APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Heaton.

1906. *July* 19.

PANDURANG BALAJI AND OTHERS (ORIGINAL DEFENDANTS 1, 2, 8 AND 9), APPELLANTS, *v.* NAGU BIN DADU (ORIGINAL PLAINTIFF), RESPONDENT.*

Breach of contract—Procuring breach—Knowledge of the contract—Suit for damages.

In a suit to recover damages for procuring a breach of contract, the plaintiff must establish not merely that the defendant procured the other defendants to commit a breach of contract but that he did so knowing that there was that contract.

SECOND appeal from the decision of Vaman M. Bodas, First Class Subordinate Judge of Satara with Appellate Powers, reversing the decree of D. W. Bhat, Subordinate Judge of Tasgaum.

The plaintiff sued to recover damages, namely, Rs. 1,300, for breach of contract, alleging that for the purpose of irrigating and raising garden crops on certain land he was entitled to the use of the water of a well in land adjoining and that owing to the obstruction caused by defendants 2—10 at the instigation of defendant 1 to the use of the water his crops failed and he suffered damages. He further alleged that he had brought a suit in the Mámlatdár's Court for the removal of the defendants' obstruction, but he did not get relief and hence he brought the present suit.

Defendant 1 denied having instigated the other defendants to obstruct the plaintiff.

Defendants 2, 3, 4 and 9 denied the plaintiff's exclusive right to the water of the well. They contended that they were also entitled to use the water, that they never caused obstruction to the plaintiff and that he had not suffered any loss.

Defendant 5 admitted the plaintiff's right to enjoy the water of the well in the manner stated in the plaint but he along with defendants 6, 7, 8 and 10 answered that they did not obstruct

* Second Appeal No. 25 of 1906.

the plaintiff and were not liable to the claim and that it was defendant 2 who obstructed the plaintiff.

The Subordinate Judge rejected the claim holding that the plaintiff was not entitled to take water in the manner stated in the plaint, that defendants 2—10 did not prohibit plaintiff from taking water of the well in question at the instigation of defendant 1 and that though the plaintiff's crops suffered damage owing to the insufficiency of water, defendants were not responsible for it. In his judgment the Subordinate Judge made the following observations:—

There have been inconsistencies in the statements of defendants' witnesses, but they are so slight that I am not inclined to disbelieve them. The evidence of defendants' witnesses appears to me to be more creditable than that of plaintiff's witnesses. Taking the whole of the evidence and the probabilities of the case into consideration, I find that the plaintiff was not entitled to enjoy the well water by the two western *machads* (water-wheels) to the exclusion of the other tenants; that defendants Nos. 2—10 did not prohibit plaintiff from enjoying the well water according to his turn; that they were not set up by defendant 1 to prohibit plaintiff from enjoying the well water according to his turn; that defendants were perfectly justified in telling plaintiff not to enjoy the well water by the two western *machads* each day; that on account of failure of rains there was little water in the year in question; that plaintiff suffered loss in so much as his crops did not get sufficient water; that it cannot be ascertained how much damage he suffered; and that defendant No. 1 is not liable to plaintiff's claim, as he did not instigate others to prohibit plaintiff from enjoying the well water according to his turn.

On appeal by the plaintiff the Judge found that the plaintiff's crops suffered damage by the wrongful act of defendants 2—10, that defendant 1 was liable to the claim, and that the plaintiff was entitled to recover damages. He, therefore, reversed the decree and allowed the claim to the extent of Rs. 700. With respect to the liability of defendant 1 the Judge observed:—

As for defendant 1, I find on the evidence that he, too, is liable. The lower Court itself says that the relations between him and the plaintiff were strained. When examined as a witness in the suit in Mámlatdár's Court, he like defendants 2—10 denied plaintiff's right to draw water from the well except during 5½ *prahars** from all the *machads*. Witness 56, whom I believe, swears that within his own hearing he (defendant 1) asked the other defendants to

* Three hours make one *prahar*.

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obstruct plaintiff, and to use force even if necessary. There seems little doubt that without his instigation and encouragement, the other defendants would probably not have dared to upset the arrangement that was in force continuously for more than 9 years.

Defendants 1, 2, 8 and 9 preferred a second appeal.

G. K. Dandekar, for the appellants (defendants 1, 2, 8 and 9) :—The evidence adduced by the plaintiff shows that there was an agreement between plaintiff who held the land under a lease from the Jamkhindi State and defendants 2—10, who were also tenants of that State, to take the water of the well by two *machads* daily instead of taking it by all the *machads*, namely twelve, for certain hours during a week as stipulated under the original lease. He further led evidence to prove that defendants 2—10 committed breach of the agreement at the instigation of defendant 1. The Judge in appeal finds that without the instigation of defendant 1, who is the agent of the Jamkhindi State, the other defendants would not have probably dared to upset the agreement which was in force continuously for nine years. The finding of the Judge is that defendants 2—10 committed the breach at the instigation of defendant 1. But we submit that that finding is not sufficient to saddle defendant 1 with liability. He will be liable only if he instigated the breach knowing that there was the agreement between the plaintiff and defendants 2—10. The plaintiff never alleged nor was there any evidence in the case to prove knowledge of the agreement on the part of defendant 1. The exact point does not seem to have arisen in any Indian case. But there are English cases which assume knowledge of the agreement or contract as one of the essential conditions for imputing liability on account of procuring a breach : *Allen* v. *Flood*[1], *Quinn* v. *Leathem*[2], *Lumley* v. *Gye*[3]. These cases show that the defendant brought about the breach with the knowledge of the agreement.

[JENKINS, C. J., referred to *Fores* v. *Wilson*[4].]

B. N. Bhajekar, for the respondent (plaintiff) :—(He was called upon to point out whether there was any evidence on the record

(1) [1898] A. C. 1.
(2) [1901] A. C. 495 at pp. 510, 535.
(3) (1853) 2 E. & B. 216 at p. 224.
(4) (1791) Peake N. P. C. 55 (77).

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to show that defendant 1 had knowledge of the agreement.) There is no evidence to show knowledge of the contract on the part of defendant 1, but the Judge in appeal has relied upon certain circumstances from which knowledge on the part of defendant 1 can be inferred. Those circumstances are that the relations between him and the plaintiff were strained. In the Mámlatdár's Court he denied the plaintiff's right to draw water as claimed in the plaint. One witness, who is believed by the Judge, says that he heard defendant 1 telling the other defendants to obstruct the plaintiff and to use force if necessary.

We further submit that knowledge on the part of defendant 1 is not necessary to saddle him with liability for the breach: *Wharton* v. *Moonu Lall*[1].

Dandekar, in reply:—The circumstances relied on followed the breach and did not precede it. They cannot prove knowledge of the contract on the part of defendant 1.

(Cross-objections filed by the respondent were heard and disallowed.)

JENKINS, C. J.:—The plaintiff has brought this suit against ten defendants and as the case was ultimately formulated in the lower appellate Court, the complaint against defendants Nos. 2 to 10 was breach of contract and against No. 1 instigation to the breach of that contract.

The lower appellate Court granted the plaintiff relief against all the defendants.

From that decree defendants Nos. 1, 2, 8 and 9 have appealed.

In our opinion the appeal of 2, 8 and 9 fails.

The appeal, however, of No. 1 raises an interesting point.

The fact, that defendant No. 1 may have induced the rest of the defendants to adopt a course of conduct which amounted to a breach of a contract by the other defendants with the plaintiff, would not alone give the plaintiff a right of action. To entitle the plaintiff to succeed against the defendant No. 1, he must establish not merely that defendant No. 1 procured the other

(1) (1866) 1 Agra 96.

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defendants to commit a breach of contract, but that he did so knowing that there was that contract.

That appears to us to be the clear result of the decision of the House of Lords in *Quinn* v. *Leathem*[1] and also of the earlier decision in *Fores* v. *Wilson*[2].

Though the lower appellate Court here has held that defendant No. 1 did procure the breach by defendants 2 to 10 of their contract with the plaintiff, it is not found that he did so knowingly in the sense we have indicated.

We have hesitated for some time as to whether we would send down an issue on this point, because we thought it possible that the evidence made it clear that there must have been knowledge on the part of the defendant No. 1, but the learned pleader for the plaintiff is unable to draw our attention to any definite statement to that effect.

We therefore think the matter must be further investigated and accordingly we send down the following issue :—

Whether it was with knowledge of the contract between the plaintiff and defendants Nos. 2 to 10, that the defendant No. 1 procured a breach of that contract by defendants Nos. 2 to 10 ?

We think that this point probably was not present to the minds of those concerned with the case in the lower Courts; therefore, further evidence may be adduced.

The finding should be returned within three months.

We will deal with the costs of the whole appeal when it comes on again. We have heard the cross-objections and we think they must fail.

Issue sent down.

G. B. R.

(1) [1901] A. C. 495. (2) (1791) Peake N. P. C. 55 (77).