6.  
p. 42, l. 27-33.

- RECORD. between the Respondent Bank and its customer, whereby the Appellant would become responsible for advances which were unsupported by trade bills or assigned accounts.
- p. 16, l. 22-44. 16. The Appellant signed the third guarantee bond on the representation that the increased amount was required by Garlock Machinery Limited, by virtue of increased sales, and without knowledge of the new line of credit granted by the Respondent Bank, which he would not have done, had he been aware that the Respondent Bank was advancing money to Garlock Machinery Limited on their own credit, unsecured by assigned accounts or acceptable trade paper. 10
- p. 16, l. 42-44.
- p. 17, l. 1-17.
- p. 38, l. 23-46. 17. At the time of obtaining the extension in amount of the Appellant's guarantee, the Respondent Bank was aware that Garlock Machinery Limited was not entitled to credit; and the Respondent Bank was relying upon the financial ability of the Appellant almost entirely.
- pp. 88-92. p. 97. p. 101, l. 34-39. pp. 103, 104, 107, 112. 18. In the course of the Trial of this action, the Appellant called as a witness on his behalf, Mr. J. D. Priestman, the Manager of the King and Spadina Branch of the Respondent Bank and sought to elicit from him the knowledge of the Bank that the great majority of the discount items set forth in detail in the endorsement on the Writ of Summons, in this Action, did not represent bona fide sales, but were in fact fictitious book accounts or fictitious acceptances, fraudulently discounted with the Bank by the said Mr. William Garlock junior, who subsequently absconded. 20
- p. 47.
- p. 121. 19. On the 20th April 1927, the Respondent Bank informed the Appellant that the liabilities of Garlock Machinery Limited to the Respondent Bank were \$28,572 and required the Appellant to make payment under the guarantee bond of the 17th November 1925. Thereafter the Respondent Bank commenced an action against the Appellant in the Supreme Court of Ontario claiming the sum of \$24,475.11, as being payable under the said guarantee bond.
- pp. 1-2. 20. The Appellant by his Statement of Defence pleaded that the guarantee of the 17th November 1925 was limited by the terms of the letter hereinbefore referred to in paragraph 7 to advances made by the Respondent Bank to the Appellant upon the discounting of bona fide approved trade paper; and that it had been obtained by the improper concealment of the change in the nature of the dealings between the Respondent Bank and its customer. 30
- p. 3.
- pp. 51, 52. 21. Chief Justice MEREDITH, in giving judgment for the Respondent Bank, said that the agreement by the Appellant to guarantee the account of Garlock Machinery Limited was an agreement between the Appellant and the said William Garlock; that the Respondent Bank did nothing but give to the said William Garlock the form in which they required the guarantee to be; that the letter, dated the 20th April 1923, which the Appellant obtained from the said William Garlock, in which expressly it was stated that the guarantee was given for the purpose of discount only, was in effect a sub-guarantee by the said William Garlock in the 40

Appellant's favour and placed no obligation on the Respondent Bank; and that the said Garlock was in no sense the agent of the Respondent Bank. RECORD.

22. Chief Justice MEREDITH, in giving judgment for the Respondent Bank, failed entirely to deal with the issue arising out of the concealment by the Respondent Bank of the material change in the relationship between the Respondent Bank and its customer.

23. After the delivery of the said judgment Chief Justice Meredith, on the application of Counsel for the Respondent Bank, permitted Counsel for the Respondent Bank (despite the protest of Counsel for the Appellant) to call further evidence in Reply, with the object of establishing that the Respondent Bank had no knowledge of the letter hereinbefore referred to in paragraph 7. Having heard such evidence, the Chief Justice said that his judgment was not affected by it, and on the 7th December 1928, judgment was entered for the Respondent Bank for \$23,755·00. pp. 53, 54.  
pp. 55-70.  
p. ~~70~~ 71.

24. The Appellant appealed from the said judgment on the grounds, amongst others, that the Respondent Bank had knowledge of the limited nature of the Appellant's guarantee; that the guarantee sued upon was obtained by concealment of material change in the dealings between the Respondent Bank and its customer, Garlock Machinery Limited; and that evidence in Reply had been improperly admitted; and that evidence in answer had been improperly rejected. pp. 72, 73.

25. The Second Appellate Division of the Supreme Court of Ontario on the 8th March 1929 dismissed the Appeal of the Appellant, but gave no reasons for their decision; and the Appellant thereafter obtained leave to appeal to His Majesty in Council. p. 74.  
p. 75-76.

26. The Appellant humbly submits that the said judgments of the Chief Justice of the Common Pleas and of the Second Appellate Division of the Supreme Court of Ontario are wrong and should be reversed, and that judgment should be entered for the Appellant on the claim and counter-claim, for the following, amongst other— pp. 71, 74.

#### R E A S O N S

1. Because the said agreement of guaranty was one continuing agreement, extended in amount on two occasions; and was limited by the said letter of the 20th April 1923 from Mr. William Garlock to the Appellant to liabilities in respect of the discounting of trade paper.
2. Because the Respondent Bank had notice or knowledge of the said letter so limiting the said guarantee.
3. Because the Respondent Bank gave credit to Garlock Machinery Limited in disregard of the limit imposed by the said letter and thereby discharged the liability of the Appellant under the said guarantee.

4. Because the particular guarantee bond sued upon was obtained by the concealment of material change in the dealings between the Respondent Bank and its customer.
5. Because the nature of the dealings between the Respondent Bank and its customer was materially altered without the knowledge and consent of the Appellant.
6. Because Chief Justice Meredith improperly received further evidence on behalf of the Respondent Bank after he had delivered judgment.
7. Because Chief Justice Meredith improperly rejected evidence 10 tendered on behalf of the Appellant.
8. Because the judgments appealed from are wrong and ought to be reversed.

JOHN JENNINGS.

*Geoffrey Lawrence.*  
*Theobald Mathew.*

In the Privy Council.

No. 27 of 1930.

*On Appeal from the Appellate Division of the  
Supreme Court of Ontario.*

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BETWEEN

T. H. HANCOCK - - - (*Appellant*)

AND

IMPERIAL BANK OF CANADA (*Respondent*).

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CASE FOR THE APPELLANT.

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