

## ORIGINAL CIVIL.

Before Ameer Ali J.

1933

July 26.

T. A. HURST

v.

SHYAMSUNDARLAL KHANDELWAL.\*

*Accounts—“Account stated” analysed—Various situations described as “account stated” and their legal effect considered—“Unilateral account stated”—“Cross-account stated”—“Account stated” for good consideration—Surcharging or re-opening settled accounts—Estoppel.*

In order to ascertain the amount due to the defendant, the plaintiff referred to certain documents and accounts submitted on behalf of the defendant and relied on the principle of estoppel or of “accounts stated”.

*Held* (1) that no estoppel arises unless the acts of the plaintiff in consequence of the accounts submitted are necessarily referable to the representation made by the defendant ;

(2) analysing the expression “account stated,” that there are four positions with their legal effect as follows :—

- (i) *mere account rendered*, which is not any kind of “account stated” at law and has no legal effect ;
- (ii) *unilateral account stated*, which consists in a claim to payment made by one party and admitted by the other to be correct ;
- (iii) *cross-account stated* ;
- (iv) *account stated for consideration*.

*Camillo Tank Steamship Co., Ltd. v. Alexandria Engineering Works* (1) followed.

Where a party submitting an account was merely asked to correct a mistake in the rate and amount of interest but not to reduce the amount of his claim as a condition of its acceptance and after the correction the account was accepted by the other party,

*held* that there was no good consideration for the settled accounts but it was a case of *cross-account stated*.

An “account stated” unless it is for consideration is subject to the equitable doctrine of surcharging or re-opening of settled accounts for any fraud or fundamental mistake committed in making up the account.

*Skyring v. Greenwood* (2) and *Holt v. Markham* (3) referred to.

\*Original suit No. 321 of 1933.

(1) (1921) 38 T. L. R. 134.

(2) (1825) 4 B. & C. 281 ;  
107 E. R. 1064.

(3) [1923] 1 K. B. 504.

## ORIGINAL SUIT.

The material facts and arguments of counsel will appear from the judgment. .

*Isaacs* and *S. N. Banerjee (Jr.)* for the plaintiff.

*Pugh* and *Sudhis Ray* for the defendant.

AMEER ALI J. This matter is before me on a further hearing under the following circumstances:

This was a suit against a share broker for damages for conversion of certain shares left with that broker as security for the amounts standing to the debit of the plaintiff's account with him. I held that there was such conversion and that the plaintiff would be entitled to damages for conversion on a certain basis. The shares, however, being pledged shares, it was common ground that, as between the plaintiff and the defendant, the defendant would have to be credited with the amount due to him on the account, that is to say, the plaintiff would only be entitled to the value of the shares less what he owed to the defendant.

Now, at the hearing, Mr. Isaacs for the plaintiff sought to prove that the amount due to the defendant was a certain sum of, I think, Rs. 1,400 odd, which sum, if credited to the defendant, would entitle the plaintiff to the balance of the value of the shares, which would be a considerable amount. This amount, alleged to be due to the defendant, is mentioned in the plaint (paragraph 5); in point of fact, no estoppel or account stated is pleaded in the plaint. In the written statement the defendant has denied that this is the correct figure, and has alleged in paragraph (8) "that on an account being taken of the transactions "between the plaintiff and the defendant there would "be due to the defendant a sum of Rs. 2,306."

In argument, Mr. Isaacs, for the purpose of establishing the amount set up by the plaintiff, relied upon a certain letter and an amended account, which, although submitted by a man called Tanden, I have held to be in effect the documents and accounts of the

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defendant firm. This being so, he relied upon the principle of estoppel or account stated in some form or other.

Mr. Pugh, on behalf of the defendant, in point of fact did not challenge, in detail, the account which I have referred to. To the evidence on this point I will refer again. Mr. Pugh contended that the matter would have to go to a reference and the defendant would prove his account there.

On the materials before me I was unable there and then to accept the argument of Mr. Isaacs on estoppel or account stated. What I did was to say that the matter must proceed before me as if the account was being taken by me, on a further hearing, and upon such hearing I would hear Mr. Isaacs further on the points (1) of estoppel and (2) of an account stated, whatever that might include.

That was the position, and on those points I have heard further arguments. I also put certain questions to the defendant with a view to discovering whether, if Mr. Isaacs should not succeed, I could here and now proceed with taking the account. The result was that I came to the conclusion I could not.

I will now deal with Mr. Isaacs' points. Before I do so, I should point out that the difficulty of the position has been enhanced by the fact that there are no proper pleadings on points which do require pleading. Normally, there should be a claim to an account, a defence of "account stated" together with a statement of the nature of the "stated account". This I will explain further. Then there should be a reply stating how the plaintiff seeks to deal with the "account stated", whether to re-open or to vary it. That we have not got here.

Taking first the point of estoppel. If the documents referred to coupled with the conduct of the parties constitute an estoppel, there is no question of accounting, at any rate as regards the period prior to November, 1930. Mr. Isaacs points out that there has been a representation. I agree. The plaintiff

has relied upon that representation. I agree again. He has acted in a particular way by making certain payments in 1931. Again that is so. But the point is, are those acts (I will not say caused or induced, although that, I think, is the word used in section 115 of the Evidence Act) necessarily referable to the representation? Mr. Isaacs quite rightly relies upon two cases in England—*Skyring v. Greenwood* (1) and *Holt v. Markham* (2). In the last case I think a military officer was actually paid by his army agent at a certain rate. It was held that when the mistake was discovered the agent could not recover, and Scrutton L. J. described it as a case of estoppel. In *Skyring v. Greenwood* (1), I think it was a case of crediting the account in a certain way. The customer had drawn against that account. It was held on the principle of estoppel that the army agent could not reverse the credits, could not debit the account with the amounts wrongly credited. The customer was “induced” to spend upon a certain basis; he did so.

Now, in this case, although I would have preferred to have ended the matter here and now, I do not think I should be right in holding that an estoppel arises. He acted, but, so far as I can see, the act was not referable to the representation.

I come then to the question of “account stated”. This is a more difficult problem. So far as I recollect, the precise implication of the comforting words “account stated” had never been subjected to analysis in this Court.

I am indebted to Mr. Isaacs for the reference to the case *Camillo Tank Steamship Co., Ltd. v. The Alexandria Engineering Works* (3), which appears to have been omitted from the latest edition of Leake on Contracts. In this case, everything that can be said about “account stated” has been said in the various speeches in the House of Lords.

(1) (1825) 4 B. & C. 281 ;  
107 E. R. 1064.

(2) [1923] 1 K. B. 504, 513.

(3) (1921) 38 T. L. R. 134.

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Lord Shaw remarks that the law upon this topic "has not arrived at a condition which can be described "as either well understood or satisfactorily clear". He was speaking of the law of England in contrast with the more civilised law of Scotland.

In the speeches of Lord Finlay and Lord Shaw which should be read in full the various meanings of "account stated", the various situations which can be described in those terms and the legal effect of those situations are analysed.

Roughly speaking there are four positions (see page 145)—

1. Mere account rendered which is not any kind of "account stated" at law and has no legal effect.
2. Account stated of the first class, consisting of a claim to payment made by one party and admitted by the other party to be correct. Unilateral account stated.
3. Cross account stated.
4. Account stated for good consideration.

2, 3 and 4 above constitute the three varieties of account stated known to the English law.

The first variety is of no more effect than any other admission.

The second variety is something more than an admission but is still subject to the equitable doctrine of surcharging or re-opening settled accounts.

The third variety, constitutes binding contracts at law which can only be challenged, or, in the words of the Scotch law, "reduced" upon grounds such as mistake, fraud, *etc.*

Mr. Isaacs contended that the facts of this case would constitute an account stated of the third variety.

For this point he relies upon the circumstances that the account submitted in November, 1930, was challenged, as to the rate of interest, by the plaintiff,

was returned to the defendant, and re-submitted with the necessary corrections, and thereafter accepted by him.

I agree that acceptance by conduct is sufficient. I am prepared to infer that the implied admission by the defendant was accepted by the plaintiff.

The difficulty, to my mind, is this, was there good consideration for settled accounts of the nature indicated in the *Alexandria Engineering Co.'s* case? It was pointed out there that the consideration might consist of "a reduction of the claim, consent to wait "for payment, or any other matter involving a "consideration for the agreement to pay". In this case, in my view, there was no reduction in the amount of the claim in the sense in which the words are there used. According to the plaintiff, there was a mistake in the rate and amount of interest and that was corrected. The defendant was giving up no part of his claim. He was merely asked to correct his bill. Had the defendant been asked as a condition of acceptance, to reduce the amount of his claim, I think this case might have come within the *Alexandria Engineering* case. It appears, however, to me that this is a case of account stated of the second variety cross-account stated.

The remaining question is whether the defendant should be allowed either to re-open, or surcharge and falsify. As to this see Story on Equity, sections 523, 524 and 525 and also Leake on Contracts, 83 to 86.

This brings me back to the defendant's evidence with regard to the account submitted (questions 401 to 424). Mr. Pugh does not appear to have asked him questions directed to show that the account was wrong. I think that should have been done. I appear to have asked him and in answer to me he said that the account was wrong as regards the balance Rs. 577, stating that there would be a far larger sum due, and also that a great many items had been left out. There was also evidence that one lot of shares was wrongly stated to be held. There was

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also some evidence from which it was to be inferred that Tanden, who submitted the account, had been acting in fraud of his employer, possibly also with fraudulent intent as against the plaintiff. I have not had time to consider whether fraud of, or connected with, the plaintiff is sufficient to allow of equitable relief, re-opening settled accounts. But there is the case of *Bank of England v. Vagliano Brothers* (1), and if I remember rightly, that is some authority. The fraud there, I think, was not fraud which was connected with the party against whom the account was sought to be re-opened. In any event, it appears to me that if a fundamental mistake is a ground for re-opening, fraud of the nature suggested must also be a ground. On the other hand, it appears to me, in the circumstances of this case, to be sufficient to give leave to surcharge and falsify, treating the account of November, 1930, coupled with the amended account of January, 1931, as a settled account.

The result is this. There must be an order for an account. The defendant will have to prove what is due to him from the plaintiff. In the account, all sums paid by the plaintiff to Tanden must be given credit for, whether received by the defendant or not; also the price of all shares mentioned in the letter of November, 1930, must be given credit for at the rates indicated in the early part of this judgment. The plaintiff elects for the rate on the 5th October, 1932. Unless the rates are agreed, these will be proved before the Referee. The account of November/January, 1931, will be taken as a cross-account stated, the defendant having leave to surcharge and falsify; the account after that date—November, 1930—to be taken in the ordinary way.

The defendant must give a statement of facts in the form of a detailed account giving details of all the items in respect of which he seeks to surcharge or falsify the November, 1930/1931-account.

(1) [1891] A.C. 107.

There is one other matter, and that is this. The suit is not a suit by a principal against his agent for accounts. The account I have ordered is to discover whether the plaintiff is entitled to damages or not after giving credit for what is due by him. I have not ordered accounts upon which the defendant can claim a decree against the plaintiff. That matter has not been considered.

The plaintiff will be entitled to the costs including the costs of the hearing, with the exception of one day's costs, which will be reserved. I do this, because, roughly, one day has been taken up in considering this question of estoppel and account stated.

Attorney for the plaintiff: *S. S. Banerjee.*

Attorney for the defendant: *J. K. Sarkar.*

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