Radhakrishna Sivadutta Rai and Others

Vs

Tayeballi Dawoodbhai

Civil Appeal No. 212 of 1959

(CJI B. P. Sinha, P. B. Gajendragadkar, Raghuvar Dayal JJ)

13.10.1961

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal by a certificate granted by the Calcutta High Court arises out of a suit filed by the three appellants against the respondent to recover Rs. 83,640/-. The three appellants are respectively the Firm Radhakishan Shivdutt Rai which carries on business at Banaras and Ramkumar Lal for himself and as karta of his joint family as well as Madan Gopal for himself and as karta of his joint family, the latter two being the partner in the first-mentioned Firm Radhakrishna Sivadutta Rai; for convenience we will refer to the partnership firm hereafter as the appellant. The respondent Tayeballi Dawoodbhai is a partnership firm which carries on business at Calcutta. The appellant's case was that the appellant and the respondent had entered into a contract in the first instance on December 18, 1950, through brokers named T.N. Mehrotra & Co., Calcutta. This contract was later confirmed by two letters written respectively on January 3 and 15, 1951, by the appellant to the respondent and replied to by the respondent. By this contract the respondent agreed to sell 1000 bales of Banaras Hemp particulars of which were set out in the plaint. According to the appellant, by a letter written on March 14, 1951, the appellant in part performance of the said contract accepted delivery of 110 bales of Banaras Hemp No. 1 and 50 bales of Banaras Hemp No. 2; this delivery was made by the respondent to L.N. Poddar & Co., who acted as the agent of the appellant and paid the price of the said 160 bales. In this transaction the respondent realised Rs. 3,840 from the said L.N. Poddar & Co. in excess of the actual price of the goods delivered to the said company. Inspite of the repeated demands made by the appellant the respondent failed to deliver the balance of the goods contracted for and thus committed breach of the contract. That is how the appellant claimed Rs. 79,800 as difference between the market rate on March 31, 1951, and the contract rate of the balance deliverable under the contract in suit. This amount was claimed as damages for the breach of contract. In addition an amount of Rs. 3,840 was claimed as having been paid in excess of the value of 160 bales delivered to L.N. Poddar & Co., on behalf of the appellant.

This claim was resisted by the respondent on several grounds. The principal contention urged by the respondent, however, was that in relation to the contract in suit the appellant had acted as agent for its disclosed principal Messrs Khaitan and Sons Ltd., and as such it was not entitled to bring the present suit. The respondent further alleged that the said disclosed principal Messrs. Khaitan and Sons had settled all their rights and claims under the suit contact with their agent and so the present claim for damages was not maintainable. In regard to the claim for Rs. 3,840 the respondent pleaded that the appellant's case was untrue. Several other pleas were also raised but with the said pleas we are not concerned in the present appeal.

Mr. Justice Bose who tried the suit framed twelve issues. On the principal point in controversy between the parties the learned judge found that the appellant had entered into the contract with the respondent on its won account and not on account of the disclosed principal as alleged by the respondent. According to the learned judge the reference to Messrs. Khaitan and Sons Ltd., made in the bought and sold notes on which the respondent's plea was based had been inserted by the brokers "by mistake or due to some misconception." The learned judge also found that the respondent had commited a breach of the contract as alleged by the appellant. The appellant's case with regard to the excess payment of Rs. 3,840 made by L.N. Poddar & Co. was, however, held not to have been proved. In the result a decree was passed in favour of the appellant for Rs. 79,800 along with interest as stipulated in the decree.

Against this decree the respondent preferred an appeal; and the main point which was urged on its behalf was directed against the finding of the trial judge that the contract had been entered into by the appellant for itself and not on account of the disclosed principal. This contention was based in the Court of Appeal, as in the trial court, on the bought and sold notes; and it was urged that the bought and sold notes clearly showed that the appellant had entered into the contract on account of the disclosed principal Messrs. Khaitan and Sons Ltd. Before the Appellate Court the respondent's case was that the said bought and sold notes constituted the terms of the contract and no other evidence was relevant and admissible in order to determine the said terms. Das Gupta, J., upheld this plea. In this opinion the bought and sold notes issued by the brokers constituted the sole basis for the terms of the contract and the two letters subsequently written on January 3 and 15, 1951, were inadmissible and irrelevant for the purpose of determining the said terms of the contract. The learned judge, however, considered the matter also on the alternative basis that the said letters could be considered for ascertaining the terms of the contract and came to the conclusion that on reading the said letters and the bought and sold notes together the result was the same, namely, that the contract had been entered into by the appellant on behalf of the disclosed principal. Bachawat, J., differed from Das Gupta, J., on the question about the relevance and admissibility of the two subsequent letters. According to him the two bought and sold notes and the two letters between them constituted the term of the contract. He was inclined to take the view that the letters could not be regarded as inadmissible or irrelevant. Reading the four documents together the learned judge, however, agreed with the conclusion alternatively recorded by Das Gupta, J., and held that the four documents supported the respondent's plea that the appellant had entered into the contract on behalf of the disclosed principal. Both the learned judges agreed in holding that there was no evidence to support the appellants plea that the reference to the principal made in the bought and sold notes was a result of any mistake. On these findings the decree passed by the trial court was reversed and the appellant's suit was ordered to be dismissed.

In regard to the costs, however, the Appellate Court took the view that the point raised before the Appellate Court about the effect of the bought and sold notes had not been specifically mooted before the trial court and that several other pleas raised by the respondent were found by the trial court to be false and so the proper order as to costs would be that each party should bear its costs throughout.

After this judgment was delivered the appellant applied for and obtained a certificate from the High Court and it is with the said certificate that the present appeal has been brought before this Court. On its behalf Mr. Pathak has strenuously contended that the Appellate Court was in error in coming to the conclusion that the contracts in suit had been entered into by the appellant on behalf of the disclosed principal Messrs. Khaitan & Sons Ltd., Banaras. For the purpose of deciding this point we propose to assume in favour of the appellant that the terms of the contract may be gathered from the

two bought and sold notes on which the respondent relies as well as the two subsequent letters on which the appellant relies.

It would be convenient at this stage to set out the said documents. We will first refer to the brokers' notes and the confirmation slips in respect thereon. This is how the brokers notes read :

> #"T.N. Mehrotra and Co., No. 377Hemp, Oil and Oil Seeds Pollock HouseBrokers. (3rd Floor) 28-A, Pollock Street.##

Any dispute in connection with this deal is subject to Arbitration by Bengal Chamber of Commerce.

> # Calcutta, 18-12-1950.Radhakrishna Sivadutta Rai,A/c Khetan and Sons Ltd.,Shewpur, Banaras.##
>
> Dear Sirs,
>
> We confirm having purchased on your account and risk undernoted goods from Messrs. Tayeballi Dawoodbhai, 20, Zakaria Street, Calcutta.
>
> Commodity : 500 (five hundred) bales of Banaras No. 1 only with Agmark Jan./March '51 at K.P. Docks @ Rs. 165 per bale of 400 lbs. each on receipt of the goods.
>
> # Yours faithfully, For T. N. Mehrotra and Company, Sd. T. N. Mehrotra.##

Sales Tax number should be furnished by the Buyers otherwise to be charged."

> #"T. N. Mehrotra and Co. No. 378Hemp, Oil and Oil Seeds Pollock HouseBrokers (3rd Floor)Tel : | Bank 4718 | 29-A, Pollock Street, | B.K. 1914 | Calcutta, 18-12-50.##

Any dispute in connection with this deal is subject to arbitration by Bengal Chamber of Commerce.

> #To : M/s. Tayeballi Dawoodbhai,20, Zakaria Street,Calcutta.##
>
> Dear Sirs,
>
> We confirm having sold on your account and risk, the undernoted goods, to M/s. Radhakrishna Shiv Dutt Rai with A.G. Mark.
>
> # A/c Khetan and Sons Ltd., Shewpur, Banaras.##
>
> Commodity : (500) Five hundred Bales of Banaras No. 1 only with A.G. Mark.
>
> Delivery : Jan./March 1951 at K.P. Dock.
>
> Price : @ Rs. 165 per bale of 400 lbs. each.
>
> Terms of Payment on receipt of goods.
>
> Brokerage 0-8-0 per bale.

Sales Tax number should be furnished by the buyer otherwise to be charged.

Yours faithfully, For T. N. Mehrotra & Co., Sd. T. N. Mehrotra."##

"To

M/s. T.N. Mehrotra & Co.,

Calcutta.

We acknowledge receipt of your purchase confirmation memo No. 377 dated 18-12-50.

Signature : Gopal Lal Gupta For Radhakrishna Shivadutta Rai."##

"To

M/s. T.N. Mehrotra & Co., Calcutta.

We acknowledge receipt of your purchase confirmation memo. No. 378 dated 18-12-50.

Signature : Gopal Lal Gupta For Radhakrishna Sivadutt Rai".##

The said confirmation slips were signed by Gopal Lal Gupta for the firm of Radhakrishna Shivdutt Rai."

After the said notes were sent by the brokers to the respective parties Gopal Lal Gupta on behalf of the appellant wrote a letter to the respondent on January 3, 1951, and on January 15, 1951 the respondent wrote a letter to the appellant. These letters read as follows :

#"Messrs Tayeballi Dawoodbhai, 3-1-51.20, Zakaria Street,Calcutta.##

Dear Sirs,

We have bought from you one thousand bales of Banaras Hemp through Messrs. T.N. Mehrotra & Co., 28-A, Pollock Street, Calcutta, on the following terms :

1. 500 (Five hundred) bales Banaras No. 1 with agmark @ Rs. 165 (one hundred and sixtyfive) per bale of about 400 lbs. delivery K.P. Docks during January/March 1951.

2. 500 (Five hundred) bales Banaras No. II with agmark @ Rs. 145 (one hundred and fortyfive) per bale of about 400 lbs. delivery K.P. Docks during January/March 1951. Please note and confirm.

Yours Faithfully, for Radhakrishna Shivdutt Rai Sd. Gopal Lal Gupta.""Tayeballi Dawoodbhai 20, Zakaria Street,Registered. Calcutta-1. Calcutta, 15th January, 1951.##

Messrs. Radhakrishna Shivadutt Rai,

Banaras.

Dear Sirs,

We confirm having sold to you through Messrs. T.N. Mehrotra & Co., Calcutta, 1000 (One thousand) bales of Banaras Hemp as follows :

(i) 500 (Five hundred) bales Banaras Hemp No. I with Agmark at Rs. 165 per bale of about 400 lbs. delivery K.P. Docks during January/March 1951.

(ii) 500 (Five hundred) bales Banaras Hemp No. II with Agmark at Rs. 145 per bale of about 400 lbs. K.P. Docks delivery during January/March 1951.

This confirms your letter of 3rd instant.

Yours Faithfully, for Tayeballi Dawoodbhai. Sd. x x x Partner.##

Copy to Messrs. T.N. Mehrotra & Co., Calcutta, and to Gopinath Mehrotra, Banaras."

Mr. Pathak contends that in construing the effect of the relevant documents we should not attach any importance to the reference to Khaitan & Sons made in the bought and sold notes for the simple reason that the said reference is the result of a mistake or misconception on the part of the brokers. In that connection he contended that the finding recorded by the trial court on the issue of mistake should be accepted by us and not the finding made by the Appellate Court. We are not impressed by this argument. In regard to these notes we have the evidence of Trilokinath and Gopinath on behalf of the brokers which negatives the theory of mistake or misconception. Trilokinath has stated on oath that when he got the offer from the respondent he telephoned to his brother Gopinath who is a broker in respect of hemp of the firm of Sewnath Gopinath and he told him about the offer. Gopinath then informed Trilokinath that the offer was closed either on the 16th or on the morning of the 17th. This information was received by Trilokinath from Gopinath on the telephone. Trilokinath was then asked about the information that his brother gave him, and he stated that his brother told him that the offer which he had communicated to him in respect of 1000 bales at Rs. 165 and Rs. 145 had been sold by him to Khaitan Sons & Co., Fibre Ltd. He also added that he received another message from his brother either on the 18th or on the night of the 17th to prepare a contract so that it will be Khaitan & Sons through the appellant. Thus, it is clear that the evidence of Trilokinath, if believed, clearly shows that there could be no mistake or misappreciation on the part of the brokers, when the notes referred to Khaitan & Sons as principal in respect of the transaction. Gopinath substantially corroborated the evidence given by Trilokinath. He stated that when he got the offer from his brother Trilokinath he went to Deokinandan who was working for Khaitan & Sons and it was after discussion with Deokinandan that the souda was closed as one on behalf of Khaitan & Sons. Having thus closed this contract with Deokinandan, who represented the principal Khaitan & Sons, Gopinath told Trilokinath to close the offer and asked him to prepare the note showing that the appellant was acting as agent for the disclosed principal Khaitan & Sons. Reading the evidence of the two brothers who worked as brokers in respect of the transaction in suit it is clear that any possibility of a mistake or misappreciation is wholly excluded.

On behalf of the appellant Gopal Lal Gupta has given evidence. He attempted to explain away the fact that he did not protect against, or object to, the insertion of the name of Khaitan & Sons in the notes by suggesting that when he signed the confirmation slips after receiving the notes he had not

noticed the reference to Khaitan & Sons. His case was that the purchase had been made by the appellant for itself and not for any other firm; and the suggestion he made was that if he had noticed that the notes had made reference to Khaitan & Sons he would either have insisted upon the said name being deleted or would not have concluded the contract; but when his statement that he did not notice the reference to Khaitan & Sons was tested in cross-examination Gopal Lal was shaken, and he had to admit that when he signed the confirmation slip he may have noticed the reference to Khaitan & Sons but he did not read the document attentively. He was, however, forced to concede that he had gone through the note before he signed the confirmation slip. It was under stress of cross-examination that Gopal Lal incidentally mentioned that the reference to Khaitan & Sons may have been made by mistake. It is obvious that Gopal Lal's evidence which otherwise suffers from the infirmity that it is full of contradictions cannot be accepted on the question of mistake because his explanation about his conduct in signing the confirmation slips considered by itself is wholly unsatisfactory. Therefore, in our opinion, the Appellant Court was fully justified in reversing the finding of the trial court on this point and in coming to the conclusion that the reference to Khaitan & Sons which the notes made was not the result of any mistake or misconception.

In this connection it may be relevant to refer to the attitude adopted by the appellant when the dispute arising between the parties in the present contract had gone before the Bengal Chamber of Commerce for adjudication. In those proceedings the respondent had raised the same plea that it has raised in the present suit. It was urged on its behalf that the appellant was not entitled to make any claim on the contract because it had entered into the contract on behalf of a disclosed principal and on its account. Apparently that plea appears to have been accepted and the arbitration proceedings therefore ended as being without jurisdiction. In meeting the plea raised by the respondent it is significant that the appellant thought it fit to urge that the respondent's allegation that the appellant was the agent of one Khaitan & Co. was not correct and that "there is no firm or company known as Khaitan & Co. or Khaitan & Sons, Ltd., or Khaitan & Sons in Shewpur, Banaras. The appellant therefore pleaded that the jurisdiction of the Chamber to entertain the case could not be disputed on that score. The appellant also alleged that the reference to Khaitan & Sons was superfluous and no importance should be attached to the said words. In the suit itself a faint attempt was no doubt made to challenge the identity of the firm Khaitan & Sons, but Mr. Pathak has very fairly not attempted to raise that point before us. It would thus be noticed that the principal point made by the appellant in the arbitration proceedings before the Chamber in respect of the reference to Khaitan & Sons in the notes was entirely frivolous; no case of mistake appears to have been set out at that stage. Besides, as we have already pointed out, there is no evidence on which a finding of mistake can be reasonably made in favour of the appellant. Therefore, we must proceed to consider the question about the construction of the relevant documents on the basis that the reference to Khaitan & Sons which the notes make is not the result of any mistake and has been made in the ordinary course of business by the brokers.

Let us then consider what the effect of the bought and sold notes is according to the established custom in the mercantile to the established custom in the mercantile world. Mr. Viswanatha Sastri, for the respondent, contends that, according to the established commercial usage, if there is no variation or disparity in the bought and sold notes, the bought and sold notes issued by the brokers constitute the term of the contract between the parties for whom the brokers act. We are inclined to accept this contention. The effect of such notes issued by the brokers has been frequently considered by judicial decisions. As early as 1846 the Privy Council had occasion to deal with this question in Cowie v. Remfry [(1846) 3 M.I.A. 448]. In that case C. & Co. and H. & Co. were merchants at Calcutta. The latter sold to the former a large quantity of indigo through the medium of a broker who drew up a sold note addressed to H. & Co. and submitted it to H. for his approval. H. objected

to a particular word appearing in the note whereupon the broker took the sold note to C. and informed him of H.'s objection. C. then struck his pen through the word objected to by H. placed his initials over the erasure and returned the note to the broker. The broker then delivered it in that altered form to H. & Co. Next day the broker delivered to C. & Co. a bought note which differed in certain material terms from the sold note. In an action brought by H. & Co. against C. & Co. for the breach of the contract as contained in the sold note the Supreme Court at Calcutta was of the opinion that the sold note alone formed the contract and so it decreed the plaintiffs suit. On appeal by the defendant the Privy Council reversed the finding of the Supreme Court and held that the transaction was one of bought and sold notes and held that the circumstances attending Co.'s alteration of the sold not and affixing his initials were not sufficient to make that note alone a binding contract. According to the Privy Council, there being a material variation in the terms of the bought with the sold note they together did not constitute a binding contract. It would thus be seen that the Judicial Committee was dealing with a case where the bought and sold notes did not tally and so the decision was that where the bought and sold notes do not tally the sold note alone cannot constitute the terms of the contract. In dealing with this question, however, their Lordships referred to the mercantile custom in regard to the bought and sold notes and observed that "the established usage of dealing in the mercantile world should be held in high respect; the very existence of such usage shows that in practice it has been found useful and beneficial; the presumption is in its favour, and no departure from it is to be inferred from doubtful circumstances". That is why the Privy Council reached the conclusion that "this must be considered as a transaction in the contemplation of the parties by bought and sold notes, and that the contract is contained in both of the notes, and not in one;" inevitably there being a material variation between the two notes "the consequence follows, from all legal principles, that no binding contract has been effected". This decision shows that the mercantile usage of entering into contracts evidenced by the bought and sold notes issued by the brokers was treated by the Privy Council as well recognised.

The next decision to which reference may be usefully made is the case of Sievewright v. Archibald [(1851) 117 E.R. 1221, 1228, 1229]. In that case again there was a variation in the bought and sold notes and the variation was material, and so it was held that there was no sufficient memorandum of a contract to satisfy the Statute of Frauds. In dealing with the question raised for the decision of the Court Lord Campbell, C.J., has made certain general observations which throw considerable light on the genesis of the bought and sold notes and the effect which is usually attributed to the said notes by commercial usage. "If the bought note can be considered a memorandum of the parol agreement", observed Lord Campbell, C.J., "so may the sold note; and which of them is to prevail ? It seems to me, therefore, that we get back to the same point at which we were when the variance was first objected, and the declaration was amended. I by no means say that where there are bought and sold notes they must necessarily be the only evidence of the contract; circumstances may be imagined in which they might be used as a memorandum of a parol agreement. Where there has been an entry of the contract by the broker in his book signed by him, I should hold without hesitation, notwithstanding some dicta, and a supposed ruling of Lord Tenterden in Thornton v. Meux (M. & M. 43), to the contrary, that this entry is the binding contrary between the parties and that a mistake made by him, when sending them a copy of it in the shape of a bought or sold note, would not affect its validity. Being authorised by the one to sell, and the other to buy, in the terms of the contract, when he has reduced it into writing and signed it as their common agent, it binds them both, according to the Statute of Frauds, as if both had signed it with their own hands, the duty of the broker requires him to do so; and till recent times, this duty was scrupulously performed by every broker. What are called the bought and sold notes were sent by him to his principals by way of information that he had acted upon their instructions, but not as the actual contract which was to

be binding upon them. This clearly appears from the practice still followed of sending the bought note to the buyer, and the sold note to the seller, whereas, if these notes had been meant to constitute the contract, the bought note would be put into the hands of the seller, and the sold note into the hands of the buyer, that each might have the engagement of the other party and not his own. But the broker, to save himself trouble, now omits to enter and sign any contract in his book, and still sends the bought and sold notes as before. If these agree, they are held to constitute a binding contract; if there be any material variance between them, they are both nullities, and there is no binding contract. This last proposition, though combated by the plaintiff's counsel, has been laid down and acted upon in such a long series of cases that I could not venture to contravene it, if I did not assent to it; but where there is no evidence of the contract unless by the bought and sold notes sent by the broker to the parties, I do not see how there can be a binding contract unless they substantially agree; for contracting parties must consent to the same terms; and where the terms in the two notes differ there can be no reason why faith should be given to the one more than the other". These observations seem to establish two propositions, first that if the bought and sold notes show a material variation neither of them nor both of them taken together can be relied upon for the purpose of proving the terms of the contract, and second if the bought and sold notes agree they are held to constitute a binding contract. To the same effect is the observation made by the Privy Council in Ah Shain Shoke v. Moothia Chetty [(1899) L.R. 27 I.A. 30], when Sir Richard Couch observed that "Moothia Chetty, one of the respondents, said in his evidence he did not consider the contract as concluded until bought and sold notes were signed. He was right in this. They were the only evidence of the contracts."

It is in the light of this legal position that we must consider the effect of the bought and sold notes in the present case. The notes referred to the appellant and added "A/C Khaitan & Sons Ltd." There is no disparity in the notes at all; and so the two notes can be safely taken to evidence the terms of the contract. When along with the name of the appellant the notes specifically refer to "Khaitan & Sons Ltd." with the preceding words "A/c", there can be no doubt that the appellant is shown by the notes to be acting on account of the disclosed principal. The appellant realised that the effect of the reference to Khaitan & Sons in the notes would inevitably be to support the plea of the respondent that it was not entitled to bring the present action and so it pleaded that the said reference was the result of a mistake. Therefore, there can be no doubt that if the material question had to be considered in the light of the bought and sold notes alone the appellant was acting on behalf of the disclosed principal and, on the contract thus entered into, had no right to sue and can claim no cause of action in its favour.

In Gadd v. Houghton [(1876) 1 Ex. D. 357], James, L.J. observed "when a man says that he is making a contract 'on account of' some one else, it seems to me that he uses the very strongest terms the English language affords to show that he is not binding himself, but is binding his principal". In that case fruit brokers in Liverpool gave a fruit merchant a sold note which read thus : "We have this day sold to you on account of James Morand & Co., Valentia, 2000 cases Valentia, oranges, of the brand James Morand & Co., at 12s. 9d. per case free on board", and the brokers signed the note without any addition. The purchaser brought an action against the broker for non-delivery of the oranges. It was held that the words "on account of James Morand & Co." showed the intention to make the foreign principals and not the brokers liable and that the brokers were not liable upon the contract. It would be noticed that in dealing with the question about the brokers liability two points fell to be considered. The first point in support of fixing the liability with the brokers was that the brokers had signed this note without describing themselves as acting for the disclosed principals; and the argument was that "when a man sings a contract in his name he is prima facie a contracting party and liable and there must be something very strong on the face of the instrument to show that

the liability does not attach to him". This principle was accepted by the learned judge who decided the case; but it was pointed out that there was another fact which had an overriding effect and that was that the note showed that the brokers were acting for the disclosed principal, and that fact clearly repelled the brokers' liability in regard to the contract. In dealing with the argument about the effect of the signature Mellish, L.J., observed "when the signature comes at the end you apply it to everything which occurs throughout the contract. If all that appears is that the agent has been making a contract on behalf of some other person, it seems to me to follow of necessity that that other person is the person liable. This is one of the simplest possible cases. How can the words 'on account of Morand & Co.' be inserted merely as a description ? The words mean that Morand & Co. are the people who have sold. It follows that the persons who have signed are merely the brokers and are not liable". We have referred to these observations made by Mellish L.J., because as we will presently point out they would be of material assistance in deciding the point which Mr. Pathak has raised on the strength of the two subsequent letters. Thus, the bought and sold notes in this case unambiguously indicate that the appellant was acting for a disclosed principal and the contracting party was the disclosed principal and no other.

It is, however, urged by Mr. Pathak that before determining the terms of the contract and the parties to it we must read the notes in question along with the two letters. We have already seen the sequence of the documents. First, the notes were delivered by the brokers to the appellant and the respondent. Then the respective parties filed confirmation slips and then followed the two letters exchanged between them. Mr. Pathak contends that in its letter addressed to the respondent the appellant has definitely stated that 'they' had bought from the respondent 1000 bales in question. Mr. Pathak places considerable emphasis on the use of the word "we" without reference to the principal; and he also relies on the fact that the letter is signed by the appellant without describing itself as acting on behalf of the principal already disclosed. Similarly he relies on the statement of the respondent's letter to the appellant that the respondent had sold to the appellant "to you" the bales in question. According to Mr. Pathak the significance of these letters should not be underestimated in determining the parties to the contract. There is no doubt, and indeed it is a matter of common-ground before us, that the letters do not constitute all the terms of the contract, and all that is urged by Mr. Pathak is that they should be considered along with the notes. The notes refer to the fact that if any dispute arises in the deal it is subject to the arbitration by the Bengal Chamber of Commerce. They also refer to the sales tax number which is to be furnished by the buyers, otherwise they would be charged. These terms undoubtedly constitute terms of the contract; but the argument is that in the correspondence which took place between the parties there is no reference to the principal and indeed the correspondence proceeds on the basis that the appellant acts for itself and not for a disclosed principal, and that should be borne in mind in deciding whether the appellant was acting for the disclosed principal or not.

In support of his argument that the signature of the appellant to its letter of January 3, 1951, and the use of the word "we" in the first paragraph of the letter indicate that the appellant was acting for itself. Mr. Pathak relies on a decision of the King's Bench Division in H.O. Brandt & Co. v. H.N. Morris & Co. Ltd. [[1917] 2 K.B. 784]. In that case the plaintiffs who carried on business in Manchester gave to the defendants a bought note dated September 3, 1914. This note was addressed to the defendants and was headed "From Messrs. H.O. Brandt & Co., 63 Granby Row, Manchester, For and on behalf of Messrs. Sayles Bleacheries, Salesville, Rhode, Island, U.S.A.". The note stated "we have this day bought from you 60 tone pure anline oil" and it was signed "H.O. Brandt & Co.". The plaintiffs sued for non-delivery of the oil. Their claim was resisted on the ground that they had entered into the contract on behalf of a disclosed principal and therefore were not entitled to be sued. It was held by Viscount Reading, C.J., and Scrutton, L.J., Neville, J., dissenting, that the

plaintiffs were the contracting parties and were entitled to sue upon the contract. The majority decision was based on three grounds. The first ground was that the plaintiffs had signed the note without describing themselves as acting on behalf of the principal and so it was held following the language used by Mellish, L.J., in the case of Gadd [(1876) 1 Ex. D. 357] that prima facie when a man signs a document in his own name and states therein "I have this day bought from you" he is the person liable on the contract. The second consideration was that the reference to the foreign principal was made in the note in order to declare the destination of the goods. There was evidence adduced in the case to show that during wartime the destination of goods intended for export had to be made known. Therefore the reference to the foreign principal was treated as having been made for the purpose of meeting the said requirement; and the third circumstance was that the plaintiff's statement at the head of the note that they were acting for and on behalf of a foreign principal could not get rid of the prima facie presumption that a person signing a contract in his own name is personally liable on it. It would thus be seen that the rule of construction which prescribes that if a person signs a contract prima facie he is the contracting party prevailed in that case because the reference to the disclosed principal was otherwise explained as serving another purpose altogether. The said rule of construction prevailed also for the additional reason that the plaintiffs were acting for a foreign principal. It would be remembered that s. 230 of the Indian Contract Act provides that in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. There are, however, there cases specified in the section where such a contract would be presumed to exist; one of these cases is where a contract is made by an agent for sale or purchase of goods for a merchant resident abroad. In other words, under s. 230 if an agent enters into a contract for a disclosed foreign principal the main provision of s. 230 will not apply because there would be a presumption that there is a contract to the contrary under which the agent would be personally bound by the contract notwithstanding the fact that he has entered into it on behalf of a foreign principal. Therefore, we are not prepared to hold that the decision in the case of H.C. Brandt & Co. [[1917] 2 K.B. 784] lays down an unqualified rule of construction on which the appellant can rely. In fact, it may be pointed out that Neville, J., who dissented from the majority view, has significantly observed that "I rather gather that I should not have found myself in isolation on this point were it not for the fact that during the war there is an obligation to disclose the destination of the goods". This observation shows that reference to the disclosed principal was not given its full effect in considering the question about the liability of the agent because it was held by the majority decision that the said reference was primarily, if not exclusively, made for the purposes of disclosing the destination of the goods.

In support of his argument that the relevant recitals in the two letters show that the contract had been entered into by the appellant on its own behalf Mr. Pathak has also referred us to the statement of the law made by Bowstead on "Agency". "The question whether the agent is to be deemed to have contracted personally," it is observed, "in the case of contract in writing other than a bill of exchange, promissory note, or cheque, depends upon the intention of the parties, as appearing from the terms of the written agreement as a whole, the construction whereof is a matter of a law for the court - (a) if the contract be signed by the agent in his own name without qualification, he is deemed to have contracted personally, unless a contrary intention plainly appear from other portions of the document, (b) if the agent add words to his signature, indicating that he signs as an agent, or for or on behalf of a principal, he is deemed not to have contracted personally, unless it plainly appears from other portions of the document, that, notwithstanding such qualified signature, he intended to bind himself." In conclusion it is added that "effect should be given to every word used and none should be rejected unless it is apparent that they have been introduced per incuriam" (P. 266, Art.

116). These observations do not carry the appellant's case very for because all that they show is that in determining the question as to whether the agent has entered into the contract on behalf of the principal or not the way he has signed the document has to be considered along with the other recitals made in the relevant documents.

What then would be the effect of the relevant recitals in the letter on which Mr. Pathak relies ? In this connection it is necessary to recall that we are reading these letters along with the bought and sold notes, and that the bought and sold notes have unequivocally and clearly indicated that the appellant was acting on behalf and on account of the disclosed principal Khaitan & Sons. If we read the letters in the light of the bought and sold notes it would be clear that the signature of the appellant will not have much significance, nor would the use of the word "we" by the appellant or "you" by the respondent make any difference. Parties knew that the appellant was acting on behalf of the disclosed principal. It is not suggested that in such a case everytime the agent has to sign expressly stating that he is acting on behalf of the disclosed principal. Therefore, if the appellant was acting for the disclosed principal the fact that he did not add the relevant description to his signature, or used the word "we" in the operative portion of the letter would not materially alter the fact spoken to by the notes that the appellant was acting on behalf of the disclosed principal. It cannot be suggested that these letters intended to alter the position disclosed by the notes. The letters, like the confirmation slips, are, and must be, presumed to be consistent with the notes; and so it would be unreasonable to attach undue importance to the signature and to the use of the relevant words "we" and "you" on which reliance has been placed. In our opinion, therefore, the Appellate Court was right in holding that even if the bought and sold notes are read along with the confirmation slips and the two letters of January 3, 1951, and January 15, 1951, the conclusion is inescapable that the appellant entered into the contract on behalf of the disclosed principal Khaitan & Sons Ltd. If that be so, it follows as a matter of law that the appellant is not entitled to bring the present suit.

Mr. Pathak faintly attempted to argue in the alternative that even if the appellant was acting on behalf of the disclosed principal it would be entitled to sue because from the subsequent conduct of the parties a contract to the contrary could be reasonably inferred. We have, however, not allowed Mr. Pathak to argue this point. It was conceded by the appellant before the Appellate Court that if it was held that the plaintiff firm was acting as agent for Khaitan & Sons Ltd., the suit was not maintainable. This concession was made in view of the provisions of s. 236 of the Contract Act. Besides, the alternative plea which Mr. Pathak wanted to raise does not appear to have been expressly pleaded or considered in the trial court.

In the result the appeal fails and is dismissed. In the circumstances of this case we direct that the parties should bear their own costs in this Court.

Appeal dismissed.

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