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RUSTOMJI  
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RUSTOMJI.

No order as to costs in the case of any of the defendants in either Court, as ejectment proceedings could have been taken in the Small Cause Court.

SHAH, J. :—I agree.

Solicitors for the appellant: Messrs. *Shamrao Minocheher and Hiralal*.

Solicitors for the respondent: Messrs. *Smetham Byrne & Co. and Mehta, Laljee & Co.*

*Appeal allowed.*

G. G. N.

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ORIGINAL CIVIL.

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*Before Mr. Justice Pratt.*

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July 30.

EBRAHIMBHOY PABANEY MILLS CO., LTD., PLAINTIFF v. HASSAN MAMOOJI, DEFENDANT<sup>2</sup>.

*Indian Evidence Act (I of 1872), sections 91, 92—Contract—Contract signed by a party personally—Oral evidence to show that the party signing contracted as agent—Admissibility of—Indian Contract Act (IX of 1872), sections 231, 233, effect of.*

In a suit on a contract signed by the defendant personally, the defendant attempted to lead oral evidence to show that he was contracting as agent and that the name of his principal was disclosed at the time of the contract. On plaintiff objecting to this evidence being admitted,

*Held*, that such evidence was not admissible for the purpose of exonerating a contracting party from liability, for that would be substituting a different agreement from that evidenced by the writing.

*Higgins v. Senior*<sup>(1)</sup>, followed.

*Venkatasubbiah Chetty v. Govindarajulu Naidu*<sup>(2)</sup> and *Sadasuk Janki Das v. Sir Kishan Pershad*<sup>(3)</sup>, referred to.

SUIT on a contract.

<sup>2</sup> O. C. J. Suit No. 2957 of 1919.

<sup>(1)</sup> (1841) 58 R. R. 884 at p. 889.

<sup>(2)</sup> (1907) 31 Mad. 45.

<sup>(3)</sup> (1918) 46 Cal. 663.

On 24th August 1918, the defendant agreed by a contract signed by him personally to purchase from the plaintiff company 200 bales of grey blankets upon certain terms and conditions mentioned in the said contract. Delivery of the goods was to be taken between February 1919 and June 1919.

The defendant having failed to take delivery of the goods although the time was extended in his favour at his instance, the plaintiffs sold the goods by public auction on account and at the risk of the defendant on 28th August 1919. The difference between the contract price and the sale price realised amounted to Rs. 55,028-5-6, which included interest, godown-rent and insurance charges. The plaintiffs submitted that they were entitled to sell the goods on account of the defendant according to law and the usage of the market. In the alternative, they claimed the amount of Rs. 55,028-5-6 as and by way of damages sustained by the defendant's failure to take delivery of the goods on 27th August 1919.

The defendant contended, *inter alia*, that his name was given in the contract as purchaser as he was merely the Bombay agent of one Mahomed Mamooji Dadoo, a merchant trading in Transvaal, who was the principal party interested in the contract and that this fact was disclosed to the plaintiffs at the time he signed the contract. The defendant, accordingly, submitted that in the circumstances the plaintiffs could not maintain the suit and that the same should be dismissed. The defendant, further, denied the plaintiffs' right to sell the goods by public auction either according to law or according to any usage of the market.

The defendant took out a third party notice to be served on Mahomed Mamooji Dadoo, and afterwards a summons for directions against the plaintiffs and the

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third party. The plaintiffs objected that as the third party had not filed his appearance the defendant was not entitled to obtain a summons for directions. The summons for directions was adjourned to the hearing of the suit.

At the trial, the defendant's counsel attempted to lead oral evidence to show that the defendant contracted as agent of Mahomed Mamooji Dadoo and that this was known to the plaintiffs. The plaintiffs' counsel objected to this evidence going in.

*Bañadurji*, with him *Sir Thomas Strangman*, Advocate-General, for the plaintiffs.

*Jinnah* with *Campbell*, for the defendant.

*Coltman*, for third party.

PRATT, J. :—The contract was signed by the defendant personally and he is attempting to lead oral evidence to show that he was contracting as agent and that the name of his principal was disclosed at the time of the contract.

I think the plaintiffs' contention, that this evidence is inadmissible, is correct.

Mr. Jinnah contends that the evidence of agency is *de hors* the contract and refers to sections 231 and 233 of the Indian Contract Act. No doubt under these sections a principal not named in the contract may come forward and adopt the contract as his, or *per contra* the other contracting party may elect to sue him although he is not named in the contract. But these sections in no way affect the liability of the party who has signed the contract.

This distinction is clearly put in the case of *Higgins v. Senior*<sup>(1)</sup>. Baron Parke said :—

“There is no doubt, that where such an agreement is made, it is competent to show that one or both of the contracting parties were agents for other

(1) (1841) 58 R. R. 884 at p. 889.

persons, and acted as such agents in making the contract, so as to give the benefit of the contract on the one hand to, and charge with liability on the other, the unnamed principals; and this, whether the agreement be or be not required to be in writing by the Statute of Frauds: and this evidence in no way contradicts the written agreement. It does not deny that it is binding on those whom, on the face of it, it purports to bind; but shows that it also binds another, by reason that the act of the agent, in signing the agreement, in pursuance of his authority, is in law the act of the principal.

But, on the other hand, to allow evidence to be given that the party who appears on the face of the instrument to be personally a contracting party, is not such, would be to allow parol evidence to contradict the written agreement; which cannot be done."

An Indian case illustrating this rule is that of *Venkatasubbiah Chetty v. Govindarajulu Naidu*<sup>(1)</sup>, where the plaintiff sued two partners on a contract executed by one of them. The Court held that oral evidence was admissible to show that the partner who did not sign was liable. The Court quoted with approval the following passages from Roscoe's *Nisi Prius Evidence* :—

"In an action on a written contract between plaintiff and B, oral evidence is admissible, on behalf of the plaintiff, to show that the contract was in fact, though not in form, made by B, as agent of the defendant; for the evidence tends not to discharge B, but to charge the dormant principal; *Wilson v. Hart*<sup>(2)</sup> and it is admissible although B named his principal at the time he entered into the contract".

This passage well explains the ground on which the evidence is admissible, namely, that it tends not to discharge the contracting party but to charge the dormant principal. It is true that the judgment contains the following passage :—

"In our opinion there is nothing in section 91 or section 92 of the Indian Evidence Act which is inconsistent with these decisions, since a question as to who the contracting parties are is not in our opinion one of the 'terms of a contract' within the meaning of these sections".

<sup>(1)</sup> (1907) 31 Mad. 45 at pp. 46 47.

<sup>(2)</sup> (1817) 7 Taunt. 295.

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This may seem at first sight to support Mr. Jinnah's contention. Perhaps this statement of law is rather too wide. The identity of the contracting parties is not a term of the contract when given as evidence to establish a benefit or to enforce a liability not inconsistent with the contract. But such evidence is not admissible for the purpose of exonerating a contracting party from liability, for, that would be substituting a different agreement from that evidenced by the writing.

On the same principle the Privy Council have held recently in the case of *Sadasuk Janaki Das v. Sir Kishan Pershad*<sup>(a)</sup>, that it is contrary to all the established rules, that in an action on a bill of exchange or promissory note against a person whose name properly appears as party to the instrument, it is open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal.

I, therefore, hold that the evidence is irrelevant and allow Mr. Bahadurji's objection.

Solicitors for the plaintiffs : Messrs. *Edgelow, Gulabchand, Wadia & Co.*

Solicitors for the defendants : Messrs. *Mehta, Lalji & Co.*

G. G. N.

<sup>(a)</sup> (1918) 46 Cal. 663 at p. 669.