APPELLATE CIVIL.

Before Kapur and Bishan Narain, JJ.

THE PUNJAB NATIONAL BANK, LTD.,—*Appellant.*

versus

SHRI SATYAPAL VIRMANI,—*Respondent.*

First Appeal from Order No. 160 of 1953

1955

Nov., 21st

Banker and Customer—Banker's lien—Extent of—Presumption is in favour of general lien unless contract to the contrary proved—Liability of the Customer—Nature of.

(1) A.I.R. 1944 Nag. 335
(2) A.I.R. 1950 F.C. 131

S.V. had with P.N. Bank, Ltd. at Lahore, a call loan account secured by deposit of Government securities of the value of Rs. 5,00,000. The interest was payable 1½ P.C.P.A. On 31st December, 1948, a sum of Rs. 4,86,149-1-0 was due from S.V. to the Bank in this account. With S.V's consent securities were sold and after adjustment of the debt Rs. 13,311-6-0 were left surplus, in the hands of the Bank. On 21st August, 1951, S.V. sent a letter to the Bank demanding the surplus with interest at 3 P.C.P.A. On 17th November, 1951, notice through lawyer sent. The Bank did not pay the money. S.V. filed an application on 1st October, 1952, under section 13 of the Displaced Persons (Debts Adjustment) Act for recovery of the money. The Bank's main defence was that under the cash credit agreement there was a lien on all amounts due to the original applicant and the Bank has a general Banker's lien and S.V. was not entitled to any interest.

Held that:—

(a) the allegation of the original applicant that there was a special contract excluding a general lien or confining the lien over securities of Rs. 5,00,000 to a particular account, has not been made out;

(b) the Bank can claim a general lien on the surplus amount and can retain it for payment of other debts due from the applicant and there is no contract, express or implied, inconsistent with the general lien.

(c) the documents executed by the applicant as given in Exhs. A., D. 9 and the acknowledgments Exhs. D. 10 and D. 11, show that the applicant had given a personal guarantee making his person and property liable for the debt and, therefore, the banker's lien would be operative in regard to the surplus in the hands of the Bank; and

(d) it is not a case of partnership or a joint account but the liability of the applicant is personal and individual.

The Punjab National Bank, Ltd. v. *Harnam Singh and another* (1), *Lloyds Bank, Limited* v. *Administrator-General of Burma* (2), *Devendrakumar Lal Chandji* v. *Gulal Singh-Nekhe Singh* (3), *Mercantile Bank of India, Limited* v. *Rochaldas Gidumal and Co.* (4), *Union Bank of Australia* v. *Murrary Aynsley* (5), *Brandao* v. *Barnett* (6), *Davis* v. *Bowshwer* (7), *Exchequer Chamber* (8), *In re: London and Globe Finance Corporation* (9), *Jones* v. *Peppercorne* (10), *Wolstonholme* v. *The Sheffield Union Banking Company, Limited* (11), *Watts* v. *Christie* (12), *Coats* v. *Union Bank of Scotland* (13), *Radha Raman* v. *Chota Nagpur Banking Association, Ltd.* (14), referred to.

First Appeal from the decree of the Court of Shri Radha Krishen Tribunal, Amritsar, dated the 19th day of October, 1953, granting a decree for Rs. 14,361-4-0 in favour of the applicant against the respondent, leaving the parties to bear their own costs.

S. L. PURI, for Appellant.

A. N. GROVER, for Respondent.

JUDGMENT

KAPUR, J. This is an original respondent's appeal against a decree for Rs. 14,361-4-0 passed by the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act. **Kapur, J.**

The original applicant had, with the Punjab National Bank at Lahore, a call loan account and by way of security the original applicant had deposited Government Securities of the value of Rs. 5,00,000.

(1) C.R. No. 40 of 1953
(2) I.L.R. 12 Rang. 25
(3) I.L.R. 1946 Nag. 210
(4) A.I.R. 1926 Sind. 225
(5) (1898) A.C. 693
(6) 8 E.R. 1622
(7) 5 Term. Rep. 491
(8) 6 Man. and Gr. 670
(9) (1902) 2 Ch. 416
(10) 70 E.R. 490
(11) 54 L.T. 746
(12) (1849) 11 Beav. 546
(13) (1929) S.C. (H.L.) 114
(14) I.L.R. 23 Pat. 501

The Punjab National Bank, Ltd. *v.* Shri Satyapal Virmani

Kapur, J.

The interest was payable at 1½ per cent per annum. On the 31st of December, 1948, a sum of Rs. 4,86,149-1-0 was due from the original applicant to the Bank in this account. With the consent of the debtor the securities were sold and after adjustment of the debt due from the original applicant a sum of Rs. 13,311-6-6 was the surplus in the hands of the Bank.

On the 21st of August, 1951, the original applicant sent a letter to the Punjab National Bank demanding the Rs. 13,311-6-6 with interest up to the date as being due from the Bank to the applicant on account of the unpaid balance of the sale proceeds of the securities. The Bank was called upon to pay the amount by meeting the *hundi* which was drawn upon the Bank through the Central Bank of India for the original sum plus Rs. 1,049-13-6 as interest, the total being Rs. 14,361-4-0. The interest was calculated at 3 per cent per annum. On the 17th November, 1951, the applicant gave notice through his pleader making the same demand. The money was not paid and the original applicant, Virmani, filed an application on the 1st October, 1952, under section 13 of the Displaced Persons (Debts Adjustment) Act, for the recovery of this money alleging that he was a displaced person and could recover under the Act.

The defence was that Virmani was not a displaced creditor, that under the Cash credit agreement there was a lien on all amounts due to the original applicant, that the Bank had a general banker's lien and that the applicant was not entitled to any interest.

The Court first decided that the applicant was a displaced person and then raised the following three issues :—

1. What amount is due to the applicant from the respondent Bank in the account in dispute ?

2. Whether the application is liable to be dismissed for the reasons given in the reply ?
3. Has the respondent Bank general banker's lien or lien by agreement on the amount in suit for other debts, if any due from the petitioner ?

It held that the balance due as surplus after the adjustment of the debt was Rs. 13,311-6-6, that no lien was created by agreement and that in law there was no banker's lien. The claim was therefore decreed and the Bank has come up in appeal to this Court.

For their claim of a lien on the basis of an agreement the Bank relied on a document, Exhibit D. 1. This is a printed copy of the Bank's form for creating all liens by agreement, but this copy was printed in 1949. The most important part of this document which the Bank relies upon is :—

> "And it is further agreed that the said Bank shall have a lien on all such Stocks, Shares and Securities or on the proceeds after sale thereof (if sold) as security for or in part payment of any other debt due or liability then incurred or likely to be incurred by me|us to the said Bank."

The question is whether any document was executed by the original applicant in favour of the Bank when this call loan account was started and what that document was. The original document has not been produced. The Bank has produced Girdhari Lal D.W. 1, who has deposed that a loan form, No. 66-A, was executed by Satyapal Virmani at Lahore in his presence, that all documents connected with that loan are in Lahore and cannot be brought and that the Bank had written to its Lahore Branch to look for those documents but they had not been found. He also deposed

The Punjab National Bank, Ltd. v. Shri Satyap al Virmani

Kapur, J.

that no loan is advanced without the execution of a document similar to and in terms of Exhibit D. 1 and that the original documents were got executed by Jagat Ram in the presence of the witness. It has been satisfactorily shown that Jagat Ram was ill and was unable to come to Court. And although the Bank wanted to examine him on commission this was not allowed in spite of two applications, notwithstanding the fact that the Bank was neither remiss nor guilty of dilatoriness. In his cross-examination this witness (Girdhari Lal) stated that the relevant documents were executed in the presence of the Manager in his (the manager's) room and he (the witness) was present in the Manager's room when Jagat Ram got the document executed. The documents after completion were entered in an appropriate register which had also been left at Lahore and the books of the Bank could not be brought to India after the partition. He has further deposed that although Exhibit D. 1 was printed in 1949, a similar form was in use before that date and the conditions contained in Exhibit D. 1 in 1949 were the same as those that were in use before 1949.

The next witness for the Bank is Bodh Raj who is the District Manager of the Pakistan Branches. He proves that certain other amounts are due according to the Bank books from Satya Pal Virmani, the original applicant, and he produced copies of accounts showing the amounts due and that suits had been filed for recovery of those monies. He stated—

> "In that suit form No. 66-A was filed. This form and the form D. 1 are the same. The form is of 1943 print. Jagat Ram is sick and cannot come to Amritsar. He is aged 70 and is suffering from high blood pressure. He can come during winter."

Read together the testimony of these two witnesses shows that Exhibit D. 1 is a copy of the form 66-A which was in use by the Bank in regard to loans advanced on securities, and Girdhari Lal has stated that an agreement form 66-A was executed by Satya Pal Virmani in his presence when the transaction of the original call loan was entered into.

Satya Pal Virmani as his own witness (P. W. 1) denied signing any form 66-A and stated that he had never signed such a form before Girdhari Lal, D. W. When cross-examined he said that he did not know anything about Rs. 1-4-0 being debited to his account, nor did he remember having received from the Bank any periodical statements of account. He stated—

> "My office must have compared my own account with the Bank account in dispute. No discrepancy was ever pointed out to me by my office and so I never referred the matter to the Bank. I did not object to the item of Rs. 1-4-0 being debited to me as the statement of account shown to me was never received by me * * *. I cannot say whether Rs. 1-4-0 was debited to my account in my account book."

Now, this item of Rs. 1-4-0 is a very important link in the case. According to the Bank's witnesses Rs. 1-4-0 were debited to the applicant's account on account of the pronote executed by him and the agreement of security given. The account which was shown to Virmani contained this Rs. 1-4-0. He did not say that Rs. 1-4-0 was never debited to him, nor has he ever raised any objection. Although he has got books of account, he has not produced any showing that Rs. 1-4-0 were never debited to him. In my opinion this evidence shows that a letter of security was executed by the applicant in favour of the Bank

The Punjab National Bank, Ltd. v. Shri Satyapal Virmani

Kapur, J.

when the account started. The evidence for the Bank is quite definite on this point that no loan account is opened and security taken unless there is a document in form 66-A executed by the customer, and there is no reason why an exception should have been made in the case of the applicant, particularly when it is admitted that securities for Rs. 5,00,000 were given by him as security for the call loan account. No banker in his senses would accept Government securities or any other security as security for a loan without getting a writing because unless it is shown that the securities were given as securities for a loan advanced or to be advanced, the lien is not created even for the advance of a particular loan.

The only question then is whether it was this very security form which was used in this case or some other form. There is no reason to disbelieve the evidence of Girdhari Lal and Bodh Raj, D. Ws. 1 and 2 on the point that a document of the nature of form 66-A which was being used at that time was executed by the applicant. D. W. 1, Girdhari Lal deposed—

> "* * * 66-A is a letter of pledge and security. The specimen blank form is D. 1. L. Satya Pal filled the same form."

Cross-examined he said :—

> "The form D. 1 was printed in 1949 but it was in vogue before that. The conditions in both were the same. I have no form in my possession which was printed in 1944."

D. W. 2, Bodh Raj's deposition on this point was .—

> "In that suit (262 of 1952) form No. 66-A was filed, (Objected to). This form and the form D. 1 are the same. The form is of 1943 print * * ".

The wordings of the form No. 66-A and the terms and conditions of this document in suit No. 262 of 1952, and in Exhibit D. 1 seem to be the same and the clauses in regard to the lien are in identical terms in the two documents. In his application made to the Tribunal the applicant alleged that the deposit of the Government securities for Rs. 5,00,000 was security for the call loan account only. It is so alleged in paragraph 3 of the application that securities were deposited simply to cover the aforesaid account and not for any other account. The words used are—

> "The securities were deposited simply to cover the aforesaid account and not for any other account. The respondent had a particular lien over the above securities."

Satya Pal Virmani appeared as his own witness and said that he did not sign any document in form 66-A and that he never signed any such document before any of the witnesses for the Bank If this was the case of Satya Pal Virmani, it was the duty of the Court to have allowed the Bank to produce Jagat Ram for whose examination on commission the Bank had made an application at the earliest stage but the Court ordered that the application would be taken up on the date fixed for the hearing of the case, and even though subsequently attempts were made by the Bank to have Jagat Ram examined, the Tribunal, for some reason or another, refused to allow this opportunity. It shows that the Tribunal was not alive to the importance of the statement of Jagat Ram.

But even without the statement of Jagat Ram, in my opinion, the Bank has proved that a document in form 66-A was executed. The Bank was sending copies of accounts to the petitioner Virmani and to his account Rs. 1-4-0 have been shown to have been debited "(annas four for printing and one rupee for agreement which the Bank claimed was the form 66-A)."

The Punjab National Bank, Ltd. v. Shri Satyapal Virmani

Kapur, J.

The petitioner Satya Pal Virmani was cross-examined in regard to this account, but his statement was that he did not see the statement of account himself but his office must have seen it. In view of what I have said above and considering the pleadings of the petitioner, it appears to me that there was an agreement and as it has not even been suggested that it was an oral agreement and there is no satisfactory evidence on the part of the petitioner, I must hold that a document of pledge was executed and it was in form 66-A.

Objection was taken that the original has not been produced and that the Bank is deliberately withholding the original document which was signed by the applicant Satya Pal Virmani. I cannot see why the Bank should not produce the original document. It is not suggested in the statement of the applicant (P.W. 1) that a document in form 66-A was executed but certain terms were deleted or changed. His deposition is that he does not even remember having executed a document although he specifically pleaded a special agreement in para 3 of his application. When Girdhari Lal appeared as a witness no question was put to him as to any change having been made in the form which was then in use and Bodh Raj, D. W. 2, has stated that the form used at the time of the original transaction is the same as Exhibit D. 1. It was then suggested that the document had been brought into India and has not been produced. The evidence seems to be the other way. Girdhari Lal has stated that they had written to the Bank's office at Lahore but the document could not be found, and there is nothing extraordinary in this considering the state of affairs in 1947, the mass of the material which had got to be collected from the different branches of the Punjab National Bank and the difficulty with which some portion of the record was or could be brought into India.

Even if there was no specific agreement as given in Exhibit D. 1, the Bank submits that there is a general banker's lien on this amount against the debts due from the original applicant. Section 171 of the Indian Contract Act, provides for a general banker's lien as follows :—

> " Bankers,.....may,
>
> in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them ;.....".

In Mulla's Contract Act at page 511 a lien is stated in the following words :—

> " A banker's lien, when it is not excluded by special contract, express or implied, extends to all bills, cheques, and money. entrusted or paid to him, and all securities deposited with him, in his character as a banker."

According to the law merchant, the banker can look to his general lien as a protection against loss on account, or loss on loan or overdraft. And money has been held to be a species of goods over which lien may be exercised :

The Punjab National Bank Ltd., v. *Harnam Singh and another* (1),where reliance is placed on *Lloyds Bank Limited* v. *Administrator-General of Burma* (2), *Devendrakumar-Lalchandji* v. *Gulal Singh-Nekhe Singh* (3), *Mercantile Bank of India, Limited* v. *Rochaldas-Gidumal and Co.* (4), and *Union Bank of Australia* v. *Murrary Aynsley* (5).

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(1) C.R. 40 of 1953
(2) I.L.R. 12 Rang. 25
(3) I.L.R. 1946 Nag. 210
(4) A.I.R. 1926 Sind. 225
(5) (1898) A.C. 693

The Punjab National Bank, Ltd. v. Shri Satyapal Virmani

Kapur, J.

In *Brandao* v.*Barnett* (1), it was held that the general lien of a banker is a part of the law merchant and is to be judicially noticed, and at page 1630, Lord Campbell said—

> "Bankers most undoubtedly have a general lien on all securities deposited with them, as bankers, by a customer, unless there be an express contract, or circumstances that show an implied contract inconsistent with lien."

Reliance was there placed on a dictum of Lord Kenyon in *Davis* v. *Bowshwer* (2). A similar view had been taken by Lord Denman in pronouncing his judgment in the *Exchequer Chamber* (3).

In *re London and Globe Finance Corporation* (4), the efficacy of a broker's general lien was raised. In that case certain shares were held by stock-brokers to secure a specific advance and when this amount was repaid the documents remained with the brokers and subsequently there was a loss, and it was held that although the specific purpose of this deposit had been satisfied by the re-payment of the advance, the brokers had a general lien on the shares for the amount due in respect of the Stock Exchange transactions. Buckley, J., as he then was, relied on *Jones* v. *Peppercorne* (5), and observed that this case has been regarded as well settling the law ever since 1858—to the effect that brokers and bankers have a general lien on securities in their hands, as between themselves and the customer, for the balance due from the customer to the broker. The following passage from Buckley, J.'s judgment requires particular notice—

> "The transactions as between the customer and the broker resulted in a sum owing by

(1) 8 E.R. 1622
(2) 5 Term. Rep. 491
(3) 6 Man. and Gr 670
(4) (1902) 2 Ch. 416
(5) 70 E.R. 490

the customer to the broker, and there were in the possession of the broker securities which had come into his hands in the course of his business as broker of the customer. It is a well-established principle that the broker has as against the customer the right to hold those securities for the amount due."

In Halsbury's Laws of England, Volume 2, Third (Simonds) Edition, at page 210, a banker's lien has been described in the following words—

> "The general lien of bankers is part of the law merchant as judicially recognised, and attaches to all securities deposited with them as bankers by a customer, or by a third person on a customer's account, and to money paid in by, or to the account of, a customer, unless there is a contract, express or implied, inconsistent with the lien."

As is stated in the same Volume, the lien attaches only when the securities come into the hands of a banker, *qua* banker, in the way of his business. As to whether securities deposited to cover a specific advance which remain in the bank after payment of that advance are subject to a general lien or not, there seems to be a difference of opinion. In *Jones* v. *Peppercorne* (1), it was held that in such a case there is not only a special lien in respect of such loans but also a general lien in respect of whatever else may be due to the stockbrokers from the bankers on account of their general business transactions, the rule in such cases being that the general lien is not excluded by a special contract unless the special contract be inconsistent with it, whereas in *Wilkinson* v. *London and*

(1) 70 E.R. 490

The Punjab National Bank, Ltd. v. Shri Satyapal Virmani

Kapur, J.

County Banking Co. (1), the House of Lords assumed that the customer was entitled to have back the securities in such a case independent of the state of account, and North, J., in *Re Bowes, Strathmore (Earl)* v. *Vane* (2), held an agreement that a policy of insurance was to be security for £ 2,000 only, inconsistent with a general lien for a further balance of £ 1,000, but in regard to monies which come into the hands of the banker after sale of securities the learned Judge said at page 588—

> "It was not suggested that the sale was wrong in any way : and it may well be that bankers who have a power of selling securities deposited, when they have sold, and have clear money in their hands after satisfying the charge, may be entitled to say they will set off that money against further sums due to them ; but that seems to me a totally different case from the present, where the security is of a wholly different nature, and the bank had no power of sale."

This case therefore is not against or wholly inconsistent with the rule laid down in *Jones* v. *Peppercorne* (3), but makes a distinction between cases where securities are sold and there is cash in the hands of a banker and where securities are lodged and the banker has no power of sale. Buckley, J., in the case to which I have already referred to *In re London and Globe Finance Corporation* (4), held that securities deposited as cover for specified advances remaining after discharge in Banker's hands are liable to general lien. In a case which I shall discuss at greater length later, *Wolstonholme* v. *The Sheffield Union Banking*

(1) (1884) I.T.R. 63
(2) (1886) 33 Ch. D. 586
(3) 70 E.R. 490
(4) (1902) 2 Ch. 416

Company Limited (1), a different view seems to have been taken. In order to obviate the difficulties arising from this conflict of opinion, bankers have letters of security in which there are special terms of charge.

A review of these authorities shows that where a banker has advanced money to another, he has a lien on all securities which come into his hands for the amount of his general balance, unless there is an express contract or circumstances to the contrary. In the present case an argument was raised that as alleged in the application of Satya Pal Virmani there was a specific contract which circumscribed the lien to the advance of call loan only. Although this allegation was made there is no evidence in support of it and, as I have already said, I am unable to accept this special contract which is inconsistent with the general lien.

Mr. Grover then submitted that the lien which the Bank is claiming is in regard to advances which are not the personal or sole liability of the original applicant but they are on account of his standing as a joint guarantor. The Bank has placed various documents on the file. It appears that Ram Narain Virmani and Satya Pal Virmani have guaranteed certain accommodation which was given to the Punjab Commerce Bank Limited, Lyallpur, against certain securities. There are two letters of security, dated the 11th June, 1947, Exhibit A and the 16th of June, 1947, Exhibit D. 9. The language used in these two letters seems to be the same. They begin—

> "In consideration of your Bank at our request allowing an accommodation by way of a fixed loan against security of .....to the Punjab Commerce Bank, Ltd., Lyallpur, we in our personal capacity hereby guarantee to you the payment on demand of all moneys

(5) 54 L.T. 746

The Punjab National Bank, Ltd. *v.* Shri Satyapal Virmani

Kapur, J.

which may at any time be due to you from the said Punjab Commerce Bank Ltd., on the general balance of that account with your Bank."

This guarantee was a continuing guarantee and the liability was co-extensive with that of the debtor bank. It was not to be affected by the death of the guarantors and it also provided—

> "We also agree that the Bank shall be entitled to recover its entire dues under the said account from our persons or property upon default in payment by the said Punjab Commerce Bank Ltd."

And it authorised the Bank to enforce this security against the guarantors even if any bills were in circulation or outstanding and it was not terminable by the guarantors except on their making full provision up to the limits of the guarantee. There are some letters on the record. One is Exhibit D. 10, dated the 6th June, 1950, which acknowledges the amount outstanding against the Commerce Bank to be correct and ends up by saying—

> "and which has been guaranteed by me.
>
> Sd.—Satya Pal Virmani."

and the other is Exhibit D. 11 of the same date in which similar language has been used. Letter Exhibit D. 12, dated the 26th May, 1949, addressed to the Bank also shows that on that date monies were also due to the Bank from Satya Pal Virmani. These documents show that the original applicant had given a personal guarantee and if there is anything due from the Commerce Bank the liability of the original applicant, Satyapal Virmani to the Bank is there.

It was next submitted that the original guarantee given was not by Satya Pal Virmani alone but by Ram Narain and Satya Pal and therefore the general banker's lien would not operate as against Satya Pal Virmani. In this particular case although the guarantee given was by two persons, each one of them had taken an individual and personal liability to pay any amounts which were due to the Bank under the guarantee. The words are quite specific and the relevant portions of the guarantee have already been given. The guarantee entitles the Bank to recover the entire dues from the person or property of the guarantors and the letters of acknowledgment Exhibits D. 10 and D. 11 show that each one of the guarantors was individually liable which is shown by the use of the following words—

"which has been guaranteed by me"

occurring at the end of Exhibits D. 10 and D. 11. In my opinion it cannot be said that it was a joint liability and not several and therefore the cases which may have some reference to partnerships have no application to the facts of the present case. In Grant's Law of Banking, Seventh Edition, the law is stated to be—

> "Bankers have no lien on the deposit of a partner, on his separate account, for a balance due to the bank from the firm."

And this is based on two cases, *Watts* v. *Christie* (1), and *Wolstenholme* v. *Sheffield Union Bank* (2). Mr. Grover laid a great deal of stress on *Wolstenholme's case* (2). In that case one Wingh had an account with the Bank and later on he opened another account in the name of a firm of which he was a partner.

(1) (1849) 11 Beav. 546
(2) (1886) 54 L.T. 746

The Punjab National Bank, Ltd. v. Shri Satyapal Virmani

Kapur, J.

The firm account was allowed to be overdrawn to the extent of £ 2,000 and Wingh's private account to extent of £ 300. As a sum of £ 500 was required over and above the amounts already drawn Wingh deposited a leasehold worth £ 5,000 for this temporary overdraft. Some time later the firm's account was closed and the leasehold was sold and the proceeds handed to the bankers and Wingh was subsequently adjudicated bankrupt and the trustees in bankruptcy sued to recover the surplus of the proceeds of the sale after settlement of overdraft on Wingh's private account. The bank pleaded that the lease was deposited with them in order to secure advances made on both the accounts, i.e., of Wingh and of the partnership and they claimed to retain the proceeds of the sale for the purpose of repaying both such advances. It was held that the lease was deposited by Wingh merely for the purpose of securing to the bankers the repayment of the particular overdraft of £ 500 and that the bankers had no general lien on the proceeds so as to entitle them to retain the surplus in respect of the firm's overdrawn account. Mathew, J., who heard the case in the first instance, held that upon true construction of the documents the lease was deposited to secure the particular overdraft of £ 500, and the attempt of the bank's counsel that there was a bargain by which the lien was applicable to the entire account, was not sustained. The matter was taken in appeal and Lord Esher, M. R., during the course of arguments observed—

> "They have a general lien, but they have no right to take a security given for one purpose and apply it to another."

The judgment of Mathew, J., was affirmed by the Court of appeal. Lindley, L.J., said—

> "*Prima facie* a separate debt cannot be set off against a joint debt either at law, in equity,

or under the mutual credit clauses of the Bankruptcy Act".

and then he went on to say that there is no authority for the bankers having a general lien in a case such as the one that was before them, and he carefully pointed out that the correspondence made it clear that Wingh had deposited the lease to secure the one particular advance and no more, and therefore this case is an authority for saying that a security given for a particular advance excludes a general lien, though this is doubted in a later case decided by Buckley, J., in *In re London and Globe Finance Corporation* (1), and in *Coats* v. *Union Bank of Scotland* (2), it was held that where securities are jointly deposited to cover a joint liability, one of the depositors on paying his share of the liability is not entitled to the return of a proportionate amount of the securities, and I have already referred to *Jones* v. *Peppercorne* (3), where Vice-Chancellor, Sir W. Page Wood, held that a general lien is not excluded by a special contract unless the special contract be inconsistent with the general lien.

In the present case the securities have been sold and a general lien extends to the money which the Bank holds to the credit of the original applicant.

Counsel also relied on a judgment of the Patna High Court in *Radha Raman* v. *Chota Nagpur Banking Association , Ltd.* (4), where it was held that bankers have a right to combine one or more accounts of the same customer but cannot combine an account which belonged either to another or to himself alone with another account which is the joint account with

(1) (1902) 2 Ch. 416
(2) (1929) S.C. (H.L.) 114
(3) 70 E.R. 490
(4) I.L.R. 23 Pat. 501

The Punjab National Bank, Ltd.
v.
Shri Satyapal Virmani

Kapur, J.

another and third person, but at page 507 the decision was given in the following words :—

> "For the reasons given above I hold that the bank had no lien on the balance of account standing to the credit of the plaintiffs in the fixed deposit account, and their right of set off, whatever it may have been in the past, was clearly barred by limitation on the 1st May, 1935, the date on which the bank made adjustment of the account."

Thus the language boils down to this that it was held that the bank had no lien on the balance of account and the right to set off, whatever it was, had become barred by time. In an earlier part of the judgment it was observed that the bank could not combine the two accounts, one belonging to the plaintiffs' father and the other which was the joint account of the plaintiffs' father and defendants 2, 3, and 4, and a distinction was drawn between a banker's lien and a set off.

On the facts as proved in this case and on the authorities which I have quoted above it cannot be said that a general lien is excluded in the circumstances of this case.

I hold therefore that—

(a) the Bank has proved that the original applicant had executed a document with terms similar to those that are contained in Exhibit D. 1 ;

(b) the allegation of the original applicant that there was a special contract excluding a general lien or confining the lien over securities of Rs. 5,00,000 to a particular account, has not been made out ;

(c) the Bank can claim a general lien on the surplus amount and can retain it for payment of other debts due from the applicant and there is no contract, express or implied, inconsistent with the general lien;

(d) the documents executed by the applicant as given in Exhibits A., D. 9, and the acknowledgments Exhibits D. 10 and D. 11 show that the applicant had given a personal guarantee making his person and property liable for the debt and therefore the banker's lien would be operative in regard to the surplus in the hands of the Bank; and

(e) it is not a case of a partnership or a joint account but the liability of the applicant is personal and individual.

I would therefore allow this appeal, set aside the decree of the Tribunal and dismiss the applicant's claim. The Bank will have their costs in this Court and in the Court below.

BISHAN NARAIN, J. I agree that in the circumstances of this case the respondent's claim against the appellant Bank should be dismissed and this appeal should be accepted with costs throughout.