1930

NILKANTH BALWANT v. VIDYA NARASINH

Sir Lancelot Sanderson

As already stated the cross-appeal must succeed; consequently the decree of the High Court dated February 12, 1924, in Appeal No. 169 of 1920, must be set aside.

The position is that the plaintiffs have succeeded in their appeal so far as the mortgaged properties in Satara and Belgaum are concerned, but the cross-appeal, which concerns the mortgaged property in Kolhapur, has succeeded, and the plaintiffs consequently have failed to hold the decree in their favour in respect of the property in Kolhapur.

In their Lordships' opinion the order as to costs should be that the cross-appeal be allowed with costs, that the plaintiffs' appeal be allowed to the extent already stated and that the plaintiffs are entitled to one-half of their costs on their appeal to His Majesty in Council, and in both the Courts in India, that the costs of the cross-appeal be set off against the costs thus awarded to the plaintiffs and that the balance, if any, be added to or deducted from their abovementioned mortgage debt as the event may require.

Their Lordships will humbly advise His Majesty accordingly.

A. M. T.

ORIGINAL CIVIL.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Blackwell.

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November 12.

SHIVLAL MULCHAND SHAH (ORIGINAL PLAINTIFF), APPELLANT *v.* MANEKJI MANCHERJI BOTTLEWALA (ORIGINAL DEFENDANT), RESPONDENT.*

Contract—Selling agency—Implied term as to duration of agreement—Breach of contract by principal—Damages, measure of—Claim by agent for prospective commission—Principles governing such claim.

The plaintiff was employed in September 1925 by the defendant as sole selling agent of *til* oil produced in his mills, under an agreement. The plaintiff was to be allowed commission at a certain rate on all the oil sold, whether by the plaintiff or by the defendant. The material term as to the duration of the

*O. C. J. Appeal No. 44 of 1928 : Suit No. 480 of 1927.

agreement was as follows :—" The agency is to continue for all time except in case of fraud on my part or by mutual consent in writing." The plaintiff was to devote the whole of his time towards the sale of the oil. The plaintiff and the defendant had arrived at a certain arrangement as to the rate of the oil which was to be varied according to the prevailing price of *til* seeds. Contrary to the terms of the arrangement the defendant with a view to cause an abnormal decrease in sales, to enable him to put an end to the contract, raised the price of *til* oil. This step, in fact, lead to a great decrease in sales. On February 9, 1927, the defendant put an end to the contract on the ground that there had been an abnormal decrease in sales. After this the defendant carried on the business himself till December 28, 1927, when the mortgagee of the factory took possession of it. The factory was eventually sold in February 1927. In a suit by the plaintiff for damages for loss of commission payable to him, owing to the wrongful conduct of the defendant, the plaintiff claimed that on the true construction of the contract there was an implied term that the agency should continue during the joint lives of the parties and that, therefore, the period to be calculated should not be merely the end of December 1927 but should be a period commensurate with the expectation of their joint lives.

Held, (1) that on the true construction of the agreement and having regard to the surrounding circumstances, it cannot be implied that the defendant should carry on his business for the joint lives of himself and the plaintiff;

(2) that, all that the parties contemplated was that so long as the business was carried on in the ordinary way, the plaintiff was to be the sole selling agent, and that the plaintiff would have no right at any time to dictate to the defendant how precisely he was to carry on his business.

Rhodes v. *Forwood*[1]; *Hamlyn & Co.* v. *Wood & Co.*[2]; *Douglas* v. *Baynes*[3] *and In re English and Scottish Marine Insurance Company : Ex parte Maclure*,[4] referred to.

That a term which the parties to the contract have not expressed should not be implied in an agreement, simply because the Court thinks it a reasonable term, but should be implied only if the Court thinks that it is necessary to be so implied from the nature of the contract the parties have made.

That, where there is a principal subject-matter in the power of one of the parties, and an accessory or subordinate benefit arising by contract out of its existence to the other party, the Court will not, in the absence of express words, imply a term that the subject-matter shall be kept in existence merely in order to provide the subordinate or accessory benefit to the other party.

That, where there is an express term requiring the continuance of the principal subject-matter, or giving the plaintiff a right to a continuing benefit, the Courts will not imply a condition that the plaintiff's right in this respect shall cease on certain events not expressly provided for.

Lazarus v. *Cairn Line of Steamships Limited*,[5] referred to.

APPEAL from the decision of Kemp J.

The plaintiff, who was a salesman in the employ of the Godrej Oil and Soap Company, in which name the

(1) (1876) 1 App. Cas. 256.
(2) [1891] 2 Q. B. 488 at p. 494.
(3) [1908] A. C. 477.
(4) (1870) 5 Ch. App. 737.
(5) (1912) 106 L. T. 378.

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defendant carried on business, sued the defendant for damages for breach of an agreement. The agreement was contained in two letters dated September 23 and 24, 1925. The defendant put an end to the plaintiff's employment by his letter dated February 9, 1927. Under the terms of the agreement the plaintiff was to be the sole selling agent of the defendant's *til* oil for India and Africa and he was to receive commission on all sales effected by the defendant whether through the plaintiff or otherwise. The plaintiff was to employ all his energy to increase the business and devote the whole of his time towards the sale of the oil. The material term on which the plaintiff relied in support of his claim for damages and on which the defendant relied in justifying the plaintiff's dismissal was as follows :—

"The agency is to continue for all time except in case of there being abnormal decrease in sales or in case of fraud on my part or by mutual consent in writing."

The plaintiff claimed to be entitled to damages from the defendant for a period of the expected duration of joint lives of both himself and the defendant. The defendant justified the plaintiff's dismissal by alleging that there was an abnormal decrease in the sale of oil.

Kemp J. found on the evidence that the defendant by insisting on charging a price for the *til* oil higher than that arrived at by an agreement between the parties in May 1926, by which the price of the oil was to vary in accordance with the price of *til* seeds, had himself created a situation in which the sales must fall in order to enable him to terminate the plaintiff's agency. He held that the defendant's conduct in so doing was wrongful and that the plaintiff was entitled to damages. It was found on the evidence that the mortgagee of the defendant's factory entered into possession thereof in December 1926 and that the factory was sold in February 1927.

As to the quantum of damages to be awarded to the plaintiff for his loss of commission his Lordship after discussing the authorities cited before him observed (June 18, 1928).

KEMP, J. :—In the present case there is no implied term that the defendant's business is to continue for all time although there is a term that on any business done the plaintiff shall be entitled to a certain commission. Defendant was, therefore, entitled to stop the business and plaintiff can claim no compensation for loss of commission that he would have earned if defendant had continued the business. I am of opinion that the plaintiff can claim damages in respect of higher rates charged by the defendant than those agreed upon in May 1926 from July 1926 to February 9, 1927. That was during the pendency of the business and was a breach during its continuance by the defendant for which the plaintiff can recover damages.

The plaintiff claims damages for eighteen years at Rs. 550 per month. I think that until the rates were fixed by the agreement of May 1926 plaintiff had no grievance. Owing to the breach of the agreement of May 1926 the sales fell abnormally from and including July 1926 to February 9, 1927. On the latter date the agency was terminated by defendant's solicitors' notice of that date. What would plaintiff have earned as commission during that period if defendant had not raised the rates in breach of the agreement? The evidence in the case of various merchants shows that the sales fell off owing to the high rates and not through any other cause. I think a fair estimate of plaintiff's damage would be an average throughout the period July 1, 1926, to February 9, 1927, of the sales in June 1926, viz., 540 maunds. From the commission so ascertained must be deducted the cost of plaintiff's

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establishment, viz., Rs. 150 per month (see particulars C to plaint). From February 9, 1927, to December 22, 1927, defendant continued to sell oil bearing the name Godrej Oil. It was not entirely made in the factory but purchased by the defendant and refined and improved in the factory. Nevertheless, it came within the definition of the work for the sale of which the plaintiff would have been entitled to commission. Up to that date the defendant sold 1,145 maunds only and the plaintiff is entitled to commission on that at eight annas a maund up to 500 maunds and twelve annas a maund between 500 and 1,500 maunds. There is no evidence that the rate for such oil was excessive. It is unreasonable to suppose plaintiff would have maintained the same establishment to sell such a small quantity of oil as he did for the larger quantities before that period. It lies on defendant to reduce plaintiff's damages once plaintiff has shown the commission he would have earned. I therefore allow damages for commission (1) from July 1, 1926, to February 9, 1927, at 540 maunds per month less Rs. 150 per month and the commission, if any, paid; (2) from February 9, 1927, to December 22, 1927, on 1,145 maunds at eight annas a maund. Plaintiff to give defendant credit for such sums as he has received.

The plaintiff appealed against this decision

Sir Jamshed Kanga, Advocate General, and *Lalji*, for the appellant.

Coltman and *B. K. Desai*, for the respondent.

MARTEN, C. J. :—This is an appeal by the plaintiff-appellant against the judgment of the learned Judge in so far as the quantum of damages is concerned. The decision of the learned Judge that the defendant committed a breach of the suit contract, Exhibit A1, on September 23, 1925, by which the plaintiff was constituted the sole selling agent in the whole of India and

Africa for the sale of the defendant's *til* oil, is not disputed. I draw particular attention to that because we start on this basis that there was a breach of contract by the defendant of that contract, and further that the defendant varied his contract initially in July 1926, when he wrongfully put up the price of his *til* oil with a view to cause an abnormal decrease in the sales, and thereby to enable himself to put an end to the contract under clause 8 which provided that the agency was "to continue for all time except in case of there being abnormal decrease in sales or in case of fraud on my part or by mutual consent in writing." So, too, the subsequent repudiation by the defendant on February 9, 1927, of the suit contract on the ground that there had been an abnormal decrease in sale was also a clear breach of contract by the defendant.

The learned Judge has awarded damages for two periods, viz., (*a*) from July 1, 1926, to February 9, 1927, and (*b*) from February 9, 1927, to December 22, 1927, when Mahomedalli, the mortgagee, took possession of the defendant's factory, and the defendant's business came to an end. In fact the whole factory was sold by the mortgagee with the consent of the defendant on January 19, 1928.

I may now state how the points as to the quantum of damages arise. The main point argued by the learned Advocate General for the appellant was this. He submitted that on the true construction of the contract and in particular of clause 8 there was an implied term that the agency should continue during the joint lives of the parties, and that accordingly damages ought to be calculated not for a mere period ending in December 1927, but for a period commensurate with the expectation of the lives of these two parties.

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I will take that point first. Now turning to the contract, Exhibit A1, it is in the form of a letter addressed by the plaintiff to the "proprietors Messrs. Godrej Oil and Soap Coy., Bombay". We are told that in fact at that date there was only one proprietor, viz., the defendant. He had purchased the factory and business in August 1925 from one Godrej. But it would appear that he had not paid the whole of the purchase money, for we find that on February 23, 1926, the defendant created a charge on the factory in favour of his vendor, and that on May 12, 1926, Godrej, the vendor, transferred this charge to Mahomedalli, and that on the same day the defendant mortgaged other property to Mahomedalli and also made the factory security for all advances made to him by Mahomedalli.

It may be, therefore, that as a vendor Godrej had still a vendor's lien on the factory. I will, however, put that aside, and take it as if this letter was addressed to the proprietor of the Godrej Oil and Soap Company. There is not one word there about this factory. The letter does however say: "I do hereby agree to undertake to work as your sole selling agent for the whole of India for sale of your *til* oil." It might, therefore, be enquired what was meant by "your *til* oil." And I will assume for the purposes of this case that the parties knew that some of that oil at any rate was produced at the factory which the defendant then owned.

It further appears from the papers before us that the plaintiff had been the agent of the company before the sale to the defendant. Now I lay great stress on this that in this agreement, Exhibit A1, there is not one word obliging the defendant to carry on the business for the joint lives expressly, or even necessarily, to manufacture oil or to continue carrying on their business at all apart

from what may be inferred from clause 8. The commission which the plaintiff was to get under clause 1 was for all sales effected through him, or sales effected by the defendant direct. Then clause 2 provided for the rate of commission he was to get, viz., so much per maund on sales of oil of various quantities. Then clause 4 provided that in consideration of the commission he was to employ all his energy to increase the business and devote the whole of his time towards the sale of the oil. Then clause 8 is the clause I have already read. That no doubt states that "the agency is to continue for all time." But that is hardly an apt expression for expressing the joint lives of A and B, nor is it a happy expression to use as regards the proprietor of an oil and soap company. One might read the expression "for all time" as meaning so long as the other party remained the proprietor of the oil and soap company.

But there is authority on the question of implying terms in a contract, and I do not think I can do better than quote what Lord Justice Kay states in *Hamlyn & Co.* v. *Wood & Co.*,[1] where he says (p. 494) :—

"The plaintiffs thereupon bring an action, and put their claim on the footing that, admitting that there has been no breach of any express contract, a term ought to be implied of which there has been a breach. I agree with the rule as laid down by the Master of the Rolls, viz., that the Court ought not to imply a term in a contract unless there arises from the language of the contract itself, and the circumstances under which it is entered into, such an inference that the parties must have intended the stipulation in question that the Court is necessarily driven to the conclusion that it must be implied. To state the rule in any wider terms would be going, I think, beyond what is justifiable on principle."

That was a decision given in a case where the defendant brewers had agreed to sell all their grain to the plaintiffs, and had subsequently sold their business, and it was held that a term could not be implied in the contract to the effect that the defendants would not

[1] [1891] 2 Q. B. 488.

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by any voluntary act of their own prevent themselves from continuing the sale of grain to the plaintiffs for the period mentioned.

That statement of the law by Lord Justice Kay was cited with approval by Lord Atkinson in delivering the judgment of the Privy Council in *Douglas* v. *Baynes*,[1] where he says (p. 481) :—

"The first question for decision on this appeal, therefore, is whether the contract can be read as if these, or equivalent words, were by implication imported into it. The principle on which terms are to be implied in a contract is stated by Kay L. J., in *Hamlyn* v. *Wood*, in the following words."

Then his Lordship quoted the words I have just read.

A strong example of an implied term, viz., that the lessee under a mining lease of the underlying soil should have liberty to let down the surface of the overlying soil, will be found in *Butterley Company, Limited* v. *New Hucknall Colliery Company, Limited*[2] distinguishing *Butterknowle Colliery Company* v. *Bishop Auckland Industrial Co-operative Company*[3] and earlier decisions to the contrary effect.

Next turning to the precise class of case that we have here, viz., that of a selling agent, I may refer to the case of *In re English and Scottish Marine Insurance Company: Ex parte Maclure.*[4] There a person entered into an agreement with an insurance company to act as their agent for five years, and to transact no other business except for the company, in consideration of which he was to receive a fixed salary and also a commission of ten per cent. on the profits on all business transacted. Before the five years expired, the company was wound up voluntarily. It was held by the Court of Appeal that the agent was not entitled to prove against the company for the loss of his commission during the remainder of the term of five years. On the

(1) [1908] A. C. 477.
(2) [1910] A. C. 381.
(3) [1906] A. C. 305.
(4) (1870) 5 Ch. App. 737.

question of principle, Lord Justice James, in delivering the judgment of the Court, says (p. 739) :—

"The second claim which has been brought before me is with respect to the commission. I am clearly of opinion that the Master of the Rolls was right upon that question also. It is the case of a person engaging a servant, and saying, 'I engage you for five years, I will pay you £500 a year for that period —that sum is secured to you—and then, in order to give you an inducement to carry on the business effectually, properly, and prudently, I will give you 10 per cent. commission upon the net profits to be earned by that business.' I am of opinion that this was a contract which did not give the servant the right to determine what the extent of the business was to be. He could not call upon the directors to issue new policies, to accept new premiums, or to take new risks, if they were not minded to do it. He could not say, 'Such a person has brought in a policy of insurance, and you must accept that.' Because, if he had a right to say 'You must carry on the business,' he would also have a right to say 'You must carry on the business in the usual and proper manner,' and that would be giving a servant the right of controlling the master in the mode in which he chose to carry on his business. Now, I am quite satisfied that the meaning of the contract was nothing of the kind. It was never intended to give the servant the right of dictating as to the extent of business, whether more or less, or nothing, but he simply took the chance of the company finding it a profitable business and carrying it on. The company had a right to reduce the business to a minimum; and if they had a right to reduce it to a minimum, they had a right to reduce it to nothing—as far as he was concerned."

I have quoted that judgment at length because of what Lord Cozens-Hardy stated in reference to it in *R. S. Newman, Limited, In re: Raphael's Claim.*[1] There the learned Judge after reading this passage in full proceeded (p. 323) :—

"I do not think it necessary to consider whether there is any distinction between that case and the case of *Turner* v. *Goldsmith*.[2] Lindley L. J. and Kay L. J. did not think there was, and I am not at all prepared to say that there is any difficulty in reconciling the two cases, and having this authority, an authority which is not merely more than forty years old, but one which, as far as I am aware, has not been questioned, it would be wrong of us to do more than to say this case is precisely within the judgment of James L. J. in *Ex parte Maclure*.[3]"

In that particular case of *In re Newman*,[1] three life directors appointed the applicant a managing director for one year from July 1, 1915, at a salary of £5 per week and a commission of five per cent. on the amount realized from the sale. His employment was to continue

[1] [1916] 2 Ch. 309. [2] [1891] 1 Q. B. 544.
[3] (1870) 5 Ch. App. 737.

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for ten years from July 1, 1915, and one sees from clause 3 of the agreement at p. 311 that he was to "devote the whole of his time and attention and his best energies to the conduct of the business." There a compulsory winding up order was made against the company, and it was held that the applicant had not proved any damages except the actual loss of his salary, and that he could not claim commission after the date of the compulsory winding up order.

There were certain other cases cited to us, viz., *Turner* v. *Goldsmith*[1]; *Lazarus* v. *Cairn Line of Steamships Limited*,[2] a judgment of Mr. Justice Scrutton; *Northey* v. *Trevillion*,[3] a judgment of Mr. Justice Phillimore, which is also reported in 18 T. L. R. 648. There is also a decision of the House of Lords in *Rhodes* v. *Forwood*,[4] closely in point, the headnote of which runs :—

"Where two parties mutually agree, for a fixed period, the one to employ the other as his sole agent in a certain business, at a certain place, the other that he will act in that business for no other principal at that place, there is no implied condition that the business itself shall continue to be carried on during the period named."

That was an agreement by which A was to be the sole agent for the sale of B's coals at Liverpool and that B would not employ any other agent at that place. At the end of four years B sold the colliery, and A claimed damages for breach of the agreement. It was held that "the action was not maintainable; for that the agreement did not bind the colliery owner to keep his colliery, or to do more than employ the agent in the sale of such coals as he sent to Liverpool."

In the present case I do not think it is necessary, on the true construction of the agreement and having regard to the surrounding circumstances, to imply any clause in the agreement to the effect that the proprietor of the oil and soap company is to carry on its business for the

(1) [1891] 1 Q. B. 544.
(2) (1912) 106 L. T. 378.
(3) (1902) 7 Com. Cas. 201, 204.
(4) (1876) 1 App. Cas. 256.

joint lives of the then proprietor of the business and the plaintiff. I think it is quite sufficient to hold that all that the parties contemplated was that so long as the business was carried on in the ordinary way, the plaintiff was to be the sole selling agent. One may indeed go further and say that the plaintiff would have no right at any time to dictate to the soap company how precisely they were to carry on their business.

What has been found against the defendant in the lower Court is that he deliberately caused an abnormal decrease in sales so as to be able to determine the contract under clause 8. That was a breach of contract on his part. So initially at any rate the business was not terminated in the ordinary way. It comes then to this. We have to consider two periods, the one period, when the defendant improperly reduced the sales while the business was still going on, and the other when the business was sold by the mortgagee with the consent of the mortgagor. I am only on the former point for the moment. Even if the defendant was entitled to sell the business, it by no means and in my opinion it does not follow, that he had any right to cause by his own deliberate act an abnormal decrease in sales with the indirect object of getting out of this agreement which he himself had entered into. In other words, the contract contemplated fair dealings between the parties and not unfair dealings, such as those the defendant resorted to.

In the result, after weighing all the circumstances of the present case, I would hold that the learned Judge came to a correct conclusion in refusing to award damages on this alleged implied condition that the contract was to be for the joint lives of the two parties. [His Lordship then dealt with the facts relating to quantum of damages, and held that there was no adequate reason for interfering with the decision of the

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trial Court on that point, and accordingly dismissed the appeal with costs.]

BLACKWELL, J. :—The first question arising on this appeal is whether the agency agreement came to an end in December 1927, when the defendant ceased to carry on the business. It may be put in another form in this manner—was there an obligation on the defendant to carry on his business giving rise to a right to damages if he did not do so? The learned Advocate General in opening this appeal referred us to a decision of Mr. Justice Scrutton in *Lazarus* v. *Cairn Line of Steamships Limited*.[1] In the course of his judgment that learned Judge reviewed a large number of authorities in cases which have arisen out of alleged breaches of agency agreements. He summarised the principles which in his opinion were to be deduced from those authorities, and the learned Advocate General was prepared to accept that summary as correct. I think it would be useful to read that summary as it appears in that judgment. The learned Judge at p. 380 said this :—

"I read them" [that is the cases which he reviewed] "as deciding (1) that the first thing to consider is the express words the parties have used; (2) that a term they have not expressed is not to be implied because the court thinks it is a reasonable term, but only if the court thinks it is necessarily implied in the nature of the contract the parties have made; (3) that where there is a principal subject-matter in the power of one of the parties, and an accessory or subordinate benefit arising by contract out of its existence to the other party, the court will not, in the absence of express words, imply a term that the subject-matter shall be kept in existence merely in order to provide the subordinate or accessory benefit to the other party; (4) but that where there is an express term requiring the continuance of the principal subject-matter, or giving the plaintiff a right to a continuing benefit, the courts will not imply a condition that the plaintiff's right in this respect shall cease on certain events not expressly provided for."

Having myself considered the various cases which the learned Judge was there reviewing, I respectfully agree with the conclusion which he drew as to the true principles to be extracted from these cases. Applying those

[1] (1912) 106 L. T. 378.

principles to the terms of the contract which we have to consider, I desire first to point out that it is not in my opinion a contract of service, but one of mere agency. By the contract the plaintiff merely agreed to undertake to work as the defendant's selling agent. The contract contained no terms for providing that the plaintiff was to be in any way subordinate to the defendant, or in any sense the defendant's servant. Moreover, it is very important to observe that there is no express term in any part of the agency agreement that the defendant will continue the business of which the plaintiff was being appointed the sole selling agent.

Looking at the agreement as a whole, I am clearly of opinion that a term to continue the business is not necessarily to be implied from the contract which the parties made. In my judgment the present case falls within the principles indicated in *Rhodes* v. *Forwood*.[1] That was a case where the agent having the sole right of sale of coals sent from a particular colliery to Liverpool, there being no express words in the contract giving him a right to require any coals to be sent to Liverpool at all, was held not entitled to complain of the sale of the colliery, although that sale prevented his principals from sending the coals to Liverpool. I do not think that the present case falls within the line of authorities of which *Turner* v. *Goldsmith*[2] is a good example. In the latter case there was an express contract to employ the agent for five years in respect of articles both manufactured and sold by the defendant. There the Court refused to imply a condition that the employment should cease if the principal discontinued his business after the destruction of his manufactory by fire. The distinction between *Rhodes* v. *Forwood*[1] and *Turner* v. *Goldsmith*[2] is, if I respectfully say so, clearly pointed out by Mr. Justice Phillimore in his judgment in *Northey*

[1] (1876) 1 App. Cas. 256.

[2] [1891] 1 Q. B. 544.

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v. *Trevillion*.[1] There the learned Judge said this (p. 204) :—

"In *Turner* v. *Goldsmith*[2] the Court, in considering *Rhodes* v. *Forwood*,[3] relied on certain expressions in the contract. Lindley L. J., in giving judgment in *Turner* v. *Goldsmith*,[2] said, 'In the present case we find an express contract to employ him.' The distinction seems to be that if it is a mere contract of agency with no service or subordination, the Court will hold that there is no implied contract that the agent is to be supplied with the means of earning his commission. If the contract is one of service, then the commission is merely intended to be instead of salary, and the contract cannot be determined without compensation."

Inasmuch as, according to the view which I take of the present contract, it was not one of service but of mere agency, and further as there was no express term that the defendant would continue his business for any length of period at all, I would hold that that agreement came to an end in December 1927 when the mortgagee took possession of the factory and the defendant thereafter ceased to carry on the business.

[His Lordship then discussed the question of damages and concluded :—]

I agree with the learned Chief Justice that this appeal should be dismissed with costs.

Attorneys for appellant: Messrs. *Thakoredas & Co.*

Attorneys for respondent: Messrs. *Craigie, Blunt & Caroe.*

Appeal dismissed.

B. K. D.

ORIGINAL CRIMINAL.

Before Mr. Justice K. Kemp.

1929

November 26.

EMPEROR *v.* WAHIDUDDIN (No. 1).*

Indian Evidence Act (I of 1872), sections 9, 11, 14, 54—Dacoity—Conspiracy to commit dacoity—Object of association, proof of—Admissibility of evidence.

At the trial of several persons for the offence of committing or conspiring to commit a dacoity, the prosecution desired to lead evidence to the effect that some of the accused were closely associated with the approver, and that

*Case No. 2 : Criminal Sessions No. 4 of 1929.

(1) (1902) 7 Com. Cas. 201. (2) [1891] 1 Q. B. 544.

(3) (1876) 1 App. Cas. 256.