allowed are *Maharaja Jaimangal Sing* v. *Mohanram Marwari* (1), *Gunga Narain Ghose* v. *Ram Chand Ghose* (2), and *Boonjad Mathoor* v. *Nathoo Shahoo* (3). In the first of these cases *Maharaja Jaimangal Sing* v. *Mohanram Marwari* (1), the decree on the award had, on previous occasions, been set aside on account of an informality in the proceedings of the arbitrators, and then on rectification of the informality, the second decree was held to be final.

In the other two cases there were such irregularities patent on the face of the proceedings in the case, that the judgments were held not to be judgments under s. 325.

In the present case we are not able to say that there are any grounds for holding that there has not been an award and a judgment in conformity therewith. We, therefore, think that no appeal lay to the second Court, and we dismiss this appeal with costs.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

GOBIND MOHUN CHUCKERBUTTY (DEFENDANT) *v.* SHERIFF (PLAINTIFF).*

1881 *March* 10.

Res judicata—Limitation—Account—Principal and Agent.

In the mofussil, if a principal in a suit against his agent prays merely that the defendant be ordered to render accounts to the plaintiff, a second suit brought by him for the recovery of the money found due by the defendant on examining the accounts will not be barred as *res judicata*.

Discussion as to form of plaint in suits for an account.

IN this case the plaintiff, who had been manager of an indigo factory at Balleakandi, in the District of Furridpore, employed the defendant, in January 1873, to collect certain debts due to the

Appeal from Appellate Decree, No. 2628 of 1879, against the decree of Baboo Promotho Nath Mookerjee, Subordinate Judge of Furridpore, dated the 16th June 1879, affirming the decree of Moulvi Mohabut Ali, Munsif of that district, dated the 3rd July 1878.

(1) 8 B. L. R., 319n; S. C., 23 W. R., 429. (2) 12 B. L. R., 48.
(3) I. L. R., 3 Calc., 375.

1881

GOBIND MOHUN CHUCKERBUTTY v. SHERIFF.

firm, which debts had been assigned to the plaintiff by the proprietors of the indigo concern. The defendant's term of service terminated in November 1874, and as he refused to render any accounts, the plaintiff, in 1875, brought a suit against the defendant for the delivery over of the account papers, and obtained a decree. In execution of this decree, the plaintiff obtained the account papers on the 11th of June 1877, and after examining them, he, in July 1877, found that the defendant had misappropriated a sum of Rs. 500, for which he instituted the present suit in the month of September 1877. The plaintiff also prayed for a decree for whatever sum might be found due on taking the accounts, undertaking to affix the proper additional stamp on his plaint.

The defendant contended, that the suit was barred by ss. 2 and 7 of Act VIII of 1859, because the plaintiff had prayed for the same relief, and a commissioner, appointed by the Court, had found to be due to the plaintiff only Rs. 83. He also contended the suit was barred by limitation. The Court of first instance gave plaintiff a decree, and this decision was affirmed on appeal. The defendant then appealed to the High Court.

Baboo *Sreenath Dass* and Baboo *Shoshee Bhosun Dutt* for the appellant.

Baboo *Bussunt Coomar Bose* for the respondent.

The judgment of the Court (GARTH, C. J., and MCDONELL, J.) was delivered by

GARTH, C.J.—We think that this appeal must be dismissed. [The learned Judge here stated the facts and continued.]

The only ground of defence which has been relied upon is, that, in the former suit, which was brought in 1275, although the decree of the Court was merely for rendering an account, a commissioner was appointed to adjust the accounts between the parties, and to ascertain what sum was due from the defendant; that the commissioner found Rs. 82-3-11 only to be due; and that the plaintiff in this suit is bound by that finding.

Now although it certainly does appear, that, in the former

suit, a commissioner was appointed for some purpose or other we do not find that he had any authority to go into the account, or to ascertain what was due. The decree merely orders the defendant to render proper accounts to the plaintiff; and it has not been proved how or why the commissioner was appointed, nor that the report of the commissioner was in any way confirmed by the Court.

It was, therefore, competent for the plaintiff, after the accounts had been filed by the defendant, and adjusted by the commissioner, either to accept the money found by the commissioner to be due to him, or to sue the defendant in a fresh suit for the sums which he now claims.

We have been referred to *Luchmeeput Singh Bahadoor* v. *Nund Coomar Goopto* (1), a case decided by Kemp and Ainslie, JJ., in which those learned Judges considered, that in that suit the lower Courts did not do their duty by merely ordering that accounts should be rendered; that the proper order was that the accounts should be examined and adjusted; and that it should be ascertained what was due from the defendant to the plaintiff; and as this had not been done, the case was remanded.

It may be that the nature of the suit perfectly justified the learned Judges in making the remand; but in the generality of suits in the mofussil, the plaint merely prays for an account. I remember a case in this Court (though I cannot say whether it was reported) in which Markby, J., explained very clearly the usual difference in the procedure between suits for an account brought on the Original Side of this Court, and similar suits brought in the mofussil.

On the Original Side the prayer of the plaint is not only for an account, but to have the account adjusted, and the balance ordered to be paid to the party entitled to it. The case is referred to the Registrar for this purpose; and after the account has been taken and the balance ascertained by the Registrar, the case comes again before the Court, and a final decree is made. Both parties have a full opportunity, if they please, of going into evidence before the Registrar, and afterwards objecting to

(1) 22 W. R., 388.

1881

GOBIND MOHUN CHUCKERBUTTY v. SHERIFF.

the Registrar's findings; and the whole matter is thus adjusted finally in one suit.

In the mofussil, however, this is generally done by means of two suits. The first is brought to compel the rendering of an account, and then, when the account has been rendered, and the plaintiff has had an opportunity of examining it and testing its correctness, he may sue in a second suit for the amount which he considers to be now due.

Of course it is far more convenient, and a saving of time and expense, to have the whole matter settled in one suit instead of two; but the reason why two suits are generally brought in the mofussil is, because the Courts there have no officer like the Registrar to whom the account can be referred for adjustment.

In this particular case the plaintiff was of course unwilling to be bound by any account furnished by the defendant, considering the dishonest manner in which the latter had dealt with him. His claim in this suit embraces several sums which were not entered in the account rendered by the defendant, and we see no reason for saying that the plaintiff's claim is barred by anything that occurred in the former suit.

Another point raised here, (I can scarcely say that it has been argued), is, that the defendant is wrongly found to be indebted to the plaintiff in a sum of Rs. 333-7-9, which was said to be due to the plaintiff on certain decrees. It does not very clearly appear how or why this sum is found due from the defendant; but we rather gather that the defendant must have received that sum, and did not pay it over. This is quite immaterial, however, for the purpose of the suit, because the plaintiff is found to be entitled to Rs. 837 altogether, and the decree is only for 500 rupees; so that the sum due for rents received is amply sufficient to support the decree, quite irrespective of the Rs. 333-7-9 said to be due as the amount of the decrees.

The appeal is dismissed with costs.

Appeal dismissed.