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limitation, but pointed out that in an administration action the bar of limitation will be of no avail. The principle of the decision seems to be that although the remedy by suit may be barred, so long as the right to account subsists between the parties, limitation cannot be pleaded to defeat the adjustment which the right to account gives. In analogy of this case, I hold that as the appellant was under a liability to account to the trust at the date of the suit, he was entitled to all the equities flowing from the taking of the account. The liability should not be separated from the right. Moreover, the plaintiffs in this case have not objected to the decree which has been given in appellants' favour for a portion of the amount sued for and the reasoning of *Kandasamy Chetty v. Annamalai Chetty*(1), which precludes the agitation of a question in partial bar of a claim applies. I would therefore disallow the respondent's contention.

The appellant is entitled to the payment of the amount decreed from out of the corpus of the trust estate.

K.R.

APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice and Mr. Justice
Seshagiri Ayyar.*

1914.
December
9, 10 and 15.

VENKATACHALAM CHETTY (FIRST DEFENDANT), APPELLANT,

v.

A. N. R. M. NARAYANAN CHETTY AND SIX OTHERS (PLAINTIFF
NOS. 1 TO 5 AND DEFENDANTS, NOS. 4 AND 5), RESPONDENTS.*

*Limitation Act (IX of 1908), art. 89—Agent's liability to principal, suit on—
Limitation—Agency, termination of—Indian Contract Act (IX of 1872).*

Money is moveable property within the meaning of article 89 of the Limitation Act.

Asghar Ali Khan v. Khurshed Ali Khan (1902) I.L.R., 24 All., 27 (P.C.), followed.

Article 89 applies to suits by a principal against an agent for moveable property received by the latter and not accounted for and time begins to run

(1) (1905 I L.R., 28 Mad., 67.

* Appeal No. 184 of 1912.

when the account is, during the continuance of the agency, demanded and refused, or, when no such demand is made when the agency terminates.

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An agency is determined when the agent ceases to represent the principal though his liability in respect of acts done by him as agent may continue.

Babu Ram v. Ram Dayal (1890) I.L.R., 12 All., 541 and *Fink v. Buldeo Dass* (1899) I.L.R., 26 Calc., 715, dissented from.

Jogesh Chandra alias Dhali Ghose v. Benode Lal Roy (1909) 14 C.W.N., 122, not followed.

Expd 31/11/1908

APPEAL against the decree of S. MAHADEVA SASTRIYAR, the Temporary Subordinate Judge of Rāmnād, Madura, in Original Suit No. 145 of 1910.

The facts of the case appear from the judgment of WALLIS, C.J.

C. S. Venkatachariar, K. Bhashyam Ayyangar and A. Srinivasa Ayyangar for appellant.

O. V. Ananthakrishna Ayyar and K. V. Krishnaswami Ayyar for respondents Nos. 1 to 5.

M. N. Duraiswami Ayyangar for the sixth respondent.

WALLIS, C.J.—The first defendant was employed by the plaintiffs, a firm of Nattukottai Chettis of Devakotta in the Rāmnād district to carry on business at certain places in Burmah as their agent under the terms of a document, Exhibit A, known as a salary chit executed by the first defendant on his appointment. By this he undertook to carry on the business under the direction of the first plaintiff, and stipulated that on bringing back the cash and accounts to Devakotta and rendering the same he was to get back the salary chit. It is explained that in the case of these agents the return of the salary chit means that the agent has passed his accounts and that his conduct has been satisfactory. The present suit is brought by the plaintiffs for an account of his dealings, and the question is whether it is barred by limitation. The first defendant continued to represent the plaintiffs in Burmah after the expiry of the three years originally agreed upon, and the plaintiffs who were dissatisfied with his conduct had some difficulty in getting rid of him as appears from the correspondence. As early as the 24th November 1906, they wired to him to give the keys, accounts, and a power to the fourth defendant who was to succeed him, and at length on the 2nd March 1907, having executed a power of attorney in favour of his successor apparently with a view to facilitate the collection of debts owing to the firm, he handed over charge to

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his successor, who gave him Exhibit IV, a signed receipt, and a list of outstandings which were stated to have been checked, and also apparently, Exhibits G and G-1 (certain further particulars) signed by his successor, which he subsequently handed over to the plaintiffs at Devakotta.

He then received a sum of Rs. 200 for his travelling expenses and for sweets and other presents to be purchased for the principals. According to the evidence taken in Commission for the plaintiffs, Exhibit VIII (a), this sum was not given as a loan, but he could do what he liked with it. It is customary to pay such sums to agents when they are returning. It is not very easy to reconcile this with the earlier statement made by the witness that if any surplus remained, it was to be handed over to the principal or an account rendered. On his arrival at Madras on the 19th March 1907, the first defendant wrote Exhibit H and wired Exhibit H-1 to the plaintiffs announcing his arrival and stating that he was coming in two days. According to the evidence for the plaintiffs he came later and handed over Exhibits G and G-1, but he never accounted for his agency or got back his salary chit.

The question then is, whether in these circumstances the suit is barred. It is now well settled that money is moveable property within the meaning of article 89 of the Limitation Act. That article applies to suits by a principal against an agent for moveable property received by the latter and not accounted for and time begins to run "when the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates." The first defendant in the present case relies on the termination of the agency. Under section 201 of the Indian Contract Act an agency is terminated, among other ways, by the principal revoking his authority, or by the agent renouncing the business of the agency, or by the business of the agency being completed, and it is from this point. Under article 89 that time is to begin to run in a suit by the principal for money received or not accounted for. Under section 218 of the Indian Contract Act the agent is no doubt bound to pay the principal the sums received on his account, but it cannot be said that until he does so, the agency is not determined because the business of the agency is not completed, for the terms of article 89 necessarily involve that

the agency may be terminated before the payment is made. I am therefore, with great respect, unable to agree with the observations to that effect in *Babu Ram v. Ram Dayal*(1) and *Fink v. Buldeo Dass*(2), which do not seem to have been necessary for the decision as there were other grounds for holding that the agency had not been determined. The better view appears to be that the agency is determined when the agent ceases to represent the principal though his liability in respect of acts done by him as agent may continue.

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Article 89 was worded in its present form for the first time in the Act of 1877, but in *Hurrinath Rai v. Krishna Kumar Bakshi*(3), a case under Act IX of 1871, their Lordships of the Judicial Committee observed that whether article 60 or article 90 or article 118 of that Act applied, time must be counted from the day when the defendant ceased to discharge the duties of diwan by departing from the plaintiff's service. That was a case of termination of the agency by the agent renouncing the business of the agency within the meaning of section 201 of the Indian Contract Act. The present would appear to be an equally clear case of termination of the agency under section 201 of the Indian Contract Act by the principal revoking his authority and the agent handing over charge to his successor. I think that on the facts set out above his agency was determined before he left Burmah and that as the suit was instituted more than three years later it is barred if article 89 applies.

It is said, however, that under Exhibit A the first defendant was bound to return to Devakotta, hand over the money and accounts and pass his accounts, and that article 89 is inapplicable as there was an express agreement that the first defendant should pass his accounts on his return. The plaintiffs rely on a decision in *Jogesh Chandra alias Dhala Ghose v. Benode Lal Roy*(4) that where there was a definite contract to render an account yearly, article 115 and not article 89 would be the article applicable in the case of unregistered contracts. This case proceeded to some extent on the authority of a decision in *Mati Lal Bose v. Amin Chand Chattapadhyay*(5) that in the case of a contract in writing

(1) (1890) I.L.R., 12 All., 541.

(2) (1899) I.L.R., 26 Calc., 715.

(3) (1887) I.L.R., 14 Calc., 147.

(4) (1909) 14 C.W.N.

(5) (1902) 1 C.L.J., 211.

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registered article 89 does not apply, but article 116. The authority of the latter decision has been doubted in *Shib Chandra Roy v. Chandra Narain Mukerjee*(1) and *Hafesuddin Mandal v. Jadu Nath Saha*(2), and it is not in my view conclusive of the present case.

As regards the present question, it seems to me that the agent's contract to account to his principal, whether express or implied, is specially provided for in article 89 and if that be so, it cannot, having regard, to the language of article 115, be brought under that article. I am therefore unable with great respect to follow the decision in *Jogesh Chandra alias Dhala Ghose v. Benode Lal Roy*(3) and hold that the suit was barred and that the appeal must be allowed, and the suit dismissed with costs throughout.

The memorandum of objections is not pressed and is dismissed.

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SESHAGIRI AYYAR, J.—I agree with the learned Chief Justice. The suit is by the plaintiffs, the principals for an account against the first defendant the agent. The subordinate judge disbelieved the plea that the accounts were finally rendered and passed a preliminary decree for the taking of accounts. Mr. C. S. Venkatachari for the first defendant in the appeal argues that the suit is barred by limitation.

With great reluctance, I have come to the conclusion that the contention is well founded. I do not see my way to holding that either article 115 or 120 of the Limitation Act applies to this case, as contended for by Mr. C. V. Anantakrishna Ayyar for the respondents Nos. 1 to 5. Article 115 is the residuary article relating to contracts, and applies only where there is no special provision relating to contracts. Article 120 is the general residuary article. On the other hand article 89 in terms provides for an account respecting moveable property received by the agent from the principal. The Judicial Committee have laid down in the *Asghar Ali Khan v. Khurshed Ali Khan*(4), that money is moveable property within the meaning of this article. The suggestion of the learned vakil for the respondents Nos. 1 to 5 that as the account claimed by the principal related to monies

(1) (1905) I.L.R., 32 Calc., 719.

(2) (1906) I.L.R., 35 Calc., 298.

(3) (1909) 14 C.W.N., 122.

(4) (1902) I.L.R., 24 All., 27 (P.C.).

lent out by the agent on his behalf and which are still unrealised the present claim is not for moveable property received from the principal, ignores the fact that the outstandings are part of the original advance made by the plaintiff to the defendant and of its augmentation. It was also contended that as Exhibit A provided for the rendering of the account at Devakottah on the return of the agent from Burma, the agency did not terminate till that was done. I am unable to accept this contention. Under section 201 of the Contract Act, an agency is terminated by the principal revoking his authority, or by the business of the agency being completed. In this case, the plaintiffs sent a telegram on the 24th November 1906 to the first defendant to hand over to one Muthiah the accounts (Exhibit VII). On the 18th December 1906, he asked the agent to start immediately (Exhibit VI B). A similar communication was sent on the 20th December 1906 (Exhibit VII A). On the 2nd of March 1907, first defendant handed over the accounts to Muthiah and started for Madras. I am of opinion that the agency terminated on this date, and as the suit was instituted more than three years after this date, it is barred by limitation.

The decisions in *Babu Ram v. Ram Dayal*(1) and *Fink v. Buldeo Dass*(2) do not affect this conclusion. It was held in those cases that until an agent for the sale or purchase of goods pays the sale-proceeds or delivers the purchased property to the principal, the agency does not terminate. This rests on the ground that the business is not completed with the effecting of the sale, or purchase, because it is the essence of an agency in such cases that the sale-proceeds or the property purchased should be handed over to the principal.

It is said that the first defendant took Rs. 200 as passage money for which he had to render an account. There may be a separate accountability for this sum, but this is no part of the business carried on in Rangoon for which the defendant was constituted the agent. It is in evidence that the agent came to Madras and handed over some accounts to the plaintiffs at Devakottah. That fact will not have the effect of intercepting the termination of the agency. The business on which the first defendant was engaged was completed when he handed over

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(1) (1890) I.L.R., 12 All., 541.

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the accounts to Muthiah. That was done in obedience to the order of the plaintiffs' in that behalf thereby revoking the agency. The first to fifth respondents' vakil relied on *Jogesh Chandra* alias *Dhalu Ghose v. Benode Lal Roy*(1), for the position that when there is a special contract fixing a date for the rendering of the accounts, the article applicable to suits by principals against agent is 115 and not article 89. The fixing of a date for rendering accounts cannot stop the termination of the agency. The authority relied upon in *Jogesh Chandra* alias *Dhalu Ghose v. Benode Lal Roy*(1) has been dissented from by MACLEEN, C.J., in *Hafezuddin Mandal v. Jadu Nath Saha*(2). Mr. Justice MOOKERJEE in *Shib Chandra Roy v. Chandra Narain Mukerjee*(3), held that article 89 would apply to a case like the present. I am therefore constrained to hold that the suit is barred by limitation.

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APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Hannay.

GANDI RAMASWAMI (SECOND DEFENDANT), APPELLANT,

v.

PURAMSETTI PEDAMUNAYYA AND SEVEN OTHERS
(PLAINTIFFS, NOS. 1 TO 6 AND FIRST DEFENDANT),
RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sec. 2, cl. (1), O. XXII, r. 1—Legal Representative—Survival of right to sue—Daughter's suit for possession of father's estate—Death of daughter—Right of father's heirs to continue suit.

Pending a suit by a daughter to recover possession of her father's property as his heir, from strangers whom she alleged to be trespassers, the plaintiff (daughter) died. In an application by the grandsons of the deceased plaintiff's father's brother as his heirs to continue the suit, *Held* (1) that the right to sue survived within the meaning of Order XXII, rule 1, Civil Procedure Code (Act V of 1908), and (2) that the applicants were her legal representatives within the meaning of section 2, clause (1) of Civil Procedure Code.

Fremmoy Choudhrai v. Preonath Dhar (1896) I.L.R., 23 Calc., 638 and *Rikhai Rai v. Sheo Pujan Singh* (1911) I.L.R., 33 All., 15, followed.

(1) (1909) 14 C.W.N., 122.

(2) (1906) I.L.R., 35 Calc., 298.

(3) †(1906) I.L.R., 32 Calc., 719.

* Second Appeal No. 776 of 1913.