Privy Council Appeal No. 138 *of* 1917.

Lachmandas Khandelwal and another - - - - - *Appellants*

v.

Raghumull - - - - - - - - - *Respondent.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH JULY, 1919.

Present at the Hearing:

LORD BUCKMASTER.
LORD ATKINSON.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD BUCKMASTER.]

By an agreement dated the 31st May, 1911, David Sassoon & Co., Ltd., appointed Raghumull and Juggomull, of the firm of Madhoram Hurdeodas, to be their brokers for the sale and purchase of sugar for a period of five years from the date of the agreement, or for such further period as should mutually be agreed, unless the agreement should be sooner determined under provisions therein contained.

The agreement contained a clause for the appointment of under-brokers in the following terms :—

> "2. The brokers shall employ such under-brokers as shall or may be necessary or required for the purposes of the Company's sugar business, and that such under-brokers shall be under the control of the Company, and the brokers shall from time to time be responsible for the fidelity of the said under-brokers and dismiss such of the under-brokers as the Company may direct, and employ others in their place,"

and also a clause imperfectly worded, but intended to provide, and accepted by all parties as providing, that the agreement might be ended by three calendar months' notice on either side.

On the 8th June, 1911, the brokers so constituted entered into an agreement with the appellants constituting them under-brokers. This agreement recited the original contract, and effected the appointment by clause 1 in these words :—

> "The brokers shall appoint and do hereby appoint the under-brokers, and the under-brokers do hereby agree to become and act as under-brokers for the said brokers for the sale and purchase of sugar in respect of all contracts to be entered into by them for or on behalf of the said David Sassoon and Company, Limited, under the aforesaid agreement and during the subsistence of the said agreement, or for such further period as the said brokers and the said Company may further extend."

The other clauses of the agreement followed the provisions of the earlier contract, but contain nothing material to the real question raised by this appeal.

On the 27th April, 1912, Juggomull died and, though it was at first urged that the contract was thereby ended, this point was decided against the respondent and was not raised before their Lordships. On the 24th May, 1912, a new agreement appears to have been made between Sassoon & Co. and the respondent, the surviving partner of the firm of Madhoram Hurdeodas, but it has not been produced and their Lordships are ignorant of its contents.

On the 12th August, 1912, the appellants' contract was summarily ended by the respondent on the ground of alleged breaches of duty. On the 2nd December, 1912, a new agreement was entered into between David Sassoon & Co. and the respondent differing in many material respects from the contract of the 31st May, 1911, and appointing the respondent broker in the same business for a new period of five years on different terms. On the 28th July, 1913, the appellants instituted the proceedings out of which this appeal has arisen, claiming against the respondent damages for wrongful termination of their agency, and accounts both under the written contract and under a verbal contract to which further reference will be made.

A defence was put forward that the dismissal was justified, but this wholly failed, and the only questions now open are (1) the measure of damages for wrongful dismissal ; (2) as to the basis on which accounts ought to be directed for monies due under the contract ; and (3) a subsidiary claim in respect of the verbal agreement.

The questions are independent of each other and need separate consideration.

With regard to the damages, the learned Trial Judge thought that, the period of the contract being five years, the appellants were entitled to compensation for loss of employment upon that footing, and the gross earnings being admitted as Rs. 30,000 for the 14 months during which the agreement had run, after allowing for expenses, he fixed Rs. 1,000 a month as the average net profit. This would produce Rs. 46,000 for forty-six months the residue of the term, and from this sum he deducted Rs. 16,000

as prospective earnings, leaving Rs. 30,000 as the estimated damage. It is true that in arriving at this conclusion he had not before him the critical contract of the 2nd December, 1912, and it is impossible and unnecessary to conjecture why a document of such importance was not forthcoming at the trial. It was, however, produced before the High Court on appeal, who held that this contract necessarily ended the original appointment of the respondent's firm as brokers to Sassoon & Co., and that with its termination the appellants' contract likewise came to an end. They altered the rate of prospective earnings per month to Rs. 1,250, and allowed this sum up to the 2nd December, 1912.

In so deciding their Lordships think that the High Court rightly interpreted the bargain between the parties and awarded damages on the correct principle.

The contract of the 8th June, 1911, was a contract which in its very nature as well as in its terms depends for its existence and duration upon the continuance of the contract of the 31st May, 1911. It is stated that the appointment it effects is for "the sale and purchase of sugar in respect of all contracts to be entered into by them [*i.e.*, the respondent] on behalf of the said David Sassoon & Co., Ltd., under the aforesaid agreement [*i.e.*, the agreement of the 31st May, 1911] and during the subsistence of the said agreement, or for such further period as the said brokers and the said Company may further extend." Even apart from the words which make the period of the contract identical with that of the covering authority, the mere fact that the appointment is an appointment to act as brokers in respect of the sugar bought and sold by the respondent's firm under their bargain with Sassoon & Co., shows that when they ceased to buy and sell sugar in accordance with that authority, the appointment of the appellants as brokers would necessarily come to an end.

It is not necessary to consider what the position would be if the original agreement were ended simply as a means of defeating the appellants' rights; for no such case is urged, and the question does not arise. That the contract of the 2nd December, 1912, cannot be treated as an extension of the original contract, but is a completely new bargain, which in itself terminated the original contract, is plain; for the terms of the two contracts differ in many important respects, and most notably in the amounts of commission to be paid. Whether or no this latter contract followed a termination by three months' notice of the earlier contract pursuant to the provisions which it contained is immaterial. The provision as to notice was a means by which either party to the contract might bring it to a close against the will of the other. It was always competent to them both by agreement to end it when they pleased; and whether it was ended by one means or the other no breach has been committed of the respondent's duties under his contract with the appellants, since such contract never expressly created nor impliedly involved any

obligation not to agree with Messrs. Sassoon to a new contract of brokerage, if and when it was thought fit.

With regard to the action for monies due under the contract of the 8th June, 1911, the only question that arises is as to whether the respondent is entitled to make a reduction in respect of losses arising from the incomplete contracts existing when the arrangement with the appellants came to an end. The learned Trial Judge thought that he was not; but in this view their Lordships cannot concur.

The accounts showed that certain losses always arose due to the failure of customers who were introduced to accept delivery and pay for the goods they had bought.

It is urged on behalf of the appellants that, had their services been continued, these losses might have been minimised, owing to their personal relations with the customers. This is indeed a reasonable possibility, but the appellants have failed to show that the difference between the amounts which the respondent seeks to deduct under this head are so materially out of proportion to the average loss that was sustained during their period of agency as to make a substantial difference in the figures, and in these circumstances their Lordships see no reason to interfere with the judgment of the High Court, who take the view that actual losses should be deducted.

The final question relates to a claim with regard to business done under a verbal contract made between the appellants and the respondent's firm for brokerage on goods bought by the respondent's firm from Messrs. Sassoon & Co. direct and from their buyers. The learned Trial Judge in directing an account of the sum due, in addition to a figure no longer disputed of 8 per cent. brokerage, adds also an account in respect of profits. This formed no part of his original judgment, but was added in the decree. There is no analysis by the learned Trial Judge of the evidence which led him to include this claim. The High Court on appeal thought it was insufficient for the purpose, and with that view their Lordships agree. The appellants in their evidence in chief do not in the first instance make a claim to embrace these sums. They stated "Juggumal told us that we would get the same commission for selling these goods." That is the same commission as they were receiving under the original contract, and in this the payment by commission is distinct from payment by a share of profits. They added that they were claiming a share of the profits in respect of these accounts, but they certainly did not say in examination in chief that there was any agreement that those profits should be paid.

There is no sufficient explanation of how the claim for profits became included in the original decree, and their Lordships think that the High Court were right in rejecting it. For these reasons they think that this appeal should fail, and they will humbly advise His Majesty that it should be dismissed with costs.

In the Privy Council.

LACHMANDAS KHANDELWAL AND
ANOTHER

v.

RAGHUMULL.

DELIVERED BY LORD BUCKMASTER.

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