## PRIVY COUNCIL.

P.C.*
1919

*June* 19;
*July* 8.

# LACHMANDAS KHANDELWAL

*v.*

# RAGHUMULL.

[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

*Damages—Suit for damages for wrongful termination of agreement—Agreement allowing Company's broker to appoint and dismiss under-brokers—Agreement terminated by new agreement—Measure of damages.*

By an agreement, dated 31st May 1911, a Company of sugar dealers appointed the respondent and his partner their brokers for the sale and purchase of sugar for the period of 5 years unless the agreement became sooner ended under its terms which allowed it to be terminated on 3 months' notice by either party. The respondent's firm were under the agreement to employ such under-brokers as might be required for the purpose of the sugar business; the under-brokers to be under the control of the Company, but liable to be dismissed by the respondent firm. On 8th June 1911, the respondent firm entered into an agreement with the appellants to employ them as under-brokers "for the sale and purchase of sugar in respect of all contracts to be entered into by the respondent firm on behalf of the Company under the agreement of 31st May 1911, and during its subsistence." The respondent's partner died on 27th April 1912, and on 12th August 1912 the contract with the appellants was wrongfully ended by the respondent. On 2nd December a new agreement was entered into between the Company and the respondent which differed in many material respects from that of 31st May 1911, and appointed the respondent as their broker for a new period of 5 years on different terms. In a suit by the appellants on 28th July 1913 claiming from the respondent damages for the wrongful termination of their agency :—

*Held*, that damages were only recoverable up to 2nd December 1912. That agreement necessarily ended the original appointment of the respondent firm as brokers to the Company under the agreement of 31st May 1911, and with its termination the appellant's contract with the respondent firm also came to an end.

*Present*: Lord Buckmaster, Lord Atkinson, Lord Phillimore, Sir John Edge and Mr. Ameer Ali.

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APPEAL 138 of 1917 from a judgment and decree (11th February 1916) in its appellate jurisdiction which varied a judgment and decree (31st May 1915) of the same Court in its Original Civil jurisdiction.

The plaintiffs were the appellants to His Majesty in Council.

The facts leading up to the suit which gave rise to this appeal were that by an agreement dated 31st May 1911 made between Messrs. Sassoon & Co. of the one part, and the respondent and his then partner Juggomull of the other part, the latter were appointed brokers for the sale and purchase of sugar on behalf of the Company for a period of five years upon the terms, *inter alia*, (*a*) that they should employ such under-brokers as might be necessary for the business, and (*b*) that the agreement might be terminated by either party giving the other three calendar months' notice; and by another agreement dated 8th June 1911 the respondent and Juggomull appointed the appellants under-brokers for the sugar business of Sassoon & Co. during the subsistence of the agreement of 31st May 1911 or for such further period as the respondent and the Company might extend it, upon certain terms one of which was that the respondent and Juggomull should have power to cancel the agreement if it should be found that the appellants had acted contrary to, or been unfaithful in, the discharge of their duties under it.

The appellants duly acted as under-brokers under the agreement of 8th June 1911 down to the 12th August 1912 when the respondent (Juggomull his partner being then dead) wrongfully, as the appellants alleged, gave them notice to terminate that agreement, charging generally that they had acted contrary to the terms of the agreement; and from that date the

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respondent refused to allow the appellants to continue to act as such under-brokers.

Thereupon the present suit was brought by the appellants for Rs. 48,760 on account of brokerage, commission and profits whilst acting as under-brokers under the agreement of 8th June 1911; and for Rs. 1,50,000 as damages for the alleged wrongful termination by the respondent of that agreement. There were other items of claim which did not come under the brokerage agreement but which the appellants claimed under a subsequent oral agreement in that behalf.

The respondent in answer pleaded, *inter alia*, that the termination of the agreement was justified, and that he was not liable in damages: that nothing was due from him to the appellants; but that, on the contrary, on an account being taken a sum of Rs. 41,000 or thereabouts would be found due to him from them.

The Trial Judge (GREAVES J.) in the result made a decree in favour of the appellants with interest and costs.

The respondent's appeal came before SANDERSON C. J. and WOODROFFE and MOOKERJEE JJ., and at the hearing of the appeal he was allowed to put forward a contention not raised in his written statement, in the issues, or in his grounds of appeal, namely, that after Juggomull's death a further agreement was made between him and Sassoon & Co. dated 2nd December 1912, which, though it admittedly continued the respondent as broker, put an end (as he submitted) to the original agreement of 31st May 1911, and that the damages payable by the respondent ought therefore to be limited to the period between the termination of the contract and the date of the new agreement. The latter had been tendered in evidence in the first Court as showing that the respondent

thought that Juggomull's death put an end to the original agreement, but it was objected to as irrelevant and was withdrawn. The Appellate Court, however, admitted it as relevant.

The Appellate Court agreed with GREAVES J. as to the responsibility for damages, and as to Juggomull's death not putting an end to the agreement; but they held that the subsequent agreement of 2nd December 1912 did put an end to it, and that the appellants were only entitled to damages up to that date which they assessed at Rs. 1,250 a month (instead of Rs. 1,000 a month as assessed by the first Court) which reduced the damages from Rs. 30,000 to Rs. 4,583.

On this appeal,

*Dunne, K.C.*, and *Sir William Garth, K.C.*, for the appellants, contended that the respondent should not have been allowed to raise the question of the agreement of 2nd December 1912, or to put it in evidence in the Appellate Court. That question was, it was submitted, wholly irrelevant and immaterial, and should not have been taken into consideration in assessing damages for a breach which occurred previously in August 1912. That agreement did not put an end to the agreement of 31st May 1911 within the meaning either of the latter agreement or that of 8th June 1911. The 3 months' notice provided by its terms for bringing it to an end was not given, and the appellants were entitled therefore to further damages for 3 months from 12th August 1912: see *Brace* v. *Calder* (1). The appellants were not liable for losses after the business had been wrongly taken out of their control.

*De Gruyther, K.C.*, and *Kenworthy Brown*, for the respondent, contended that the appellants were on the

(1) [1895] 2 Q. B. 253.

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terms of the agreement of 8th June 1911, rightly held liable in respect of losses sustained by the respondent from the contracts entered into through them before 12th August 1912, though such losses may not have been ascertained until later. The High Court was right in holding that the agreement of 2nd December 1912 terminated that of 31st May 1911, because it was inconsistent with it. There was no obligation on the respondent to continue it. Reference was made to *Cowasjee Nanobhoy* v. *Lallbhoy Vullubhoy* (1). If the appellants were entitled to damages in respect of a breach by the respondent of the agreement of 8th June 1911, the Appellate Court was right in assessing them with reference to the duration of the respondent's agreement with Sassoon & Co. of 31st May 1911.

*De Gruyther, K.C.*, replied.

*July* 8. The judgment of their Lordships was delivered by

LORD BUCKMASTER. By an agreement dated the 31st May, 1911, David Sassoon & Co., Ltd., appointed Raghumull and Juggomull, of the firm of Madhoram Hurdeodas, to be their brokers for the sale and purchase of sugar for a period of five years from the date of the agreement, or for such further period as should mutually be agreed, unless the agreement should be sooner determined under provisions therein contained.

The agreement contained a clause for the appointment of under-brokers in the following terms:—

"2. The brokers shall employ such under-brokers as shall or may be necessary or required for the purposes of the Company's sugar business, and that such under-brokers shall be under the control of the Company, and the brokers shall from time to time be responsible for the fidelity of the said under-brokers and dismiss such of the under-brokers as the Company may direct, and employ others in their place,"

and also a clause imperfectly worded, but intended to provide and accepted by all parties as providing, that

(1) (1876) I. L. R. 1 Bom. 468; L. R. 3 I. A. 200.

the agreement might be ended by three calendar months' notice on either side.

On the 8th June, 1911, the brokers so constituted entered into an agreement with the appellants constituting them under-brokers. This agreement recited the original contract, and effected the appointment by clause 1 in these words :—

"The brokers shall appoint and do hereby appoint the under-brokers, and the under-brokers do hereby agree to become and act as under-brokers for the said brokers for the sale and purchase of sugar in respect of all contracts to be entered into by them for or on behalf of the said David Sassoon and Company, Limited, under the aforesaid agreement and during the subsistence of the said agreement, or for such further period as the said brokers and the said Company may further extend."

The other clauses of the agreement followed the provisions of the earlier contract, but contain nothing material to the real question raised by this appeal.

On the 27th April, 1912, Juggomull died and, though it was at first urged that the contract was thereby ended, this point was decided against the respondent and was not raised before their Lordships. On the 24th May, 1912, a new agreement appears to have been made between Sassoon & Co. and the respondent, the surviving partner of the firm of Madhoram Hurdeodas, but it has not been produced and their Lordships are ignorant of its contents.

On the 12th August, 1912, the appellants' contract was summarily ended by the respondent on the ground of alleged breaches of duty. On the 2nd December, 1912, a new agreement was entered into between David Sassoon & Co. and the respondent differing in many material respects from the contract of the 31st May, 1911, and appointing the respondent broker in the same business for a new period of five years on different terms. On the 28th July, 1913, the appellants instituted the proceedings out of which this appeal has arisen, claiming against the respondent

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damages for wrongful termination of their agency, and accounts both under the written contract and under a verbal contract to which further reference will be made.

A defence was put forward that the dismissal was justified, but this wholly failed, and the only questions now open are (i) the measure of damages for wrongful dismissal; (ii) as to the basis on which accounts ought to be directed for monies due under the contract; and (iii) a subsidiary claim in respect of the verbal agreement.

The questions are independent of each other and need separate consideration.

With regard to the damages, the learned Trial Judge thought that, the period of the contract being five years, the appellants were entitled to compensation for loss of employment upon that footing, and the gross earnings being admitted as Rs. 30,000 for the 14 months during which the agreement had run, after allowing for expenses, he fixed Rs. 1,000 a month as the average net profit. This would produce Rs. 46,000 for forty-six months the residue of the term, and from this sum he deducted Rs 16,000 as prospective earnings, leaving Rs. 30,000 as the estimated damage. It is true that in arriving at this conclusion he had not before him the critical contract of the 2nd December, 1912, and it is impossible and unnecessary to conjecture why a document of such importance was not forthcoming at the trial. It was, however, produced before the High Court on appeal, who held that this contract necessarily ended the original appointment of the respondent's firm as brokers to Sassoon & Co., and that with its termination the appellants' contract likewise came to an end. They altered the rate of prospective earnings per month to Rs. 1,250, and allowed this sum up to the 2nd December, 1912.

In so deciding their Lordships think that the High Court rightly interpreted the bargain between the

parties and awarded damages on the correct principle.

The contract of the 8th June, 1911, was a contract which in its very nature as well as in its terms depends for its existence and duration upon the continuance of the contract of the 31st May, 1911. It is stated that the appointment it effects is for "the sale and purchase of sugar in respect of all contracts to be entered into by them [*i.e.*, the respondent] on behalf of the said David Sassoon & Co., Ltd., under the aforesaid agreement [*i.e.*, the agreement of the 31st May, 1911] and during the subsistence of the said agreement, or for such further period as the said brokers and the said Company may further extend." Even apart from the words which make the period of the contract identical with that of the covering authority, the mere fact that the appointment is an appointment to act as brokers in respect of the sugar bought and sold by the respondent's firm under their bargain with Sassoon & Co., shows that when they ceased to buy and sell sugar in accordance with that authority, the appointment of the appellants as brokers would necessarily come to an end.

It is not necessary to consider what the position would be if the original agreement were ended simply as a means of defeating the appellants' rights; for no such case is urged, and the question does not arise. That the contract of the 2nd December, 1912, cannot be treated as an extension of the original contract, but is a completely new bargain, which in itself terminated the original contract, is plain; for the terms of the two contracts differ in many important respects, and most notably in the amounts of commission to be paid. Whether or no this latter contract followed a termination by three months' notice of the earlier contract pursuant to the provisions which it contained,

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is immaterial. The provision as to notice was a means by which either party to the contract might bring it to a close against the will of the other. It was always competent to them both by agreement to end it when they pleased; and whether it was ended by one means or the other no breach has been committed of the respondent's duties under his contract with the appellants, since such contract never expressly created nor impliedly involved any obligation not to agree with Messrs. Sassoon to a new contract of brokerage, if and when it was thought fit.

With regard to the action for monies due under the contract of the 8th June, 1911, the only question that arises is as to whether the respondent is entitled to make a reduction in respect of losses arising from the incomplete contracts existing when the arrangement with the appellants came to an end. The learned Trial Judge thought that he was not; but in this view their Lordships cannot concur.

The accounts showed that certain losses always arose due to the failure of customers who were introduced to accept delivery and pay for the goods they had bought.

It is urged on behalf of the appellants that, had their services been continued, these losses might have been minimised, owing to their personal relations with the customers. This is indeed a reasonable possibility, but the appellants have failed to show that the difference between the amounts which the respondent seeks to deduct under this head are so materially out of proportion to the average loss that was sustained during their period of agency as to make a substantial difference in the figures, and in these circumstances their Lordships see no reason to interfere with the judgment of the High Court, who take the view that actual losses should be deducted.

The final question relates to a claim with regard to business done under a verbal contract made between the appellants and the respondent's firm for brokerage on goods bought by the respondent's firm from Messrs. Sassoon & Co. direct and from their buyers. The learned Trial Judge in directing an account of the sum due, in addition to a figure no longer disputed of 8 per cent. brokerage, adds also an account in respect of profits. This formed no part of his original judgment, but was added in the decree. There is no analysis by the learned Trial Judge of the evidence which led him to include this claim. The High Court on appeal thought it was insufficient for the purpose, and with that view their Lordships agree. The appellants in their evidence in chief do not in the first instance make a claim to embrace these sums. They stated "Juggomull told us that we would get the same commission for selling these goods." That is the same commission as they were receiving under the original contract, and in this the payment by commission is distinct from payment by a share of profits. They added that they were claiming a share of the profits in respect of these accounts, but they certainly did not say in examination in chief that there was any agreement that those profits should be paid.

There is no sufficient explanation of how the claim for profits became included in the original decree, and their Lordships think that the High Court were right in rejecting it. For these reasons they think that this appeal should fail, and they will humbly advise His Majesty that it should be dismissed with costs.

J. V. W.

*Appeal dismissed.*

Solicitors for the appellants: *Pugh & Co.*
Solicitor for the respondent: *G. C. Farr.*