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32 C. 1141=2 C. L. J. 869.

two being connected, a long current of authority would appear to establish that the plaintiff is entitled to the fishery rights he now claims. I scarcely think it is necessary to go through the various authorities; they are collected in a well-known work (the Law of Riparian Rights, Tagore Law Lectures, 1889 by Lal Mohun Das, p. 374, and they appear to substantiate that, upon the facts as found in this case by the District Judge, the plaintiff is entitled to succeed.

Whether, if the matter had been *res integra* and there had been no such current of authority, we should have come to the same conclusion is not worth further consideration.

The appeal is dismissed with costs.

MITRA J. I am of the same opinion

Appeal dismissed.

32 C. 1145.

[1145] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Geia

KHURKUN SAHA *v.* DHATIA DAS.*

[4th July, 1905.]

Principal and agent—Liability of principal—Right of suit—Agent's right to sue principal for price of goods purchased.

Where the plaintiffs, as agent of the defendants, purchased goods for the defendants from whole sale dealers, and it was not their case as set out in the plaint that they had done so by pledging their own personal credit or that the pledging of their own credit was within the scope of the agency.

***Held* that they would have no cause of action against the defendants for the amount due to the wholesale dealers, until they were compelled to pay their demands.**

SECOND APPEAL by the plaintiff Khurkun Saha.

Khurkun Saha and his brother Janak instituted this suit, out of which this appeal arose, against three persons Dhatia Das and the two sons of his deceased brother Katia Das on the following allegations: that Dhatia Das and Katia Das had entered into a contract with the plaintiffs to the effect that the latter would supply them with such goods as they would require, and that the former would pay the plaintiffs a commission of ¼ per cent. and interest at the rate of 1 per cent. per mensem; that according to the contract Dhatia Das and Khatia Das purchased goods on credit through the plaintiff to the value of Rs. 19,035; that the plaintiff had been paid only Rs. 16,859 and that a sum of Rs. 2,645 was due to the plaintiffs from the defendants on account of the balance of the price of goods together with commission and interest.

The present suit was for the recovery of this amount.

[1146] The defendants denied the contract and pleaded that the plaintiff Khurkun, who was their agent in respect of certain *jotedari* and other business, had omitted to submit the accounts of his period of agency and put the plaintiffs to strict proof of all their allegations.

The second plaintiff Janak having died, the first plaintiff Khurkun Saha was substituted in his place as his legal representative.

* Appeal from Appellate Decree No. 1814 of 1903 against the decree of C. Fisher, District Judge of Dinajpur, dated the 16th June 1903, reversing the decree of H. H. Heard, Subordinate Judge of Darjeeling, dated the 24th of April 1903.

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The Court of first instance found that the plaintiffs had proved their case and made a decree in their favour.

On appeal by the defendants the District Judge found that the plaintiffs had supplied large quantities of goods to a shop called the Naxalbari shop, which belonged to Dhatia alone, but he found that the contract alleged in the plaint was not proved and that the goods had been supplied to Dhatia alone by Khurkun under a power of attorney; he disbelieved the plaintiffs' allegation that they had paid Rs. 1,536 to the wholesale dealers out of their own pocket and he further found that the plaintiffs had not submitted any account of the agency under the power of attorney.

On these findings he allowed the appeal and dismissed the suit.

The plaintiff Khurkun Saha in his own capacity and as legal representative of his brother Janak appealed to the High Court.

It appeared that the power of attorney referred to by the District Judge was executed jointly by Dhatia Das and Katia Das in favour of the plaintiff Khurkun Saha.

Babu *Lal Mohan Das* and Babu *Pravash Chandra Mitter* for the appellant.

Babu *Surendra Chundra Sen* for the respondents.

GEIDT J. The present suit was brought by the two plaintiffs Khurkun Saha and Janak Lal Saha to recover from Dhatia Das and the two sons of his deceased brother Katia Das the sum of Rs. 2,645 on the following allegations:—It was stated that Dhatia and Katia, who owned a shop at Naxalbari, had entered into an agreement with the plaintiffs to the effect that the plaintiffs would procure goods for the purposes of their shop and that the defendants would pay to the plaintiffs a commission on the goods purchased at the rate of one rupee per cent. It was further alleged that the plaintiffs had, under this arrangement, [1147] purchased goods for the defendants to the amount of Rs. 19,000 and that the defendants had paid only the sum of Rs. 16,859. It was for the difference between these sums together with commission and interest that the present suit was brought. The defendants denied any such contract as was stated in the plaint, and it was said that the plaintiff No. 1 Khurkun had for many years been the accredited agent of the defendant Dhatia, that, in spite of repeated demands, Khurkun had not submitted the accounts for the period of his agency, and that it was with a view to evade his liability as agent that the suit was brought.

The Subordinate Judge, who tried the case, found that the agreement set up by the plaintiffs had been proved, and that under that agreement, the plaintiffs had purchased and paid for the goods, which had been supplied to the defendants' shop, and he, therefore, passed a decree for the amount claimed. On appeal, the District Judge found that the contract set up had not been proved, and that the plaintiffs acted as agents of the defendants under a power of attorney executed by the two defendants in 1306. He further found that the shop for which the goods were supplied belonged to the defendant No. 1 Dhatia alone and that the plaintiffs had not, as the Subordinate Judge found, paid out of their own pocket the sums claimed for the goods supplied for the defendants' business. He also held that in any case the plaintiffs were not entitled to make any claim on account of the Naxalbari shop, until they had submitted accounts of the collections they had made under the power of 1306. On these findings, he dismissed the suit and the plaintiff Khurkun has appealed to this Court.

It may be that the District Judge was not correct in finding that the plaintiff Khurkun, in purchasing goods for the defendants' shop, was acting under the power of attorney of 1306 ; for, we find that that power of attorney was executed by both the brothers, whereas the District Judge has found that the shop at Naxalbari was owned by the defendant Dhatia. It appears to us, however, that the findings of the District Judge negative the case set up by the plaintiffs in their plaint and in the course of the trial. The plaintiffs avowedly purchased the goods for the defendants' shop as agents of the defendants and *prima facie* therefore, it would be the defendants, who would be liable to the wholesale **[1148]** dealers for the price of the goods supplied. The plaintiff appellant is found to have made no payments on account of the goods supplied to the defendants' shop, and *prima facie* therefore he has no cause of action against the defendants. But it is argued on behalf of the appellant that according to the findings of the Subordinate Judge, the plaintiff appellant had to pledge his own credit before the wholesale dealers would consent to supply the goods, and that he is, therefore, entitled to recover from the defendants the amount due to the whole sale dealers in order that he may protect himself against any future claim that may be made by those dealers. But we would observe that this is an entirely new case. It is nowhere suggested in the plaint that the plaintiffs had to pledge their own personal credit or that the pledging of their credit was within the scope of their agency. On the case set up in the plaint, the plaintiffs were merely agents for the defendants and would not personally be liable to the wholesale dealers, and inasmuch as the defendants may be liable in an action brought by those dealers, it appears to us that, until the plaintiffs are compelled to pay the demands of the wholesale dealers, they have no cause of action as against the defendants. For these reasons, we think that the appeal fails.

We, therefore, dismiss it with costs.

GHOSE J. I agree.

Appeal dismissed.