

Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Burkitt.

BHOLA NATH (PLAINTIFF) v. MUL CHAND AND ANOTHER

(DEFENDANTS).\*

1903

May 15.

Act No. IX of 1872 (*Indian Contract Act*), section 30—*Wagering contract*—*Principal and agent*—*Suit by principal to recover from agent money received on account of a wagering contract.*

Held that an agent who has received money to the use of his principal on an illegal contract between him as such agent and a third party cannot be allowed to set up the illegality of the contract as a defence in an action brought by the principal to recover from the agent the money so received. *De Mattos v. Benjamin* (1), *Bridger v. Savage* (2), and *Tenant v. Elliott* (3) referred to.

In this case the defendants as brokers for the plaintiff entered into various contracts with third parties for the sale and purchase of large quantities of grain. These transactions were merely speculations on the rise and fall of prices, and were not accompanied, or intended to be accompanied, by actual delivery of grain. They were therefore contracts of a wagering nature, such as would, in respect of the parties between whom they were made, fall within the purview of section 30 of the Indian Contract Act. The suit out of which the present appeal arose was brought by the plaintiff on the allegation that the transactions above mentioned had resulted in a profit, and that after taking an account and deducting certain sums for brokerage and so forth, the defendant held some Rs. 1,300 odd to the use of the plaintiff. The Court of first instance (Munsif of Hathras) dismissed the suit on the ground that the contracts out of which the plaintiff's claim arose were wagering contracts to which section 30 of the Indian Contract Act applied. On appeal by the plaintiff, the lower appellate Court (Additional Subordinate Judge of Aligarh) after referring certain issues for determination by the Munsif, came to much the same conclusion, and dismissed the appeal. The plaintiff thereupon appealed to the High Court.

Mr. S. S. Singh and The Hon'ble Pandit Madan Mohan Malaviya, for the appellants.

\* Second Appeal No. 398 of 1901, from a decree of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 9th of January 1901, confirming a decree of Babu Gokul Prasad, Munsif of Hathras, dated the 16th of June 1900.

(1) (1894) 63 L. J., Q. B., 248. (2) (1885) L. R., 15 Q. B. D., 363.

(3) (1787) 1 B. and P., 3.

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Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the respondents.

STANLEY, C. J. and BURKITT, J.—In view of the findings of fact in this case, behind which we cannot go in second appeal, the decision of the learned Subordinate Judge cannot be supported so far as it is appealed against. Issues were referred by the Subordinate Judge to the Munsif, and his findings upon those issues show that all the contracts to which this suit relates were entered into by the plaintiff with third parties through the defendants as his agents. It is alleged by the plaintiff that moneys had been paid on foot of those contracts by the third parties to the defendants as agents for the plaintiff. The contracts have been found to be, and undoubtedly are, contracts which come within the purview of section 30 of the Contract Act, and are therefore contracts in respect of which no suit for recovery of profits could have been maintained by the plaintiff against the parties with whom they were entered into. Those third parties, however, waived their right to rely upon this section of the Statute, and are said to have paid over money to the defendants in respect of the losses which they sustained on foot of the contract. If an agent receive money on his principal's behalf under an illegal or void contract, the agent must account to the principal for the money so received and cannot set up the illegality of the contract as a justification for withholding payment, which illegality the other contracting party had waived by paying the money. If authority be needed for this proposition, it is to be found in two recent authorities to which we have been referred, namely, the case of *De Mattos v. Benjamin* (1) and in the case of *Bridger v. Savage* (2). The principle governing the question is laid down in the much older case of *Tenant v. Elliott* (3) in which it was held that an agent having received money to the use of his principal on an illegal contract between the principal and a third party shall not be allowed to set up the illegality of the contract as a defence in an action brought by the principal for the money so received. To such a suit as the present, section 30 of the Contract Act has

(1) (1894) 63 L. J., Q. B., 248.

(2) (1885) L. R., 15 Q. B. D., 368.

(3) (1797) 1 B. and P., 3.

no application, inasmuch as it is not a suit by a party to a wagering contract to recover the profits of the wager from the other party to the contract. For these reasons we are of opinion that the judgment of the lower appellate Court upon the legal question raised before it is wrong. We find, however, that it has not been ascertained whether any money has been actually paid to the defendants in respect of the contracts in question. The learned Subordinate Judge says, that having regard to the nature of the contracts, it was not necessary to enquire if the defendants made any profit out of such contracts. In the account books profits are recorded, but the entry does not mean that they were actually recovered by the defendants. It will therefore be necessary to remand an issue as to this to the lower appellate Court for determination. Accordingly we remand the following issue under section 566 of the Code of Civil Procedure:—"What amount, if any, was actually received by the defendants as profits resulting from the contracts which formed the subject-matter of the suit; and of the amount of the profits, if any, so found to have been received, what sum remains due to the plaintiff after allowing credit to the defendants for brokerage, commission, and other charges to which the defendants may be entitled under their contract with the plaintiff?" On return of the finding ten days will be allowed for objections. The Court will be at liberty to admit such further evidence as may be necessary for the purpose of determining this issue.

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