APPELLATE CIVIL.

Before Broadway and Monroe JJ.

1932

March 15.

PIRTHI SINGH-JAMIAT RAI (PLAINTIFFS) Appellants

versus

MATU RAM AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 1853 of 1926.

Wagering contracts—Nazrana *contract*—*Money paid by Agent on behalf of his Principal*—*whether recoverable*—Mandi *contract*—*explained.*

Held, that under a *Nazrana* contract an agent can recover monies paid out by him on behalf of his principal even on wagering contracts, and a set-off or adjustment in accounts of third parties should be treated on the same footing as a cash payment.

Behari Lal v. *Parbhu Lal* (1), and *Arjan Das-Kalu Mal* v. *Walaiti Ram-Jairu Mal* (2), followed.

Held also [following *Manilal Dharamsi* v. *Allibhai Chagla* (3)], that if the contract is a *Mandi* contract, and on the due date the market rate falls below the rate agreed upon in the contract, the party who has secured the option declares that he will sell, and thereupon the party who has pocketed the premium has either to take delivery of the article and pay for it at the agreed rate or to pay the difference between the agreed rate and the ruling market rate.

First appeal from the decree of Sayed *Abdul Haq, Subordinate Judge, 1st Class, Delhi, dated the 26th April, 1926, dismissing the plaintiffs' suit with costs.*

KISHAN DAYAL, SHAMAIR CHAND and BHAGWAT DAYAL, for Appellants.

J. N. AGGARWAL and J. L. KAPUR, for Respondents.

(1) 79 P. R. 1908 (F. B.). (2) 1928 A. I. R. (Lah.) 420.
(3) (1923) I. L. R. 47 Bom. 263, 265.

1932

PIRTHI SINGH-JAMIAT RAI v. MATU RAM.

BROADWAY J.

BROADWAY J.—This appeal has arisen out of a suit brought by the firm of Pirthi Singh-Jamiat Rai, *Sarafs* of Delhi, against Matu Ram and Gogan Ram, proprietors of the firm Mutasaddi Lal-Matu Ram of Rohtak, for the recovery of Rs. 6,394-8-3, being the principal and interest due in connection with certain transactions relating to the purchase and sale of gold. The plaintiffs are a firm carrying on business as dealers in bullion and as commission agents. According to the plaint they carried out certain transactions on behalf of the defendants both in Delhi and Bombay. The defendants admitted having had dealings with plaintiffs, and further admitted that they had received ready gold to the value of Rs. 8,305-8-9, and further admitted the correctness of the credit allowed by the plaintiffs to the extent of Rs. 13,112-9-9. With regard to the remaining items they alleged that certain transactions, which are described as *Nazrana* ones, had never been entered into or authorised by them either in Delhi or in Bombay and also denied having received a sum of Rs. 4,000 as a loan. Before filing their written statement the defendants claimed to be entitled to examine the account books of the plaintiffs. The examination was allowed and the written statement was filed after the examination had been made, and this fact is of importance as in spite of this examination of the books the only exception taken to the plaintiffs' accounts was that the transactions entered in them as having been made on behalf of the defendants had never been authorised by the defendants. The following issues were settled :—

1. Are the items denied by the defendants in schedule A annexed to the written statement due from them to the plaintiffs?

1932

PIRTHI SINGH-JAMIAT RAI v. MATU RAM.

BROADWAY J.

(The defendants can show wagering transactions in rebuttal of this issue).

2. To what relief, if any, are the plaintiffs entitled?

The trial Court, after recording such evidence as the parties desired to produce, came to the conclusion that the plaintiffs' account books had been regularly kept and were in every way reliable, and that the defendants had failed entirely to rebut the plaintiffs' evidence supported by these books with regard to the item of Rs. 4,000—said to have been advanced as a loan which had been specifically denied by the defendants. He held, however, that, although the account books were reliable, he was unable to find that the defendants had "authorised the contracts objected to being made or had ever accepted them when made" and, therefore, the items of Rs. 1,181-4-0, Rs. 3,267-3-0, Rs. 3,398-2-3 and Rs. 24-1-0 could not be held claimable by the plaintiffs. As the admitted credits exceeded the admitted debits the plaintiffs' suit was dismissed with costs. The plaintiffs have appealed to this Court, and on their behalf we have heard Mr. Kishan Dayal, while Mr. Jiwan Lal, *Kapoor*, has endeavoured to support the findings arrived at by the trial Court.

We have been taken laboriously through the accounts by Mr. Kishan Dayal, and Mr. Jiwan Lal, *Kapoor*, has endeavoured to point out errors and omissions in them. As a result I have no hesitation in holding that the learned Subordinate Judge was correct, and these accounts are perfectly regular and, as such, reliable. The disputed transactions, which are referred to as *Nazrana* contracts are entered in plaintiffs' books in full detail with all the necessary

references, and the correctness of these books has been sworn to by the plaintiff. These books are further supported by the books of the other traders concerned. The plaintiff has sworn that these transactions were all entered into under the specific instructions of the defendants and, after a careful consideration of the evidence on the record, I see no reason why the plaintiff's statement, supported as it is by regularly kept books which are in their turn supported by the books of other traders, should not be accepted as sufficient proof that these transactions were all entered into at the instance of the defendants. The defendant Matu Ram must be regarded as wholly unreliable. He denied having received the sum of Rs. 4,000 as a loan, and endeavoured to prove that he was not in Delhi on the date when that advance was shown to have been made by the plaintiffs. It was held by the trial Court that the defence set up was entirely false, and there can be no doubt that the view of the trial Court was correct. Indeed the learned counsel for the respondents did not attempt to support his client's contention that this loan had not been made. Again, the defendant says he only keeps one *Bahi* and that *Bahi* has admittedly been tampered with. Whether the tampering can be attributed to the defendant Matu Ram or not is immaterial, for the fact remains that there is no evidence to rebut that of the plaintiffs.

I do not think it necessary to discuss the accounts as, after the learned counsel for the respondents had endeavoured to challenge their correctness, he was forced to admit that he had failed in his endeavour.

Mr. Kapoor sought to show that the action of plaintiffs as the agents of his clients was open to

1932

PIRTHI SINGH-JAMIAT RAI v. MATU RAM.

BROADWAY J.

objection. Dealing with the item of Rs. 3,267-3-0 he urged that on the due date, *i.e.* the 10th September, 1919, the rate for gold was Rs. 26-6-0 a *tola*, and that, therefore, the plaintiffs, as agents, should have exercised the option by making the defendants sellers instead of buyers, and that had they done so instead of the loss of Rs. 1,400 there would have been a profit of Rs. 1,400. Further, it was urged that a certain *mandi* contract—see page 130—showing a debit against the defendants of Rs. 81-4-0 should really have resulted in a profit of Rs. 225 which should have been credited and had not been so credited. Allowing, therefore, the sum of Rs. 1,181-4-0 to stand he urged that the whole item of Rs. 3,267-3-0 should be taken out of the account altogether.

In connection with the item of Rs. 3,398-2-3, which deals with certain transactions in Bombay, it was urged that the only proof of these transactions was to be found in the plaintiffs' books inasmuch as the Bombay firm had failed to supply a copy of their books. Further, it was pointed out that the statement of the *munim* of the Bombay firm, which was taken on interrogatories, obviously contained mistakes as to dates. Before dealing with these arguments it will be necessary to ascertain what a *Nazrana* contract is. It was said that these contracts were exactly the same as *tezi mandi* contracts which were dealt with in *Manilal Dharamsi* v. *Allibhai Chagla* (1), where it was held that such contracts were not necessarily wagering ones. The plaintiff in his cross-examination described these contracts in the following words :—" A man comes to me and asks for such a contract of gold for a month or two hence. We

(1) (1923) I. L. R. 47 Bom. 263.

enquire the rate of *Nazrana* current at that time. The rate usually varies from Re. 0-3-0 to Rs. 2 per *tola*. At that rate we strike a bargain for that man with some other person. We pay the latter *Nazrana* at the ascertained rate. He then fixes the rate. This means that he on the due date would be liable at our option either to supply or to accept the specified quantity of gold at the specified rate whatever be the market rate. The option will be with us whether to compel him to accept or to compel him to supply the gold, irrespective of the market rate. We would exercise this option against that third person in accordance with our dealer's instructions." It would appear that what happens in a contract of this nature is that one party pays a premium to the other party thus acquiring an option to buy or to sell, as he decides, a certain quantity of gold at a certain rate on a certain date. Either on, or some date prior to, that date the purchaser decides whether he will buy or sell. According to his decision, communicated to his broker, the broker enters into a contract with some third person in order to meet the situation. On the due date the parties can either take or give delivery of the stipulated quantity of gold or settle on the difference. The contracts referred to by the learned counsel in this case are clearly contracts of this nature and, as I consider the plaintiffs' evidence reliable, these transactions must be held to have been entered into by the plaintiffs on the specific instructions of the defendants, and the defendants must, therefore, be held liable in regard to each and all of them. Mr. Kapoor's contention, therefore, that as agents the plaintiffs acted wrongly in exercising the option in connection with these transactions is without force, as I consider that it was not the plaintiffs who exercised

1932

PIRTHI SINGH-JAMIAT RAI v. MATU RAM.

BROADWAY J.

the option at their own discretion, but the option was exercised by the defendants themselves. Mr. Kapoor's contention, therefore, with regard to the item of Rs. 3,267-3-0 cannot be given effect to.

With regard to the item of Rs. 81-4-0 the contract was what is referred to in the Bombay judgment as a *Mandi* contract which described at page 265 of *Manilal Dharamsi* v. *Allibhai Chagla* (1), as follows :—

"If the contract is a *Mandi* contract and on the due date the market rate falls below the rate agreed upon in the contract the party who has secured the option declares that he will sell and thereupon the party who has pocketed the premium has either to take delivery of the article and to pay for it at the agreed rate or to pay the difference between the agreed rate and the ruling market rate." In the present case there was a contract for the supply of 200 *tolas* of gold for a "fall" rate at Rs. 27-8-0. As the market price was Rs. 26-6-0 on the due date all that was necessary was for the holder of the option to end the matter by agreeing to lose his premium, which is what was done in the present instance, and, inasmuch as there was no other transaction entered into in connection with this particular contract, no further reference to the transaction could be expected to be in the *Sanda Khata* or the book in which various transactions are entered. Mr. Kapoor's contention, therefore, with regard to this item of Rs. 225 fails.

As to the transactions in Bombay. It is true that the evidence of the *munim* of the Bombay firm is defective, and that he has obviously made a mistake as to dates. Nevertheless, I consider that, having

(1) (1923) I. L. R. 47 Bom. 263, 265.

regard to the regularity and correctness of the plaintiff's books, the genuineness of these transactions should be accepted. They have been sworn to by the plaintiff himself and the *munim* of the Bombay firm, who was giving his evidence with the Bombay firm's books in front of him, definitely stated that the account relating to these particular transactions had been finally settled. I, therefore, consider that this item of Rs. 3,398-2-3 should be allowed.

A contention was raised that these *Nazrana* contracts were really wagering contracts and, therefore, no suit could be brought on the basis of such transactions. This matter has to my mind been definitely settled as far as this Court is concerned by the decision of a Full Bench in *Behari Lal and others* v. *Parbhu Lal and others* (1), where it was definitely held that an agent can recover monies paid out by him on behalf of his principal even on wagering contracts. It was further held that a set-off or adjustments in accounts of third parties should be treated on the same footing as cash payments, and, therefore, I consider that the claim as brought by the plaintiffs is one that falls within the decision of the Full Bench and that the monies are claimable. As I have already said, although Mr. Kapoor endeavoured to show that complete adjustment of these accounts had not been made, he was finally constrained to admit that his attack on the several items he picked out had not succeeded. The view taken by the Full Bench of the Chief Court was approved in *Arjan Das-Kalu Mal* v. *Walaiti Ram-Jahru Mal* (2), by a Division Bench of this Court consisting of the Chief Justice and Bhide J. In my judgment, therefore, the plaintiffs have

(1) 79 P. R. 1908 (F. B.). (2) 1928 A. I. R. (Lah.) 420.

1932

PIRTHI SINGH-JAMIAT RAI v. MATU RAM.

BROADWAY J.

proved that the accounts produced by them are correct, and that the various transactions shown in them as having been entered into by or on behalf of the defendants were entered into on the specific instructions of the said defendants, and that the accounts have definitely been adjusted in relation to all of the transactions to which exception has been taken by the defendants.

In addition to these sums there is also the sum of Rs. 4,000 advanced in cash to the defendants by the plaintiffs which item has been found proved by the Court below, a finding that has not been challenged before us.

In these circumstances I consider that the plaintiffs have established their case and are entitled to a decree for the amount claimed by them. I would, therefore, accept this appeal and grant the plaintiffs a decree for Rs. 6,394-8-3 with costs throughout. In view of the fact that the transactions were of a wagering nature I do not think any further interest should be allowed.

MONROE J. MONROE J.—I agree.

A. N. C.

Appeal accepted.