APPELLATE CIVIL.

Before Das and Kulwant Sahay, J.J.

JAGDIP PRASAD SAHI.

v.

MUSSAMMAT RAJO KUER.*

1923.

April, 17.

*Principal and Agent—liability to account to joint principals, whether accounting to one is a discharge—Accounts, suit for, by joint principals—Limitation—*terminus a quo*—estoppel.*

The liability of an agent to account to joint principals is not discharged by accounting to only one of them.

Halsall v. *Grifith*(1) and *Lee* v. *Sankey*(2), followed.

Limitation for a suit for account against an agent of co-principals does not begin to run until the principals jointly call upon the agent to account to them.

When *R*, one of two co-principals, in order to defeat the claim of *S* the other principal, absolved the agent from accounting to her, *held*, that the conspiracy to defraud *S* not having been carried into effect and no equities having arisen which would induce the court to hold that *R* was not entitled to place the true facts before the court, *R* was entitled, in a suit brought by her and *S* jointly, against the agent, to shew that no account had in fact been rendered to her.

Analogous appeals. In Appeal No. 193 of 1920 the defendant was the appellant. In Appeal No. 5 of 1921 the plaintiff first party was the appellant.

On the 13th December, 1912, the plaintiffs executed an *am-mukhtarnama* in favour of the defendant, Jagdip Prasad Sahi. They stated in that document that it was necessary in order to preserve the property to appoint a competent and conscientious person to manage their estate, and accordingly they appointed the defendant as their agent to look after

* Appeal from Original Decree No. 193 of 1920, from a decision of Lala Damodar Prasad, Subordinate Judge of Muzaffarpur, dated the 15th July, 1920.

(1) (1834) 2 C. & M. 679; 149 E. R. 933. (2) (1872-73) L. R. 15 Eq. 204.

1923.

JAGDIP PRASAD SAHI v. MUSSAMMAT RAJO KUER.

their properties. In the first paragraph they provided that the agent should pay Government revenue and the rent payable to the superior landlords. In the second paragraph they provided that the agent should take proper steps for the collection of rent due to them. The fifth paragraph was as follows:

"He shall from time to time pay to us in equal halves year after year a certain sum for our personal expenses and house repairs, etc. He shall pay exclusively to me, Musammat Rajo Kuer, the entire income of the share of *Mauza* Pagra Mahisuri Jalkar Ghatarn Nadi Bulan, *Pargana* Sarisa, *Tauzi* No. 4377-16, thana and Sub-Registry Dalsing Sarai, District Darbhanga. I Musammat Shampati Kuer, neither have, nor can have, nor shall have anything to do with the income and share of the said *Mauza*."

In the ninth paragraph it was provided that the agent should receive as his remuneration 5 *per cent.* of the amount realized by him:

"Out of the income in cash or kind of our estate and out of the money payable to us by the debtor."

It was stated in the plaint that the plaintiff No. 1 terminated the agency on the 5th February, 1919, and that plaintiff No. 2 terminated the agency on the 19th January, 1917. The defendant not having rendered any account to the plaintiffs the suit out of which these appeals arise was instituted on the 19th September, 1919, for an account from the defendant. The Subordinate Judge came to the conclusion that Mussammat Rajo Kuer had discharged the defendant from accounting to her and that she was not entitled to an account from the defendant. So far as Mussammat Shampati Kuer was concerned the Subordinate Judge came to the conclusion that the defendant did not render any account to her and that she was entitled to an account from the defendant. The defendant appealed from that portion of the judgment which was against him.

Hasan Imam (with him *Noresh Chandra Sinha* and *Jalgobind Prasad Sinha*), for the appellant in Appeal No. 193 of 1920.

Sivanandan Rai, for the respondents in Appeal No. 193 of 1920.

1923.

JAGDIP PRASAD SAHI v. MUSSAMMAT RAJO KUER.

DAS, J.

DAS, J. (after stating the facts as set out above, proceeded as follows) :—

In my opinion the appeal of the defendant ought to be dismissed. Mr. *Hasan Imam* contended before us that the *mukhtarnama*, in favour of the defendant, was a joint *mukhtarnama* and that upon the finding of the learned Subordinate Judge that the defendant rendered an account to Mussammat Rajo Kuer and that Mussammat Rajo Kuer gave a complete discharge to the defendant, it must follow, so it was argued by Mr. *Hasan Imam*, that the liability of the defendant is at an end. The argument was developed to-day by Mr. *Noresh Chandra Sinha*, who places considerable reliance upon section 38 of the Indian Contract Act. Section 38 of the Indian Contract Act provides that :

> "Where a promisor has made an offer of performance to the promissee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract"

and it also provides that an offer to one of several joint promisees has the same legal consequences as an offer to all of them.

The question whether a discharge by one of two joint creditors operates as a complete discharge under section 38 of the Indian Contract Act has been debated in different Courts and there is a considerable divergence of opinion on this important topic. But it seems to me that the question which has been argued before us is not one under section 38 of the Indian Contract Act. I will assume for the purpose of this decision that one of two joint creditors can give a valid discharge to a debtor so as to completely bind the other joint creditor. But the liability of an agent to account is not a liability that arises by virtue of a contract between the parties but is a liability that is annexed by law to the office of the agent. Therefore it seems to me that we have nothing whatever to do with section 38 of the Indian Contract Act.

So far as the liability of an agent to account to joint principals is concerned the authorities are

1923.

JAGDIP PRASAD SAHI v. MUSSAMMAT RAJO KUER.

DAS, J.

unanimous that an agent cannot get a discharge by accounting to only one of two co-principals. The position is put in this form in Halsbury's *Laws of England*:

"Co-principals may jointly appoint an agent to act for them and in such case become jointly liable to him, and may jointly sue him. The agent is not bound to account separately to one of several co-principals and if he has done so is not thereby discharged from liability to the others unless the co-principals are also partners." [Vol. I, page 159, paragraph 347.]

At page 187 the proposition is put in this form:

"Where the monies are received on behalf of joint principals, the agent is liable to account to them jointly, and is not discharged by payment to one or more of them only, unless by authority of all."

Two cases are relied upon as authorities in support of the propositions which are laid down in the passages to which I have already referred. The first of these cases is the case of *Hatsall* v. *Grifith* (1). That was a case in which two persons, Brown and Prothero, on their behalf and on behalf of Hatsall, the plaintiff, employed the defendant as an agent to sell a ship in which they were all interested. The defendant sold the ship and paid over to Brown and Prothero their proportionate share of the purchase money; but he refused to make over the share of the plaintiff except on a joint receipt by all of them. His refusal to account to the plaintiff was upheld by the Court on the ground that he was not bound to account to only one of the co-principals. Baron Alderson put the point very clearly in these words: "The want of the joint concurrence of the three appears to have been the ground of the defendant's refusal to pay." It follows from this decision that in order to give a discharge to an agent there must be a joint concurrence of all the principals and where such a joint concurrence is wanting there is in point of law no discharge at all. The other case is *Lee* v. *Sankey* (2). In that case two trustees employed a firm of solicitors to receive the proceeds of the testator's real estate. The solicitors

(1) (1834) 2 C. & M. 679; 149 E. R. 933. (2) (1872-73) L. R. 15 Eq. 204.

paid over the money to one only of such trustees without the receipt or authority of the other. It was argued on behalf of the solicitors that a discharge by one of the trustees operated as a complete discharge and was completely binding on the other trustees. The Court came to the conclusion that the receipt of one trustee was not a sufficient discharge to the solicitors for the money which they had received by the authority of the two and that they were personally liable to make good the loss which had resulted to the trust estate. In my opinion these cases are conclusive on the point which has been argued before us. I must accordingly hold that the discharge by Mussammat Rajo Kuer did not absolve the appellant from accounting to his principals jointly.

It was next argued that the suit is barred by limitation. The *mukhtarnama* was executed on the 13th December, 1912. Mr. *Noresh Chandra Sinha* argues before us that upon the evidence of Mussammat Rajo Kuer there was a demand for account and a refusal to render account in January, 1914, and that accordingly time began to run from January, 1914. Mr. *Noresh Chandra Sinha* states before us that there is evidence on the record that each of the two ladies called upon the defendant to account to each of them. But he concedes that there is no evidence whatever that the two ladies jointly called upon the defendant to account to them. In my opinion, upon the authorities which I have already discussed, the question of limitation must be answered in favour of the plaintiffs. It is sufficient to say that the defendant was not bound to account to the principals separately and that the principals acting separately could not have given a valid discharge to the defendant. Mr. *Noresh Chandra Sinha* puts his case on the terms of Article 89 of the Limitation Act which provides that a principal has three years to bring a suit for account from the time when the account is, during the continuance of the agency, demanded and refused. Mr. *Noresh Chandra Sinha* argues that, it being admitted by

1923.

JAGDIP PRASAD SAHI v. MUSSAMMAT RAJO KUER.

DAS, J.

Mussammat Rajo Kuer that there was a demand for account and a refusal to render account in January, 1914, the time, so far as she is concerned, began to run in January, 1914, and that, so far as Shampati Kuer is concerned, time began to run at the end of each year when she is alleged to have made a demand for account, a demand which was not complied with by the defendant. The argument, in my opinion, is wholly inadmissible. The ladies could not have maintained separate suits, each on her own account. It may be that if Mussammat Rajo Kuer were entitled to maintain a suit for account on her own behalf such a suit is barred by limitation. It may also be that if Mussammat Shampati Kuer were entitled to maintain a suit for account on her own behalf that suit is barred by limitation. But we are not, in this litigation, concerned with any suit that might have been brought either by Mussammat Rajo Kuer or by Mussammat Shampati Kuer. This is a suit by Mussammat Rajo Kuer and Mussammat Shampati Kuer jointly and to such a suit it is clearly no answer to say that so far as Mussammat Rajo Kuer is concerned, if she had filed a suit on her own behalf, that suit would have been barred by limitation and that so far as Shampati Kuer is concerned, if she had brought a suit on her own account, that suit would have been barred by limitation. This is a joint suit by the two ladies and there is no evidence that there was a joint demand for an account by the two ladies. In my opinion time began to run from the termination of the agency and it is conceded that time having begun to run from the termination of the agency the suit is well within time.

The last point which has been argued before us is that the agent should not be called upon to account for *zirait* lands and *kasht* lands. Mr. *Hasan Imam* informed us yesterday that there was nothing in this point. But his learned junior has pressed this point before us with great vehemence. Having considered the point we are bound to agree with the view which was taken by Mr. *Hasan Imam*, namely, that there is

1923.

JAGDIP PRASAD SAHI *v.* MUSSAMMAT RAJO KUER.

DAS, J.

nothing at all in this point. The learned Vakil argues that there is nothing at all in the *mukhtarnama* which provides that the agent was to be in charge of *kasht* lands or *zirait* lands. Conceding that there is nothing in the *mukhtarnama* to support the contention of the plaintiffs, it is equally clear that there is nothing in the *mukhtarnama* which supports the contention of the learned Vakil, for the defendant, that the agent was not to be put in charge of the *kasht* lands and *zirait* lands. As a matter of fact there is indication in the *mukhtarnama* that the agent was to be in charge of property yielding rent in kind and also that he was to be in possession of *kasht* lands. In the first paragraph of the *mukhtarnama* it is provided that the agent should pay the rent of the *kasht* land in the possession of the plaintiffs to the landlord. It is argued that although there was a duty upon him to pay the rent due to superior landlords there was absolutely no duty on him to look after the *kasht* lands. It appears that the agent has in his account debited the plaintiffs with the rent which he has from time to time paid to the landlord but has not credited the plaintiffs with the profits of the *kasht* land. In my opinion it is impossible to take the view that although the agent was to pay the rent due to the superior landlord he was to have nothing whatever to do with those lands. The ninth paragraph of the *mukhtarnama* provides in distinct terms that the agent should get as his remuneration for his work 5 *per cent*. of the amount realized by him out of the income in cash and kind. It is very ingeniously argued by the learned Vakil that the income in kind, referred to in paragraph 9, is the income derivable from *bhaoli* land and not from *kasht* land. I am unable to agree with this contention, especially as there is nothing in the *mukhtarnama* to exclude the view that the agent was to be put in charge of all the properties that belonged to the plaintiffs. It is admitted by the learned Vakil that there are no documents in his favour. It is admitted by him that the evidence which has been adduced on behalf of the plaintiff does not support him. The learned Vakil

1923.

JAGDIP PRASAD SAHI v. MUSSAMMAT RAJO KUER.

DAS, J.

has, however, referred us to a passage in the evidence of Mussammat Shampati Kuer. She distinctly states in that passage that since the appointment of Jagdip as the manager, Pandey, who used to work as her *ziratia*, has ceased to work as such. The whole of her evidence supports her case that the defendant was put in charge of *kasht* lands as well as *zirait* lands. It was then pressed before us that her previous deposition supports the case of the defendant that she had her own servants to look after the *zirait* land. Her previous deposition is *Exhibit M*. In the course of her evidence in a case between her and Mussammat Rajo Kuer she stated as follows:

> "We are separate and some of our lands are separate but this disputed land is joint since Chengan Sahi's death. Brahmdeo cuts crops and divides on my behalf, and Maha Rudra after Musammat Rajo's affairs. Jagdip was agent for both of us when the barley crop still lying in the field was cultivated and he cultivated it for both of us jointly."

In my opinion this evidence does not support the case of the defendant. She was undoubtedly right in so far as she stated that at the time when she was giving her evidence, Brahmdeo was looking after her *zirait* lands and Maha Rudra was looking after Rajo Kuer's land. But she stated very definitely that Jagdip was the agent for both when the barley crops were cultivated and that he cultivated them for both of them. Undoubtedly since the termination of the agency of the defendant other arrangements have been made by these ladies. But it does not follow that because other arrangements were made by the ladies in 1919, that is to say, at the time when Mussammat Shampati Kuer was giving her evidence in the case, that that arrangement was also in existence at the time when Jagdip was the agent of the ladies. In my opinion the decision of the learned Subordinate Judge, so far as Mussammat Shampati Kuer is concerned is right and must be upheld. I would accordingly dismiss F. A. No. 193 of 1920, with costs.

Appeal No. 5 of 1921. I come now to Mussammat Rajo Kuer's appeal and it seems to me that that appeal must be decided upon our view of

the law that an agent cannot discharge himself by accounting to only one of two co-principals. The finding of the learned Subordinate Judge is, not that the defendant did account to Mussammat Rajo Kuer, but that Mussammat Rajo Kuer, in order to defeat the interest of Mussammat Shampati Kuer in a threatened litigation between Mussammat Rajo Kuer and Shampati Kuer, entered into a conspiracy, for the finding of the learned Subordinate Judge comes to that, with Jagdip Prasad, by which she accepted the position that Jagdip had rendered account to her. These accounts upon which reliance is placed are *Exhibits B* to *B 3*. The accounts are headed

"Accounts of receipts and disbursements of the estate of Musst. Rajo Kuer, Proprietress."

There is no doubt whatever that a conspiracy was on foot in order to defeat the interest of Mussammat Shampati Kuer and the question which we have now to consider is this: whether the transaction between Mussammat Rajo Kuer and Jagdip Prasad Sahi was such as now precludes Mussammat Rajo Kuer from placing the true facts before the Court, and claiming an account from Jagdip Prasad Sahi. There are two questions involved in the argument, a question of law and a question of fact. Now, the question of law which I have already discussed is a complete answer to the defence taken in this case. If it be the law that an agent cannot discharge himself by accounting to one of the co-principals, it must follow that the transaction between Mussammat Rajo Kuer and Jagdip Prasad Sahi is wholly ineffectual so as to save the defendant from accounting to the plaintiffs as to the profits that came into his hands in the course of his agency. But apart from any such question, it seems to me that, the truth being known to both the parties, there is no case of estoppel which would prevent Mussammat Rajo Kuer from claiming accounts from Jagdip Prasad Sahi. Mr. *Noresh Chandra Sinha* concedes that this is not a case of estoppel at all. But his argument is that the question being one of

1923.

JAGDIP PRASAD SAHI v. MUSSAMMAT RAJO KUER.

DAS, J.

discharge, Mussammat Rajo Kuer was entitled to discharge Jagdip Prasad from accounting to her. But when we are considering whether Mussammat Rajo Kuer did absolve Jagdip Prasad from accounting to her we are bound to consider the case made on this point by Jagdip Prasad. Now, his case is that he took the accounts to Mussammat Rajo Kuer; that he explained them to Mussammat Rajo Kuer; that Mussammat Rajo Kuer accepted those accounts and admitted them to be correct, and, that Mussammat Rajo Kuer, in a *mukhtarnama* which she subsequently executed in favour of Maha Rudra, stated very definitely that Jagdip Prasad Sahi had explained all the accounts to her and that she had accepted those accounts as correct. If there be no estoppel Mussammat Rajo Kuer is entitled to say that the statements, which were made by her, have no foundation in fact; and the decision of the learned Subordinate Judge supports the evidence of Mussammat Rajo Kuer. But the learned Subordinate Judge has taken the view that having entered into a fraudulent conspiracy she ought not to be allowed to claim an account from Jagdip Prasad. I am unable to take this view. That conspiracy was not carried into effect and no equities have arisen which would induce us to hold that Mussammat Rajo Kuer is not now entitled to put the true facts before the Court. If indeed the conspiracy had succeeded and Mussammat Shampati Kuer had been defeated in her claim, no doubt it would be impossible to hold that Rajo Kuer was entitled to claim an account against Jagdip. But as I have said before, the conspiracy was not carried into effect and no equities have arisen which would prevent us from giving the appropriate relief to the plaintiff. It is not the case of the defendant that Mussammat Rajo Kuer gave him a complete discharge without taking any accounts from him. It would be impossible to support such a case, if such a case had been made, having regard to the fact that the dealings were between principal and agent, and that the principal was an illiterate *pardanashin* lady. The whole

1923.

JAGDIP PRASAD SAHI v. MUSSAMMAT RAJO KUER.

DAS, J.

argument of Mr. *Noresh Chandra Sinha* is that Mussammat Rajo Kuer was entitled to give a valid discharge to the agent without taking any accounts from him. It is sufficient to say that that is not the case of the defendant and that that case will not be supported in any Court of law. The case of the defendant is that he rendered an account to Mussammat Rajo Kuer, and that Mussammat Rajo Kuer gave him a discharge after accepting the accounts as correct. The learned Subordinate Judge has found that the defendant did not render any accounts to Mussammat Rajo Kuer and that the accounts, *Exhibits B* to *B 3* are not correct. It is conceded that there is no case of estoppel which would prevent Mussammat Rajo Kuer from claiming an account now from the defendant. I hold that the plaintiffs are entitled to an account from the defendant. The appeal of Mussammat Rajo Kuer must accordingly be allowed, and she will be entitled to the general costs of the appeal, but not to a separate hearing fee.

The result is that the decree passed by the learned Subordinate Judge must be varied in accordance with the judgment; and the defendant must pay the costs of the suit to the plaintiffs.

KULWANT SAHAY, J.—I agree.

Appeal No. 193 of 1920 dismissed

Appeal No. 5 of 1921 allowed.

APPELLATE CRIMINAL.

Before Mullick and Adami, J.J.

1923.

March, 12.

NARESHI SINGH

v.

KING-EMPEROR.*

Right of Private Defence—seizure of trespassing cattle—preparation to resist anticipated rescue, whether justifiable—

---

* Death Reference No. 6 of 1923 with Criminal Appeal No. 20 of 1923, from a decision of A. E. Scroope, Esq., I.C.S., Sessions Judge of Saran, dated the 3rd February, 1923.