raised at all, the case was clearly one of those in which it was for the Judge in his discretion to allow the amendment or not. Then, considering that for ten years past the appellants had been submitting to the jurisdiction of the Shahabad Court, and taking part in carrying out the execution proceedings there; considering also that when they appealed the case to the High Court in 1876, they never thought of raising this question of jurisdiction; considering also that in the present suit they never thought of raising this issue until they had heard the opinion which had been expressed by the Judge of Ghazipore, we think that the Judge acted very rightly, after this long series of litigation, in not allowing the plaintiffs at that stage of the case to raise a point which after all was foreign to the merits. We are now asked on appeal to say that the Judge has exercised his discretion improperly, and to allow the plaintiffs to raise this issue. We are clearly of opinion that if we have a right to interfere at all with the exercise of the Judge's discretion, we ought certainly not to do so in this instance, and the more so, perhaps, because we are now informed that the Allahabad High Court has reversed the decision of the Judge of Ghazipore. We also think it perfectly clear that upon the issues already raised, it was not open to the plaintiffs to raise the question of jurisdiction.

The appeal is dismissed with costs.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

SOOPROMONIAN SETTY v. HEILGERS.

1879
May 16.

Principal and Agent—Undisclosed Principal—Liability of Agent—Contract Act (Act IX of 1872), s. 230—Evidence Act (Act I of 1872), s. 92—Charter-Party—Employment of Stevedores to Load and Discharge Cargo.

The defendants let a steamship to the plaintiff for a certain term, and signed a charter-party "by and on behalf of the owners of the steamship A." The charter-party was a time charter to commence on arrival at Calcutta, and to terminate at one of certain ports; the steamer in the interim

1879

SOOPRO-MONIAN SETTY v. HEILGERS.

to ply to and from any port the charterers pleased. It was agreed that the steamer should be provided "with a proper and sufficient crew of seamen, engineers, stokers, firemen, and other necessary persons for working cargo with all despatch;" and that in taking and discharging cargo, "the master and his crew with his boats shall be aiding and assisting to the utmost of their power;" and that "the owners or agents of the said steamship shall be held responsible to the said charterers for any incapacity, want of skill, insobriety or negligence on the part of master, officers, engineers, stokers, firemen, or crew, of the said steamship." The names of the principals were not disclosed in the charter-party, but were verbally disclosed before the charter-party was signed.

In an action against the agents for damages for refusing to supply stevedores and other persons, in addition to the crew, when loading and discharging cargo,—*held*, that the presumption created by the second clause of s. 230 of the Contract Act is merely a *primâ facie* one, and may be rebutted, and that the contract was not personally binding on the agents, because the *primâ facie* presumption of an intention to contract personally was rebutted by the language of the contract itself.

Held also, that the terms of the charter-party showed that the crew only were to assist in loading and discharging cargo; and that the plaintiffs were not entitled to call on those responsible for the steamer to load and discharge cargo by stevedores instead of by the crew.

Reading the second part of s. 230 of the Contract Act with s. 92 of the Evidence Act: *Semble.*—That if, on the face of a written contract, an agent appears to be personally liable, he cannot escape liability by evidence of any disclosure of his principal's name apart from the contract.

ON the 1st of September 1877, the plaintiffs and the defendants, "as agents for and on behalf of the owners of the steamship *Lumley Castle,*" agreed by charter-party for the letting by the defendants, and for the hiring and taking to freight by the plaintiffs, of the said steamship for a term of five months. The material parts of the charter-party were as follows:—"And the said agents do hereby covenant and agree with the "said charterers in the manner following,—that is to say, that the "said steamship shall be strong, tight, staunch, and substantial "both above water and beneath, and in every respect seaworthy, "and properly equipped, and found during the time she shall "be employed under this charter-party. And that the said "steamship shall, at all times during the said service, carry the "British National ensign, and be provided with a proper and "sufficient crew of officers, seamen, engineers, stokers, firemen,

"and other necessary persons for working cargo with all des-"patch, and that the said steamship shall, at all times during "the said service, be properly fitted and furnished with en-"gines, machinery, masts, yards, sails, boats, anchors, cables, "cordage, fire-engines, and every requisite for keeping the "machinery in an effectual working order; and all the stores "fit and needful for such steamship for the said service, all "of which shall be provided and done at the proper cost and "charge of the said owners, and the steamship so properly "equipped, stored, and manned shall receive and take on board "her all such persons, troops, invalids, passengers, pilgrims, "horses, cattle, stores, provisions, cargo, specie, bullion, treasure, "and whatsoever else may be ordered to be put on board, and "shall carefully stow and properly dunnage and mat such cargo "and therewith proceed to such ports or places as the said "charterers shall order and direct . . . and then immediately "make right and true delivery of her cargo (and receive cargo, &c.) ". . . in performance of all which services the said master and "his crew with his boats shall be aiding and assisting to the "utmost of their power.

"And the master of the said steamship (for and on behalf "of the owners) shall obey all orders and instructions which "he may receive from the said charterers or their agents, and "the master shall be responsible to the said charterers for due "and proper care and preservation of all persons and cargo "which may be put on board . . . and the owners or agents of "the said steamship shall be held responsible to the said "charterers for any incapacity, want of skill, insobriety or negli-"gence on the part of master, officers, engineers, stokers, firemen, "and crew of the said steamship."

The charter-party gave the charterers the option of discharging the steamship either at the ports of London, Liverpool, Bombay, Calcutta or Singapore; and it was signed by the defendants "for owners of steamship *Lumley Castle*." The names of the owners were not stated in the charter-party, but the plaintiffs alleged that they were Messrs. Laws, Surtees, and Company of Newcastle-on-Tyne. The charter-party came into operation on the 9th of October 1877, the vessel being then in

1879

Soopromonian Setty v. Heilgers.

the port of Calcutta: and on that date the plaintiffs notified to the defendants their intention of sending cargo alongside for the purpose of being loaded, and then requested the defendants to provide stevedores and other persons in addition to the ordinary crew of the steamship to load and stow the cargo, but the defendants refused to do so, then, or at any of the other ports to which the vessel subsequently went.

The defendants pleaded that in making the charter-party they were agents, and that they disclosed their principals before the charter-party was made; that they were not bound to supply stevedores; that they had a full and sufficient crew for all purposes; and that it was not usual to supply stevedores under such charter-parties as that sued upon.

Messrs. *Hill* and *Jackson* for the plaintiff.

Messrs. *Phillips* and *Stokoe* for the defendants.

Mr. *Hill*.—A contract, that the agent shall be personally liable, is to be presumed, "where the agent does not disclose the name of his principal"—Contract Act, s. 230. That means, in the case of a contract in writing, where the name of the principal is not disclosed on the face of the instrument. The name of the principal is not disclosed in the charter-party, and the defendants are, therefore, liable under the Contract Act. They are also liable under the charter-party itself. It provides that the "owners or agents" shall be responsible for loss caused by the default of the master or crew. The defendants will rely on these words,—"The steamship shall be provided with a proper and sufficient crew for working cargo with all despatch." "Despatch" must be construed with reference to the circumstances of the port at which cargo had to be loaded or discharged. Despatch at a small port, would not be the same as despatch in the port of Calcutta. If the loading or discharge of cargo would be hastened by the employment of stevedores and other persons, the defendants were bound to employ them. The services contracted for are distinct. Some are to be performed by the master and crew; some by persons to be hired. The ship is to assist skilled workmen, such as stevedores.

1879

SOOPRO-MONIAN SETTY v. HEILGERS.

There was a burden cast on the defendants to employ skilled labor, and they are liable for any loss which may have accrued by reason of their refusal to employ skilled labor. [WILSON, J.—Your case rests on the words "all despatch"?] Yes. We were entitled to have the ship properly loaded with all despatch, and in a port where it is customary to load with the assistance of stevedores, they should have been employed as a security against loss by improper loading. It is the usage to employ stevedores at certain ports, and if shipowners contract to load, they contract to load according to the usage of the ports to which the ship goes, unless there is some special provision to the contrary in the charter-party.—*Murray* v. *Currie* (1), *Blaikie* v. *Stembridge* (2), *Harris* v. *Taylor* (3). Here the usage is to employ stevedores.

If agents sign in their own names they will be personally liable, even though they are described in the body of the contract as agents for a named principal.—*Paice* v. *Walker* (4). No doubt that case was disapproved of in *Gadd* v. *Houghton* (5), but it has not been overruled. The agent is presumed to have made himself personally liable "when the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad," and "where the principal, though disclosed, cannot be sued."—Contract Act, s. 230. Suppose the case of a principal out of the jurisdiction, he cannot be compelled to come within the jurisdiction. The Act must be taken to refer to cases where the principal cannot be effectively sued. Here the agents themselves contract as agents; there is no intention to make the principals liable, apparent on the face of the contract.—*Gadd* v. *Houghton* (5), *Southwell* v. *Bowditch* (6), *Lennard* v. *Robinson* (7), *Parker* v. *Winlow* (8). In *Calder* v. *Dobell* (9), when the contract was made the plaintiffs required the broker to disclose his principal, which he did, and the Court held that the plaintiffs had a right to sue either the broker or his principal.

(1) L. R., 6 C. P., 24.
(2) 6 C. B., N. S., 894.
(3) 23 L. J., Ex., 210.
(4) L. R., 5 Ex., 173.
(5) L. R., 1 Ex. Div., 357.
(6) L. R., 1 C. P. Div., 374.
(7) 5 E. & B., 125.
(8) 7 E. & B., 942.
(9) L. R., 6 C. P., 486.

1879

SOOPROMONIAN SETTY v. HEILGERS.

Mr. *Phillips.*—The question of usage is immaterial. The charter-party describes what is to be provided by the ship, and what is to be done by the owners before they hand over the ship to the charterers. The ship is to be provided "with a proper and sufficient crew for working cargo with all despatch." That means, not the utmost possible despatch, but reasonable despatch. The ship is to be provided with engines, etc., and every requisite for keeping the machinery in an effectual working order;—that is to say, it is to be provided with whatever can be reasonably foreseen as necessary. The charter-party describes what trim the ship is to be in, and what appliances she is to be furnished to start with. The crew is to receive and take on board cargo: some part of the work is to be done by the persons who bring the cargo, the other part by the crew who are to stow, dunnage, and mat the cargo and to "aid and assist." The charter-party describes fully what is to be provided by the owners, and they cannot be made liable for anything further. The charter-party says nothing about providing stevedores; it shows what the agents were to furnish before handing the ship over to the charterer.

The words "with all despatch" cannot refer to one particular port, because this is not a voyage but a time charter. If it were a voyage charter, it might have been contended that "all despatch" was according to the usage of Calcutta. But these words cannot mean "all despatch" according to the custom of every port the vessel goes to. They must have a constant meaning; not a shifting meaning according to the port where the ship is going. How are the agents to provide stevedores at every port to which she goes? This contract does not provide for any labor outside the ship; it provides for a reasonable and proper crew, and for the general equipment of the vessel.

The defendants are merely the agents of the owners of the ship. They have no control over the ship personally. They are described "as agents for and on behalf of the owners of the steamship *Lumley Castle;*" and such a description brings them within the case of *Gadd* v. *Houghton* (1). They contract "for and on behalf;" they do not take any liability. They

(1) L. R., 1 Ex. Div., 357.

covenant as the "said agents." Who are the "said agents"? The persons agreeing "as agents." It is impossible to say, looking at the whole contract, that it does not appear that the agents were acting on behalf of the owners. There is no consideration to make them liable; no promise is made to them for their own benefit.

When a man signs a contract, without indicating that he is not signing on his own behalf, he must be held to bind himself; and evidence is not admissible to show that he is not liable. But he may show on the construction of the contract that he is not liable. It is not necessary that the principal should be named. Hardships have been occasioned by cases where the agent did not sufficiently show he was not liable, and that he was merely agent. The Contract Act is designed to remedy such hardships, and the converse rule to that which obtains in England is laid down, namely, that the agent shall not be presumed to be liable, instead of being presumed to be liable unless he can show the contrary. The rule in England stated in *Lindus* v. *Melrose* (1) that an agent putting his name to a mercantile instrument is liable as a principal, unless the instrument distinctly shows that he signs as agent, is not followed here. In *Calder* v. *Dobell* (2) the question was, whether the principals having been disclosed, and the plaintiffs having refused to give them credit, the plaintiffs could turn round and make them liable: so that case does not really apply to this one. If it appears, on the face of the contract, that the agent is contracting as agent for a principal and not for himself as principal, he will not be liable.—*Fleet* v. *Murton* (3), *Hutchinson* v. *Tatham* (4). In *Gadd* v. *Houghton* (5) the words "on account of" were considered to be sufficient to show that the defendants were not contracting on their own behalf, but intended to bind their principal. Here we have the words "for and on behalf of;" what was the object of putting those words in if the defendants meant to contract as principals? In *Lennard* v. *Robinson* (6)

(1) 3 H. & N., 177.
(2) L. R., 6 C. P., 486.
(3) L. R., 7 Q. B., 126.
(4) L. R., 8 C. P., 482.
(5) L. R., 1 Ex. Div., 357.
(6) 5 E. & B., 125.

1879

SOOPRO-MONIAN SETTY v. HEILGERS.

the agents signed "by authority of, and as agents for, Mr. A. H. Schwedersky of Memel," and Campbell, C. J., said: "Looking at the whole of the contract, I think the defendants are made personally liable. There is nothing in the signature to prevent them from being so. In the body of the contract, they are contracting parties; and they may well become so 'by authority of, and as agents for,' their employer,—that is, he may be made liable to them." The Court, therefore, considered the description as a clause put in for protection as against the defendants' own principals. The case besides was decided before *Gadd* v. *Houghton* (1), and the words "as agents" would discharge the defendants now.

The judgment of the Court was delivered by

WILSON, J.—I think the defendants are entitled to judgment in this case, and on several grounds. The first ground of defence taken by Mr. Phillips is, that the defendants are not themselves liable as parties to the contract, but that if any one is liable, it is their principals. I think he is right. The liability depends on s. 230 of the Indian Contract Act. The first part of that section says: "In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them."

The present contract is one in terms made by Messrs. Heilgers and Company as agents for and on behalf of the owners of the steamship *Lumley Castle*. It is signed "F. W. Heilgers and Company, Agents for owners of Steamship *Lumley Castle*."

It follows (if the case be governed by this first part of the section) that they are not bound unless the terms of the contract are such as to show that they meant to bind themselves personally. I find nothing to that effect in the contract. On the contrary, I think an intention not to bind themselves is plainly shown. There are only two clauses in the contract which can be thought to point the other way. It is said: "The said agents covenant and agree with the charterers in the

(1) L. R., 1 Ex. Div., 357.

manner following." I think that means that they covenant as agents for and on behalf of their principals. The other clause is the later one, which says, that the master shall be responsible in certain instances, and again, that the owners or agents shall be responsible for the consequences of certain kinds of negligence.

I think the meaning is, that the owners contract that the master shall do certain things, and the owners contract that they or their agents shall make good certain losses. But it is necessary also to look at the second part of the section. It says: "Such a contract (that is, a contract by the *agent personally*) shall be presumed to exist," where any of the three specified conditions exists. I think that means that such a contract shall be presumed to exist *unless the contrary appears.*

That seems to me the natural meaning of the words. And further it is legitimate here to refer to the Indian Evidence Act, an Act passed in the same year as the Contract Act, and an Act having specially to do with presumptions. Section 4 says: "Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

We may, I think, properly apply the same construction to the section of the Contract Act, and presume the agent to be personally liable, unless in any of the specified cases an intention to the contrary is shown. Now, one of the specified cases is, where "the agent does not disclose the name of his principal."

Two meanings have been proposed for those words. Mr. Hill says, they mean (in the case of a written contract), where the name of the principal is not disclosed on the face of the contract. Mr. Phillips says, that any disclosure is sufficient. I am inclined to think Mr. Hill's view is right, though it is not necessary, for the reasons I shall state, to decide the point. But I incline to think that these words must be read subject to the provisions of s. 92 of the Evidence Act, and that if, on the face of a written contract, an agent appears to be personally liable, he could not escape liability by the evidence of any disclosure of his principal's name apart from the document.

1879

SOOPRO-MONIAN SETTY v. HEILGERS.

Still, if this be so, if this is a contract on behalf of an undisclosed principal, so as to bring the case within the second clause of the section, I think the defendants are, nevertheless, secured against personal liability, because the *primâ facie* presumption of an intention to contract personally is rebutted by the language of the contract itself.

If Mr. Phillips' contention be right, and the disclosure of the principal may, to satisfy the section, be in the document or outside it, then the matter is clear. The agents did disclose the names of their principals at the time of the contract, and the case falls under the first, not the second, clause of the section. Upon any view I think the defendants are entitled to have the suit dismissed, on the ground that the contract is not personally binding upon them; they are also entitled, in my opinion, to have the suit dismissed, on the ground that the claim is not one which the plaintiff is entitled to make under the contract. The complaint is, that the defendants refused to employ stevedores to load and unload the ship, and insisted on loading by captain and crew; and it is plain from the evidence, that this was the real controversy from first to last. The captain said, "I and my crew are entitled to load and unload." The plaintiff said: "No, your crew is short. You are not loading with proper despatch, but you are bound to place the loading and unloading in the hands of independent stevedores, for that is the method of loading in ordinary use in Calcutta and Bombay."

Now, it is matter of common knowledge that two methods of loading and unloading are in use—by the crew, and by stevedores—and people may contract for either way. The charter-party is a time charter to commence on arrival at Calcutta, and to terminate at one of five named ports; but in the interim, the steamer may ply to and from any port the charterers please. They may send her on any number of voyages. They may carry what freight they like—passengers, pilgrims, and troops, who can walk on board; or cargo in bags, which is easy to load, or cargo in bulk, which is troublesome. The voyages then being unlimited in number and as to place, and as to the kind of cargo to be carried, it seems unlikely that the owners would

put themselves entirely in the power of the charterers by binding themselves to load and unload any kind of cargo any number of times according to the usages of any number of unknown ports, and accordingly the matter is specially dealt with by a clause in the charter-party. The agents covenant that the steamer shall be provided "with a proper and sufficient crew of officers, seamen, engineers, stokers, firemen, and other necessary persons for working cargo with all despatch."

They expressly contemplate the method of unloading by the crew and not by stevedores, and they go on to say, the steamship shall receive and take on board her all such persons, troops, invalids, passengers, pilgrims, horses, cattle, stores, provisions, cargo, specie, bullion, treasure, and whatever else may be ordered to be put on board, and shall carefully stow and properly dunnage and mat such cargo, &c.; and they go on to make provision, that in the performance of all such services the master and his crew, with his boats, shall be aiding and assisting to the utmost of their power. They are to provide, not stevedores, but crew for loading. The loading is to be with all despatch,—that means, I think, all despatch consistent with the method of loading contemplated. And this view is confirmed by a later clause, which provides that the owners or agents shall be liable for loss, &c., which may arise from any incapacity, want of skill, insobriety or negligence, not of stevedores, but on the part of the master, officers, engineers, stokers, firemen, or crew.

It seems to be clear, for these reasons, that the plaintiffs were not entitled to call on those responsible for the ship to unload by stevedores instead of by the crew; and that, on the other grounds also, this suit cannot be sustained.

The suit must be dismissed with cost on scale No. 2.

Suit dismissed.

Attorneys for the plaintiff: Messrs. *Orr* and *Harriss.*

Attorneys for the defendants: Messrs. *Sanderson and Co.*