

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Oukur Pershaud Bustooree v. Mussumat Foolcoomaree Dabee, from the High Court of Judicature at Fort William, in Bengal: delivered 17th July, 1871.*

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Present:

SIR JAMES W. COLVILLE.  
LORD JUSTICE JAMES.  
LORD JUSTICE MELLISH.

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SIR LAWRENCE PEEL.

THIS was a suit brought by the Appellant, who was the manager of a factory in Moorshedabad, against the Respondent, who carried on an old established business of broker, to recover a sum of 16,051 rupees and interest alleged to be due on the balance of an account. The Defendant had for several years sold the goods of the Plaintiff's firm, and according to the finding of the Principal Sudder Ameen, the correctness of which was not disputed before us, had received a pucca or *del credere* commission, which made her liable to the Plaintiff for all goods sold which were not paid for by the purchasers. As there was no proof that any part of the price of the goods in respect of which this suit was brought had been received by the Defendant, the claim against the Defendant was only supported upon the ground that as she received a *del credere* commission, she was liable for the price of all goods sold by her for the Plaintiff. It was admitted that the cause of action for the last item in the account had accrued more than three years, but that there were items in the account which had occurred within six years from the commencement

of the suit. The statute of limitation was pleaded, and the sole question to be determined is, whether under the circumstances previously stated the suit is barred by the Indian Statute of Limitations, Act 14 of 1859. The High Court held that the case came within the 9th Clause of first section, as a suit brought for the breach of a contract, and the Chief Justice in giving judgment says, "Although no express contract was proved to have been entered into between the parties, still their dealings were evidence from which it might properly be assumed they had agreed to carry on business on the terms which we find them carrying on. It was an engagement on the part of the Defendant that she would sell the Plaintiff's cotton, and that she would guarantee the purchasers. There was a liability on the part of the Defendant not arising from a wrong, but a liability arising out of an engagement which she must be assumed to have entered into with the Plaintiff. It therefore falls within Clause 9 of Section 1. It is a suit for a breach not in writing. It was urged before us on the part of the Appellant that the High Court had put a wrong construction on the words "breach of any contract," as used in the Clause; that these words are not there used for the purpose of distinguishing actions founded on contract from actions founded on tort, but for the purpose of distinguishing actions to recover unliquidated damages for breach of contract from actions to recover debts, and that the enumeration in the clause itself and in the 8th Clause of several debts with respect to which the period of limitation is to be three years, proves that it could not have been intended to make the limitation for all debts three years under the words "suit for the breach of any contract," and that the present suit was in substance a suit to recover a debt or liquidated sum of money, and that the period of limitation was six years under the 18th Clause of Section 1. Several cases were cited from the Indian Courts, and it appears from them that much difference of opinion has prevailed among the Judges in India respecting the proper construction to be put on the words "for the breach of any contract" in the 9th Clause. Their Lordships do not think it necessary or advisable that they should attempt on the present occasion to lay down what

is the proper construction of these words as applicable to all cases. It is sufficient to say that it appears impossible to them to put so narrow a construction upon them as not to include the case now before them. The real debtors for the price of the goods sold are the purchasers of the goods, and the broker is only sued upon his collateral undertaking that in consideration of the commission paid to him he will pay the price of the goods if the purchaser fails to do so. An action in such an undertaking is an action on an express contract, and the sums which can be recovered under it are damages for a breach of contract.

Their Lordships, therefore, are of opinion that the Judgment of the High Court was correct, and they will recommend to Her Majesty that the Appeal should be dismissed, with costs.



