Present : De Sampayo and Schneider JJ. 1922

SITHAMBARAM CHETTY *v.* THE KELANI VALLEY RUBBER CO., LTD.

39—D. C. Colombo, 727.

Principal and agent—Authority of superintendent of estate to borrow money on behalf of the estate.

The superintendent of an estate as such has no authority to borrow money on behalf of his employer, or to pledge his credit, even for the purposes of the estate, unless such authority is expressly given, or can be implied from the recognized course of dealing with third parties.

THE facts appear from the judgment.

Hayley, for defendant company, appellant.

R. L. Pereira (with him *M. W. H. de Silva*), for plaintiff, respondent.

September 7, 1922. DE SAMPAYO J.—

The plaintiff is a Chetty trader of Sea street, Colombo, having a branch establishment at Yatiyantota. The defendant is the Kelani Valley Rubber Co. and proprietor of Hathmathe estate, situated at Ruwanwella. At the time of the transactions, on account of which this action is brought, the superintendent of the estate, under the defendant company, was one E. H. Grigson, who has since been dismissed from his employment.

The plaintiff alleged in his plaint that at the request of the defendant company he agreed to advance to and on account of the defendant company such sums of money as the defendant company might from time to time require, which sums the defendant company undertook to repay to the plaintiff, together with a commission of 18 per cent. per annum. But, as a matter of fact, there was no such agreement, express or implied. The allegation is purely imaginary, and, except in connection with the present action, the parties never came in contact with each other. The plaintiff goes on to say that in pursuance of the alleged agreement, the plaintiff between October 1, 1920, and February 28, 1921, advanced to the defendant company various sums of money, which with the agreed commission or interest, and after deducting certain sums paid on account, amounts to Rs. 6,929.10, and which accordingly is claimed in this action.

The plaintiff's case is that in the months of October, November, and December, 1920, he paid on cash orders of the superintendent various sums, which, after crediting the defendant with certain

1922.

DE SAMPAYO J

Sithambaram Chetty v. The Kelani Valley Rubber Co., Ltd.

sums paid on account, amount to Rs. 3,303.92, and that he had further to get from the defendant a sum of Rs. 3,425, being the amount of a cheque issued to the plaintiff by Grigson, and dishonoured on presentment. The plaintiff's representative at Yatiyantota was one Krishnapillai, and he was also the plaintiff's principal witness in this case. He was obliged to admit that the cheque for Rs. 3,425 includes Rs. 2,000 which was a private debt of the superintendent, and although he attempted to explain that the balance Rs. 1,425 was represented by cash orders on account of the estate, he was not able to do so satisfactorily, and finally plaintiff's counsel admitted that the plaintiff's claim in respect of the amount of the cheque could not be supported. That part of the claim being disallowed, the District Judge has given the plaintiff judgment for the other sum of Rs. 3,303.92. But the improper, and what must be characterized as the dishonest, inclusion of Rs. 3,425 in the claim against the defendant company has a serious effect on the *bona fides* of the plaintiff in respect of the whole action.

The case turns upon the question whether Grigson had the defendant company's authority to borrow money. The superintendent of an estate as such has no authority to borrow money on behalf of his employer or to pledge his credit, even for the purposes of the estate, unless such authority is expressly given or can be implied from the recognized course of dealing with third parties. In the present case Grigson was regularly supplied by the defendant company with all the funds necessary for the estate, and was prohibited from obtaining money elsewhere. The plaintiff, or his agent Krishnapillai, was well aware of Grigson being supplied with moneys by his employers, and, in the circumstances, he knowingly undertook a certain risk in lending money to Grigson. Moreover, Grigson was in the habit of borrowing money from the plaintiff on his own private account, and dishonestly paid plaintiff such money by means of estate cheques. The agreement to pay 18 per cent. commission or interest, which is pleaded in the plaint, was, doubtless, one made by Grigson in connection with his private transactions. The defendant company was financially sound, and plaintiff could not possibly have imagined that the company would raise money at such a rate of interest as 18 per cent. As a matter of fact, though the cash orders sent by Grigson to plaintiff were to pay parties to whom money was due from the estate, Grigson from time to time misappropriated the moneys obtained from the plaintiff. The amount of such misappropriations cannot now be ascertained. The plaintiff was aware of Grigson's conduct, and it cannot possibly be held that the plaintiff thought that Grigson had the defendant company's authority to borrow money. The District Judge rightly holds that the plaintiff connived at Grigson's dishonesty. Grigson himself in connection with the plaintiff's claim frankly admitted to his employer that the whole amount claimed was due by him, and none of it was

due by the defendant company, and that the Chetty was well aware of it. He repeated this admission in the course of his evidence in this case. All this was surely sufficient to put the plaintiff out of Court. But the District Judge has purported to go upon some evidence of Mr. F. H. Layard, the Managing Director of the defendant company, which I think the District Judge has misconstrued. Mr. Layard in cross-examination says that it is the custom for a superintendent to cash cheques and pay a small commission, that he may also obtain on cash orders to the extent of his credit in the bank for a limited period, such as for a month, and that the cash orders in question represent moneys "due from the estate." From these statements the District Judge draws the conclusion that Grigson had authority to borrow the money on these cash orders, and that the defendant company was liable to the plaintiff. It is obvious, however, that Mr. Layard was referring to the ordinary and necessary practice on estates in remote districts, whereby the superintendent gets cash for immediate requirements by the issue of cheques, or cash orders, to local traders on payment of a small commission. As Mr. Layard said, an estate cannot be run unless the superintendent had such limited authority. Mr. Layard mentioned one month as the limit of time, because I think the superintendent sends his requisition for funds once a month. If the requisition includes, as it should, the cash orders already issued, the superintendent would be able to pay for these orders within a month, and Mr. Layard added that if necessary the superintendent may send an intermediate requisition. When Mr. Layard said that the cash orders in question represented moneys due from the estate, it is clear that what he meant was that on the face of them the orders were to pay parties to whom, in the first instance, the moneys were due, but as the superintendent received moneys on his requisitions for all these purposes, it is impossible to hold that Mr. Layard meant that the estate owed these moneys to the plaintiff.

In my opinion the judgment of the District Judge is based on a wrong reading of Mr. Layard's evidence, and is against the clear result of all the other evidence in the case. I would set aside the judgment, and dismiss the plaintiff's action, with costs, in both Courts.

SCHNEIDER J.—I agree.

Set aside.