

maximum punishment provided for in the section. I sentence him to two years' rigorous imprisonment.

C. H. O.

*Appeal accepted in part.*

### APPELLATE CIVIL.

*Before Mr. Justice Abdul Raof and Mr. Justice Jai Lal.*

RAM DAS-UTTAM CHAND (PLAINTIFFS)

Appellants,

*versus*

DHANPAT-DIWAN CHAND (DEFENDANTS)

Respondents.

1925

Jan. 22.

Civil Appeal No. 2239 of 1923.

*Civil Procedure Code, Act V of 1908, section 20—Jurisdiction—Place of suing—Suit by a principal against an agent for accounts.*

The plaintiffs were grain dealers at Sargodha, while the defendants were commission agents who carried on their business at Karachi. The present suit for a balance due on account was instituted at Sargodha. The defendants pleaded that the Sargodha Court had no jurisdiction, and that the cause of action had arisen at Karachi. The Senior Subordinate Judge accepted the plea of the defendants and returned the plaint to be presented to the proper Court.

*Held*, that it had been established by the evidence that the relationship between the parties was that of principal and agent, and that the suit was one for an account by the principal against his agent.

*Held also*, that the cause of action in a suit for accounts against an agent arises at the place where the contract of agency was made or where it was to be performed, and where the refusal to account took place. The Sargodha Court had therefore no jurisdiction to entertain the suit.

*Mohammad Shaffi v. Karamat Ali (1), Salig Ram v. Chaha Mal (2), Rowther v. Rowther (3), Tika Ram v. Dawlat*

(1) 76 P. R. 1893.

(2) (1911) I. L. R. 34 All. 49.

(3) (1919) 55 I. C. 266.

1925

*Ram* (1), and *Mylappa Chettiar v. Muhammad Shirazee* (2), referred to.

RAM DAS-  
UTTAM CHAND  
v.  
DHANPAT-  
DIWAN CHAND.

*Ram Lal v. Bhola Nath* (3), distinguished.

*Miscellaneous first appeal from the order of Lala Khan Chand Janmeja, Senior Subordinate Judge, Shahpur at Sargodha, dated the 2nd July 1923, returning the plaint.*

TEK CHAND and NANAK CHAND, for Appellants.

MANOHAR LAL and BADRI DAS, for Respondents.

The judgment of the Court was delivered by—

ABDUL RAOOF J.—The plaintiffs are grain dealers at Sargodha in the District of Shahpur. The defendants are commission agents who do their business at Karachi. The present suit was instituted at Sargodha. The defendants pleaded that the Sargodha Court had no jurisdiction and that the cause of action had arisen at Karachi. The learned Senior Subordinate Judge accepted the plea of the defendants and returned the plaint to be presented to the proper Court. Against the order returning the plaint the present appeal has been preferred.

A mass of documentary evidence consisting of letters and telegrams of the parties, copies of account books and some oral evidence bearing on the question of jurisdiction was produced by the parties. The following facts are either admitted or established by the evidence on the record :—

(1) The dealings between the parties commenced in May 1920 when the plaintiffs sent goods to the defendants to be sold by them as commission agents at Karachi, the defendants charging their commission. They accepted the plaintiffs' drafts, paid money at

(1) (1924) 22 All. L. J. 591.

(2) (1919) 37 Mad. L. J. 712.

(3) (1920) 59 I. C. 359.

their request and having sold the goods credited the amount realised to their account.

(2) Later on the defendants at the plaintiffs' request purchased goods at Karachi and sent them abroad according to the plaintiffs' directions to various constituents.

(3) The defendants purchased goods at Karachi and despatched them to Sargodha and in doing so they adopted the following procedure:—

They drew money from the Karachi Branch of the National Bank of India and handed over the railway receipts to the Bank which transmitted them to the Sargodha Branch to be handed over to the plaintiffs on payment of the price of the goods received.

(4) Sometimes the plaintiffs sent money to Karachi and drew the same by means of *hundis* and *vice versa*.

(5) The defendants also used to draw *hundis* upon the plaintiffs. Shortly put, the defendants were put in funds by various ways, such as (a) actual remittance of money, (b) *hundis* sent by the plaintiffs drawn in favour of the defendants; (c) defendants drew upon plaintiffs and sold the *hundis* to the Branch at Karachi, etc., etc.

The plaintiffs instituted the suit on the following allegations:—That there were mutual dealings between the plaintiffs and the defendants and that the latter received from the plaintiffs by way of loan Rs. 3,82,698-9-6 out of which they paid Rs. 3,78,078, leaving a balance of Rs. 4,619-13-0 due to the plaintiffs. They further claimed a sum of Rs. 1,130 on account of the profits of the grain transactions. As summarised in the judgment of the lower Court the

1925

RAM DAS-  
UTTAM CHAND  
v.  
DHANPAT-  
DIWAN CHAND.

1925

RAM DAS-  
UTTAM CHAND

v.

DEANPAT  
DIWAN CHAND.

plaintiffs gave the following reasons for instituting the suit at Sargodha :—

(1) That the defendants resided in the district of Shahpur at Sargodha;

(2) That the goods were sent from Sargodha and some goods were despatched and delivered to them at Sargodha;

(3) That by special agreement the money was payable and was actually paid at Sargodha; and

(4) That the defendants had expressly agreed to render accounts at Sargodha.

The defendants on the other hand pleaded that their firm carried on business at Karachi; that the relationship between the plaintiffs and the defendants was that of principal and commission agent; that the fact that the defendants individually lived at different places in the district of Shahpur did not make the slightest difference and that the suit was cognizable by the Karachi Court and the Sargodha Court had no jurisdiction to try it. They denied that there was any agreement to render accounts at Sargodha or to pay any money there. They complained that by the statements contained in the plaint the plaintiffs had tried to change the nature of the suit which was practically and essentially a suit for an account by a principal against an agent. All the contentions raised by the defendants were accepted, and as already observed, the plaint was returned.

The following contentions have been raised by Mr. Tek Chand in support of this appeal :—

That the relationship between the plaintiffs and the defendants was not that of principal and agent but that of lender and borrower and that even if it be admitted, that the defendants had acted as the commission agents of the plaintiffs, at least part of

the cause of action for the suit had taken place at Sargodha for the following reasons:—

1925

(i) that advances by way of loan were made to the defendants by the plaintiffs from time to time; and

RAM DAS-  
UTTAM CHAND  
v.  
DHANPAT-  
DIWAN CHAND.

(ii) that goods were consigned by the defendants to Sargodha in their own name, the Railway Receipts were sent to the Sargodha Branch of the National Bank with the direction that they were to be handed over to the plaintiffs after receipt of cash payment. As regards this last point the argument of Mr. Tek Chand is that, because the defendants were themselves the consignees, the delivery of the goods after payment of cash must be taken to have in fact and in law been made at Sargodha.

We may at once remark that there is no evidence on the record to show that there was any special agreement between the parties that the accounts would be rendered at Sargodha or that the money would be payable there, or that the goods would be delivered at that place. The whole thing, therefore, hinges upon the determination of the question whether it was a suit for an account by a principal against an agent. We have been taken through the entire evidence by the learned counsel for the appellants and have arrived at the same conclusion at which the learned Judge of the Court below has arrived, namely, that the defendants' firm is the firm of commission agents and that they were employed by the plaintiffs as such. The payments made by the plaintiffs to the defendants either by way of advance or otherwise must be taken to have been made in relation to the purchasing, selling and despatching of grain by the defendants on behalf of the plaintiffs. The mere fact that in respect of the goods despatched to

1925

RAM DAS-  
JITAM CHAND  
v.  
DHANPAT-  
DIWAN CHAND.

Sargodha the railway receipts were sent in the manner described above could not bring about any change in the relation between the parties. This, according to the arrangement between them, was one of the methods of payment. It is admitted by Mr. Tek Chand that there is no direct evidence in support of the proposition that the delivery of the goods despatched to Sargodha was to take place at Sargodha; but he contends that from the circumstance that the railway receipts of the goods were to be handed over to the plaintiffs only after payment to the bank it can reasonably be inferred that the delivery of the goods to the plaintiffs was to take place at Sargodha. In the absence of any evidence on the point we find ourselves unable to draw this inference from the above circumstance. The position is fully covered by authorities to which we shall presently refer.

The general rule applicable to suits for accounts between principal and agent was laid down by Mr. Justice Chatterji in the case of *Mohammad Shaffi (defendant) petitioner v. Karamat Ali and others (plaintiffs) respondents* (1).

The facts of the present case, however, are somewhat similar to the facts in the case of *Salig Ram and another (plaintiffs) v. Chaha Mal (defendant)* (2), to which we shall refer in some detail. The plaintiffs in that case, who were grain dealers at Hathras, on the 30th December 1910, telegraphed to the defendant, who was a commission agent at Karachi, ordering two wagon loads of *juar* to be sent at once to Hathras. They sent 600 rupees by telegram and another 600 rupees by means of a *hundi*. The *juar* was despatched on 2nd of January 1911, and reached Hathras on the 12th of January. The railway re-

(1) 76 P. R. 1896.

(2) (1911) I. L. R. 34 All. 49.

ceipt was, on the plaintiffs' instructions, sent value-payable for the balance due to the defendant, but for some reason it was not delivered to the plaintiffs and, owing to instructions given by the defendant to the railway authorities, the grain was not delivered to the plaintiffs until the 8th of February 1911. Meanwhile the price of *juar* had fallen and the speculation resulted in a loss. The plaintiffs sued for compensation due on account of the alleged negligence of the defendant, and instituted the suit at Hathras. The learned Judges of the Division Bench held that the suit was not cognizable at Hathras, because the cause of action had arisen at Karachi. The passage dealing with this particular point is to be found at page 52 of the report and is to this effect:—

“ The sole question for decision is, whether the cause of action in whole or in part arose at Hathras, *vide* section 20 (c) of the Code of Civil Procedure, which applies to the facts of the present case. The case is clearly one for compensation under section 212 of the Contract Act in respect of the direct consequences of the defendant's neglect and misconduct as alleged. The latter was the appellants' agent, and it was his duty to purchase the grain at Karachi, to place it on the railway at Karachi, and despatch it to the plaintiffs' address, and he was then directed to post the railway receipt and send it V.-P. P. to the plaintiffs. \* \* \* \* \*

“ It is thus quite clear that the defendant's neglect or misconduct or both took place, if at all, at Karachi. In the course of the transaction he had nothing to do outside Karachi. He had not contracted to deliver at Hathras, but merely to place the goods on the rails at Karachi and to post the railway receipt there also. We fail to see that the

1925

RAM DAS-  
UTTAM CHAND  
v.  
DHANPAT-  
DIWAN CHAND.

1925

RAM DAS-  
UTTAM CHAND

v.

DHANPAT-  
DIWAN CHAND.

cause of action, *i. e.*, the defendant's alleged neglect or misconduct which resulted in loss, occurred anywhere else but at Karachi."

As contended in this case the argument was also put forward before the learned Judges of the Allahabad High Court that the cause of action partly had arisen in Hathras to which the learned Judges replied: "The contract was made at Karachi, where the plaintiffs' offer was accepted. The performance of the contract had to be completed at Karachi and the money due was payable at Karachi. The defendant contracted to act as the plaintiffs' agent at Karachi for the purpose of purchasing and despatching the goods and to do certain acts there also. His negligence or misconduct, if any, occurred there.

This ruling has been consistently followed in various cases.

In the case of *J. M. V. Rowther plaintiff v. K. M. M. Rowther* (1) under circumstances similar to those of the present case it was held that "the cause of action in a suit for accounts against an agent arises at the place where the contract of agency was made or where it was to be performed and where the refusal to account took place." The facts of the case shortly stated were as follows:—

The defendant was employed by the plaintiff as his agent at Tiruvaloor in Tanjore District. The proposal to employ the defendant as agent was made by letter addressed to him at Tiruvaloor, and was accepted by defendant by letter through the post. It was held that the contract was clearly to be performed at Tiruvaloor, and that therefore the refusal to account occurred there. The learned Judge held that as the suit was based upon a contract of agency the cause of action took place at the place where the

(1) (1919) 55 I. C. 266.



agent resided. In support of this proposition he relied upon the above-quoted ruling.

This case was again followed by a Division Bench of the Allahabad High Court in the case of *Tika Ram (plaintiff) v. Daulat Ram (defendant)* (1), and it was held by the learned Judges that "in the absence of any express contract regulating the rights of the parties or trade usage, a suit against an agent by his principal for rendition of accounts and for payment of money due thereon can only be instituted at the place where the agent resides or carries on business."

In the case of *The firm of A. M. Mylappa Chettiar appellant (plaintiff) v. Agha Mirza Muhammad Shirazee respondent (defendant)* (2), the facts are summed up in the headnote thus:—

"That the plaintiff, a trader at Negapatam, offered to buy timber from the defendant at Mandalay who accepted the offer. Under the terms of the contract the defendant shipped the timber from time to time at Mandalay, took the bills of lading in his own name and drew from a bank at Mandalay such sums of money as were due to him (defendant) in respect of the timber shipped, by handing over the bills of lading to the bank who in their turn passed it on to the plaintiff through another bank with whom plaintiff had dealings. The defendant made default in sending the timber as agreed and the plaintiff instituted the suit for damages." The suit was instituted in the Negapatam Court and objection was taken to its jurisdiction. The learned Judges held that no part of the cause of action for the suit arose at Negapatam and that the Negapatam Court had no jurisdiction to try the case. The facts of that case

1925

RAM DAS-  
UTTAM CHAND  
2.  
DHANPAT-  
DIWAN CHAND.

(1) (1924) 22 All. L. J. 591.

(2) (1919) 37 Mad. L. J. 712.

1925

RAM DAS-  
UTTAM CHAND

v.

DHANPAT-  
DIWAN CHAND.

were peculiarly similar to the facts of the present case. It was contended in that case, as it is contended in the present case, that at least a part of the cause of action had arisen in Negapatam, because the delivery of the goods was to be made there. The learned Judges held that the bank in Madras and that at Mandalay were the agents of the plaintiff, and that in fact and in law the delivery of the goods was made at Mandalay and the payment was also made there. In a similar manner in the present case the defendants delivered the railway receipt to the bank at Karachi to be sent to the bank at Sargodha who in their turn passed it on to the plaintiff. It is true that the Madras case was a case between principal and principal, but the rule laid down in that case will apply with a greater force to a suit between a principal and his agent.

Mr. Tek Chand for the respondent relied upon a large number of cases in support of his contention. All those were cases of isolated contracts between two contracting parties and are distinguishable from the case of a principal against his commission agent. In fact in one of the cases relied upon by Mr. Tek Chand himself this distinction is clearly pointed out. That is the case of *Ram Lal and another, plaintiff-petitioners v. Bhola Nath and another, defendants, opposite parties* (1), in which a principal had sued another principal and the learned Judges of a Division Bench of the Allahabad High Court distinguished the case of *Salig Ram and another plaintiffs v. Chaha Mal defendant* (2) upon the following ground:—"In the first place, it was not a suit between two principals for damages for breach of a contract but was one for compensation under section 212 of the Indian Contract Act in respect of the direct

(1) (1920) 59 I. C. 350.

(2) (1911) I. L. R. 34 All. 49.

consequences of the defendant's negligence and misconduct as alleged. The defendant there was the agent of the plaintiff and it was his duty to purchase grain at Karachi, to place the goods on the rails at Karachi and to post the railway receipt to the plaintiff's address."

It is unnecessary to refer to and discuss the other cases cited by Mr. Tek Chand, because they are all distinguishable from the case against an agent for account. In our opinion the view taken by the Court below was right. The appeal fails and is dismissed with costs.

*A. R.*

*Appeal dismissed.*

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### LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice LeRossignol.*

NAND LAL (PLAINTIFF) Appellant.

*versus*

AKKI AND OTHERS (DEFENDANTS) Respondents.

Letters Patent Appeal No. 162 of 1924.

*Indian Limitation Act, IX of 1908, section 20 and article 75—Suit on bond payable by instalments—with a proviso rendering the whole amount due in default of payment of one or more instalments—Plaint reciting that two instalments were paid and default made on the third—Limitation—whether oral proof of payment of the two instalments is admissible.*

The plaintiff sued to recover money on a bond payable by instalments with the *proviso* that default in payment of one or more instalments should render the whole debt due forthwith. The plaint recited the payment of the first two instalments and a default on the third. The suit was within time if the first two instalments had actually been paid. The District Judge found that the first two instalments had been

1925

Jan. 28.