

defendant No. 1 upon the whole evidence. The learned Judge in the Court of Appeal below states in his judgment: "Was Ramsukh the appellant's agent at all? Did the appellant by any act of his give the plaintiffs to understand that Ramsukh was his agent?" And after having stated the questions he arrived at his conclusion, which could have been arrived at only upon a complete negative answer to those questions being returned.

The contentions urged before us therefore fail, and this appeal must be dismissed with costs.

Appeal dismissed.

M. N. R.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and
Mr. Justice Giedt.*

DEBENDRA NATH BISWAS

v.

HEM CHANDRA ROY.*

1903
BRAGWAN
DAS
v.
CREET.

1903
Aug. 14.

*Executor, debt contracted by—Co-executor, liability of—Liability of estate for
debt incurred by Executor.*

The estate of a testator is not liable for debts, contracted by one of the several executors, for goods apparently supplied to the estate. The executor who contracted the debt is personally liable for it.

Farhall v. Farhall (1) and *Labouchere v. Tupper* (2), referred to.

SECOND APPEAL by the defendants Nos. 2 and 3, Debendra Nath Biswas and another.

This appeal arose out of an action brought by the plaintiffs, Hem Chandra Roy and another, for the recovery of a certain sum of money due on a promissory note.

* Appeal from Appellate Decree, No. 1841 of 1900, against the decree of W. Teunon, District Judge of Moorshidabad, dated June 30, 1900, affirming the decree of Mohendra Nath Mitter, Subordinate Judge of that District, dated Aug. 17, 1899.

(1) (1871) L. R. 7 Ch. 123.

(2) (1857) 11 Moo. P. C. C. 198.

1903
 DEBENDRA
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 v.
 HEM
 CHANDRA
 ROY.

The plaintiffs alleged that the said promissory note was executed, on the 7th Joisto 1303 B.S. (19th of May 1896), by Bipin Behary Chowdhry (defendant No. 1), one of the four executors appointed by the will of one Kali Prosanna Biswas, deceased, and that the consideration for it was paddy, paddy golas, a *catcheri* house, and other things taken over from the plaintiffs for the benefit of the estate. They further alleged that the note was given by Bipin Behary in the discharge of his functions as one of the executors, and the estate was therefore liable for the debt.

Bipin Behary Chowdhry did not enter appearance.

The defence of the other executors mainly was that inasmuch as the promissory note was given by Bipin Behary alone in his personal capacity, and not by the majority of the executors, the estate was not liable.

In the will it was provided that the executors were to do everything in consultation and agreement with the testator's eldest son, Debendra, and that when they, the executors, differed in opinion, the opinion of the majority was to prevail.

The Court of first instance found that the executors joined in acquiring the properties which formed the consideration for the promissory note; that the transaction was one entered into for the benefit of the estate; that the promissory note was executed because the estate had no cash in hand to pay for the properties acquired; and that Bipin Behary alone signed the note because it so happened that the other two male executors were at the time absent from illness, and the fourth was a *pardanashin* lady; and it accordingly passed a decree against the defendants, and directed that the decretal amount should be recovered from the estate of the testator, Kali Prosanna Biswas.

On appeal by the defendants Nos. 2 and 3, the District Judge of Murshidabad affirmed the decision of the first Court, observing that it could not be said on the facts found, that Bipin Behary had acted contrary to the wishes of his co-executors or otherwise than with their assent.

Babu Lal Mohan Das (*Babu Harendra Nath Mookerjee* with him) for the appellants. The debt due on the promissory note executed by only one of the executors after the death of the

testator, though apparently for the benefit of the estate, the estate is not liable for it: *Farhall v. Farhall*(1) and *Labouchere v. Tupper* (2). The estate might be liable to the executor who raised the money for the purposes of the estate, if he could show that there were no moneys of the estate in his hands. But the creditor could not sue the estate.

Babu Saroda Prosanna Roy (Dr. Ashutosh Mookerjee with him) for the respondents. The debt having been contracted for the benefit of the estate, the estate is liable. Moreover, the promissory note was executed with the acquiescence of the other surviving executors.

MACLEAN C.J. This is a suit by certain creditors against the executors of a deceased gentleman, and the object of the suit is to have his estate rendered liable for a debt which was contracted by one of the executors alone. There were four executors, and the suit is brought on a promissory note given by one of them alone for goods apparently supplied to the estate. The question is whether the estate can be made liable. I do not think it can. I refer only to two cases, the case of *Farhall v. Farhall*(1) where Sir George Mellish says:—"It appears to me to be settled law that, upon a contract of borrowing made by an executor after the death of the testator, the executor is only liable personally, and cannot be sued as executor so as to get execution against the assets of the testator"; and the same principle was laid down in the case before the Privy Council of *Labouchere v. Tupper*(2).

The appeal must be allowed in favour of the present appellants, but the decree of the lower Court will stand as against the executor who gave the promissory note—the defendant No. 1, Bipin Behary Chowdhry.

This case was before the Court a short time back, and it stood over in order that the defendant No. 1 might be served with notice of the appeal. It has been served, but he does not appear. The appellants are entitled to costs in all the Courts.

GEIDT J. I concur.

Appeal allowed.

S. C. G.

(1) (1871) L. R. 7 Ch. 123.

(2) (1857) 11 Moo. P. C. C. 198.