Gordon Woodroffe & Co.

Vs

Sheikh M. A. Majid & Co.

Civil Appeal No. 164 of 1964.

(K. Subha Rao, V. Ramaswami-I, J.M. Shelat JJ)

22.03.1966

JUDGMENT

RAMASWAMI, J.

This appeal is brought against the judgment of the High Court of Madras dated December 15, 1959 in O.S. Appeal No. 22 of 1955.

The respondent was a trader at Madras in hides and skins. The appellant was a firm, Gordon Woodroffe and Company (Madras), Limited, doing business among other things as exporters of hides and skins. For the period of 8 months commencing from January, 1949, there were as many as 101 contracts entered into between the appellant and the respondent. The case of the respondent was that he entered into an agreement with the appellant to act as agents for shipping the goods (hides and skins) to United Kingdom and for finding purchasers there. It is alleged that the appellant used to make payment to the respondent in respect of the goods sent to it for shipment in the nature of advances and he used to set off these advances when payment was made to the respondent after the goods were shipped. The respondent will hereinafter be referred to as the plaintiff and the appellant as the defendants. The plaintiff tentatively claimed a sum of Rs. 56,564/- and odd as due to him as balance of the price of the goods and a further sum of Rs. 40,275/- as representing the loss sustained by him by reason of the defendants' conduct in not shipping his goods under the "Shaik mark". The plaintiff accordingly prayed that an account should be taken of the dealings between the parties for the period in question. The defendants contested the suit on the ground that it was not an agent of the plaintiff but it purchased hides from the plaintiff for export and for resale in the United Kingdom. The case of the defendants was that there was an outright purchase of the goods from the plaintiff for the purpose of resale in the United Kingdom. The defendants also contended that a sum of Rs. 4,351/- and odd was due to it from the plaintiff and it prayed for a decree against the plaintiff for that amount by way of counter-claim. The trial Judge held, by his judgment dated May 6, 1954 that the defendants were only purchasers of the goods from the plaintiff and the ides of agency was quite inconsistent with the nature of the transactions between the parties. The trial Judge came to the conclusion that the plaintiff was bound by the statements of account rendered by the defendants from time to time. After giving an opportunity to the parties to produce further evidence, the trial Judge held that since there was no fraud the accounts could not be reopened and the claim of the plaintiff with regard to Rs. 157/- in respect of the marine insurance alone was sustainable. The trial Judge accordingly dismissed the suit and decreed that counter-claim of the defendants after deducting the said sum of Rs. 157/-. The plaintiff preferred an appeal to the High Court of Madras under the Letters Patent. By its judgment dated December 15, 1959 the High Court reversed the decision of the trial Judge and held that the defendants acted as del credere agents of the plaintiff for effecting the sale of the plaintiff's goods in the United Kingdom. On this basis the High Court

decreed the plaintiff's suit and directed the taking of accounts, as prayed for, from the defendants, though in respect of some of the items the claim of the plaintiff was negatived. The High Court also held that the plaintiff was liable to pay to the defendants the amount claimed by them by way of counter-claim.

The first question presented for determination in this case is whether the defendants were acting as del credere agents of the plaintiff or whether the defendants were outright purchasers of the goods supplied to them by the plaintiff. In the approach to this question it is necessary to notice the distinction between a contract of sale and a contract of agency. The essence of sale is the transfer of the title to the goods for price paid or to be paid. The transferee in such case becomes liable to the transferor of the goods as a debtor for the price to be paid and not as agent for the proceeds of the sale. On the other hand, the essence of agency to sell is the delivery of the goods to a person who is to sell them, not as his own property but as the property of the principal who continues to be the owner of the goods and who is therefore liable to account for the proceeds. The true legal relationship between the parties in the present case has, therefore, to be inferred from the nature of the contract, its terms and conditions and the nature of respective obligations undertaken by the parties.

It is necessary, at this stage, to set out briefly the course of the dealings between the parties which has been summarised by the High Court as follows :

> "The plaintiff used to purchase tanned hides of all sorts in Periamet (Madras), and in his godown assort them according to quality, pack them into bales and mark them with this mark, viz., Shaik or S. M. A. Mark. Then the bales would be delivered into the defendants' godown where the bales would be opened and re-assorted so as to conform to London specification and standard. In the process of putting the goods into that shape, there used to be necessity for the defendants to cut and trim the pieces and sometimes call on the plaintiff for replacement of the pieces which fell below the standard. Thereafter, the defendants used to re-pack them into bales each weighing 600 pounds and then ship the goods themselves as shippers and obtain the necessary shipping documents on the basis of c.i.f. contracts. The goods would be shipped to the defendants' London Officer where they were sold to London purchasers. All the expenses incurred in connection with the goods prior to shipment, such as carriage, trimming and assortment in the defendants' godown were all to be borne by the plaintiffs. So also expense in connection with the shipment, such as freight, insurance, short weight, etc., were all to be borne by the plaintiff. After the goods were shipped and as soon as the shipping documents were got ready, the price of the goods was calculated at the price fixed in the contract notes and after deducting the expenses and the advances with interest thereon, the balance, if any, was paid to the plaintiff either by cheque or by credit being given in his accounts. For every shipment a contract note was being sent by the defendants to the plaintiff. So also, a statement of account with a covering letter as well as a cheque for the balance found due to the plaintiff were being sent to the plaintiff from time to time. In all, there were 101 contract forms and several statements of accounts sent to the plaintiff in respect of the shippers. To none of those contracts or statements of account did the plaintiff raise any objection at any time."

The question whether the defendants took delivery of the plaintiff's goods as agents for sale or whether they purchased the goods outright must largely depend upon the terms of the contract of

which a sample is Ex. P-1. All the 101 contracts were prepared in the same printed form. Exhibit P-1 is the contract dated January 21, 1949. It is in the form of a letter sent by the defendants to the plaintiff. It opens with the sentence "We confirm buying from you for resale the following subject to U.K. Import Licence". Then follows a description of the goods giving the number of bales, the average weight and range, the assortment and the price per lb. in pennies. The price quoted is said to be c.i.f. less 2 1/2 per cent. The goods were already shipped by the s.s. 'City of Florence'. The seller is said to be liable to pay brokerage at the rate of one pie per lb. Then follow the terms of the contract which are to the following effect :

> "Landed weight to be accepted, payment on presentation of documents in order. It is understood that the above goods are for re-sale in United Kingdom. You are responsible irrespective of any inspection by us in Madras for selection and quality of the goods at destination where inspection and acceptance thereof will be made by our agents or the ultimate buyers. In the event of any dispute or claim in respect of goods covered by this contract, failing amicable settlement with buyers, such claim is to be submitted to arbitration according to the custom of the trade in the United Kingdom and the result of such settlement or arbitration is binding on you. We have a charge or lien on all goods covered at this contract for all moneys advanced by us including expenses incurred and interest thereon. Insurance through Gordon Woodroffe Company, Madras, Limited. Time is an essence of the contract."

In the first place, it is important to notice that the contract in the opening portion specifically makes a mention of the fact that the defendants were buying the goods for resale, and in the paragraph containing the terms of the contract it is reiterated that the goods were intended for resale in the United Kingdom. On the face of it, therefore, the contract is clearly not one of agency for sale but it reads as an agreement of sale. If the defendants were intended to be constituted as the agents for sale the terms of the contract would have been entirely different. Another important feature in this case is that there is a definite price fixed in the contract for the plaintiff's goods. According to the plaintiff the rates fixed in the contract were the ones at which the goods were sold to London purchaser and not a different rate and the defendants were agents who were obtaining for him only the price at which the goods were sold at London. It is true that the defendants admit that before fixing the price as between themselves and the plaintiff they used to ascertain the London price by cable. It is also true that the plaintiff was debited in the statement of account with the expenses of the cable. Even so, if the defendants were simply acting as agents for the sale there was no need at all to fix the price in the contract as between them and the plaintiff. It was contended for the plaintiff that according to the contracts the prices fixed are c.i.f. less 2 1/2 per cent and discount of 2 1/2 per cent was the commission for the defendants as agents. There is no use of the word "commission" in the contracts and we see no reason to hold that 2 1/2 per cent should be taken as commission and not as a margin of profit. The important point is that if the contract was one of agency there was no need to mention the price at all as between the plaintiff and the defendants. It may be that in most cases the prices which the defendants obtained from the London purchasers were the same as the prices stipulated in the contracts with the plaintiff but the fact remains that they obtained 2 1/2 per cent discount on the sale price, that is to say, they purchased the goods from the plaintiff 2 1/2 per cent less and sold them to their London purchasers at the full price, so that 2 1/2 per cent was their margin of profit. It is possible that sometimes that sold the goods to the London purchasers at a higher price in which case they would be entitled to the difference in prices as a profit in addition to the 2 1/2 per cent which they got from the plaintiff.

In all there are 101 contract forms and in accordance with these contract forms statements of

account were furnished by the defendants to the plaintiff. Exhibit P-1A is the statement of account dated January 25, 1949 based upon the contract note Ex. P-1. It is true that the plaintiff did not sign any one of the contract forms, but all of them were received by the plaintiff without any objection. Statements of account were prepared in terms of these contracts and the plaintiff was receiving moneys from the defendants on the basis of these contracts and according to the price fixed therein. He did not, at any time, raise the slightest protest against the terms of the contract or against the price fixed therein. On the other hand, he received all the contract forms and statements of account as well as the moneys sent to him by cheque. The plaintiff cannot, therefore, be heard to say that he was not a consenting party to the contracts.

There is also the circumstance that before the goods were shipped to London they were subjected to a process of trimming and reassortment in the godowns of the defendants with a view to make them conform to London standard and selection. In that process the defendants often called upon the plaintiff to replace the pieces found defective. If the defendants were merely acting as agents the process of trimming and reassorting in the godowns to make the goods conform to London standards and specifications will be unnecessary, for in that case the defendants were merely bound to ship the goods as they were delivered to them. Another important feature of the transaction is that in several contracts time was fixed for delivery of the goods. In some cases like the contracts in forms like P-1 to P-3 the shipment has been effected before the contract forms were issued but there are some contracts which contained the stipulation that the bales were to be sent to the godowns of the defendants for shipment to be effected "promptly" which according to D.W. 1, Ayyalu Chetti meant two weeks. There were also some contracts like Ex. D-2(a) which required the goods to be sent for shipment to be effected within one month, and some other contracts within two months. All the contracts provided that time should be the essence of the contract. If the defendants were acting only as agents for the sale there is no reason why there should be a stipulation in the contract as to the time fixed for the delivery and the stipulation that time should be the essence of the contract. There is also a further condition in the contracts that the sales-tax was on seller's account, the seller being the plaintiff. This circumstance also indicates that the legal relationship between the parties was that of a seller and a purchaser and not of a principal and agent.

On behalf of the plaintiff it was argued that according to the contract the goods were to be marked with the plaintiff's mark. It is true that in some of the defendants' letters such as Ex. P-10 it was mentioned that the bales were sent with the plaintiff's mark in some shipments but this circumstance has not significance. It only means that the buyer resold the goods to the London purchaser with the mark of the plaintiff. It was also contended on behalf of the plaintiff that "premium" was paid to the plaintiff in case the goods supplied were of special quality. It is in evidence that the "premium" was extra price obtained in London if the Board of Control was satisfied about the special quality of the goods (vide D-10). It was pointed out that if the defendants were purchasers the premium should go to them but in some cases the premium was paid to the plaintiff. Exhibits P-7, P-10 and P-18 show that for some shipments the premium was paid to the plaintiff. The explanation of D.W. 1, Ayyalu Chetti is that in some cases the premium was paid to the plaintiff ex gratia. If in London the quality of the goods was found particularly good the premium was obtained from the London purchaser, that is to say, the premium was obtained not as in terms of the contract but as a special payment if the goods happened to be of good quality. It is a payment therefore, made outside the terms of the contract and there is nothing significant if the defendants considered it fair and just to pay the whole of the premium to the plaintiff or to share it with him in some cases. It was also contended by the plaintiff that according to the terms of the contract the landed weight was to be accepted and the plaintiff was to be responsible for the selection and quality of goods at the destination where inspection would be made by the defendant's agents or the ultimate London buyers. In some

statements of account sent by the defendants the plaintiff has been debited various amounts for shortage in weight at London. The plaintiff was also informed about the claims made by the London purchasers on the ground of low standard and selection, that is to say, the plaintiff was made answerable for weight as well as quality. It is true that the liability of the plaintiff is an additional burden thrown upon him under the terms of the contract but it is of no significance in considering the question as to whether there was transfer of title to the goods at the time of shipment from the plaintiff to the defendants. On behalf of the plaintiff reference was also made to the fact that the contracts provided for a lien on all the goods covered by the contracts for all moneys advanced by the defendants, including expenses incurred and interest thereon. It is the admitted position that for purchasing skins and hides, the plaintiff was taking large sums of money as advances from the defendants. We find from the several statements of account that reference is made to all such advances. These advances together with interest thereon are deducted from the sale-price payable to the plaintiff and for the balance alone cheques were sent to him. It appears that on a later date, i.e., in June, 1949 the defendants took a regular hypothecation deed, Ex. P-19 from the plaintiff in respect of all the advances to be made by the defendants. But it should be noticed that in making such advances, the defendants were only acting as creditors of the plaintiff and were, therefore, entitled to charge interest on such advances till they actually purchased the goods from the plaintiff. After the purchase of the goods they did not charge any interest on the moneys paid by them. It appears from the statements of account that interest was charged on advances upto the date of shipment. In other words, the title in the goods passed to the defendants at the moment of shipment of the goods and the fact was that interest was charged on all advances only upto the date of shipment. The charge or lien on the goods, therefore, subsisted till the time of shipment i.e., till the title in the goods passed to the defendants under the contract of sale. We are, therefore, unable to agree with the Counsel for the plaintiff that the clause with regard to the lien is not consistent with the theory of the transactions being an outright sale. There was also a suggestion on behalf of the plaintiff that there cannot be a contract of sale subject to c.i.f. terms if there was an outright sale at Madras between the parties. We do not think there is any substance in this argument. The primary object of the contract was that there was a purchase by the defendants from the plaintiff of the goods for resale in the United Kingdom and in keeping with this object the buyer stipulated with the seller for delivery of the goods abroad and for that purpose adopted a c.i.f. form of sale. It is also contended on behalf of the plaintiff that the term with regard to arbitration "according to the custom obtaining in United Kingdom" was not compatible with the theory of a sale between the parties. It is not possible to accept this argument as correct. It is open to the plaintiff to agree that even after the sale had taken place any dispute with regard to the quality of the goods and selection may be submitted to arbitration in the United Kingdom. It is true that a clause of this description is unusual but it is not inconsistent with the theory that there was a sale of goods between the parties at Madras. We have already observed that the contracts in this case were not c.i.f. contracts but the price alone was fixed on a c.i.f. basis.

It is well-established that even an agent can become a purchaser when an agent pays the price to the principal on his own responsibility. In Ex parte White, In re Nevil, [(1871) 6 Ch. 397] T & Co. were in the habit of sending goods for sale to N who was a partner in the firm of N & Co., but received these goods on his private account. The course of dealing between T & Co. and N was that the goods were accompanied by a price list. N sold the goods on what terms he pleased, and each month sent to T & Co., an account of the goods he had sold, debiting himself with the prices named for them in the price list, and at the expiration of another month he paid the amount in cash without any regard to the prices at which he had sold the goods, or the length of credit he had given. On these facts it was held by the Court of Appeal in Chancery that though both the parties might look upon

the business as an agency, N did not, in fact, sell the goods as agent of T & Co., but on his own account, upon the terms of his paying T & Co. for them at a fixed rate if he sold them, and the moneys he received for them were therefore his own moneys, which T & Co., had no right to follow.

A similar principle has been expressed in W. T. Lamb and Sons v. Goring Brick Company, Ltd. [[1932] 1 K.B. 710]. In that case, certain manufacturers of bricks and other building materials, by an agreement in writing, appointed a firm of builders' merchants as "sole selling agents of all bricks and other materials manufactured at their works". The agreement was expressed to be for three years and afterwards continuous subject to twelve months' notice by either party. While the agreement was in force the manufacturers informed the merchants that they intended in the future to sell their goods themselves without the intervention of any agent, and thereafter they effected sales to customers directly. An action was then brought by the merchants for breach of the agreement. It was held by the Court of Appeal that the effect of the agreement was to confer on the plaintiffs the sole right of selling the goods manufactured by the defendants at their works, so that neither the defendants themselves nor any agent appointed by them, other than the plaintiffs, should have the right of selling such goods. It was also held that the agreement was one of vendor and purchaser and not one of principal and agent. Though the term 'agent' was used in the agreement, the Court of Appeal considered that the substance of the transaction was that the manufacturers sold their bricks to the so-called agent who in turn sold them on their own responsibility to customers. The price charged by the manufacturers to the sole selling agents was the ruling market price and the sole selling agents were allowed a deduction of 10 per cent by way of commission on that price. The manufacturers had no concern at what rate the sole selling agents sold the goods to customers. It was clear from these facts that the sale by the selling agents to customers was a transaction in which the manufacturers were not interested and there was no privity of contract between the manufacturers and the ultimate purchasers. Reference may be made, in this connection to the following passage from Blackwood Wright, 'Principal and Agent', Second Edn. page 5 :

> "In commercial matters, where the real relationship is that of vendor and purchaser, persons are sometimes called agents when, as a matter of fact, their relations are not those of principal and agent at all, but those of vendor and purchaser. If the person called an 'agent' is entitled to alter the goods, manipulate them, to sell them at any price that he thinks fit after they have been so manipulated, and is still only liable to pay for them at a price fixed beforehand, without any reference to the price at which he sold them, it is impossible to say that the produce of the goods so sold was the money of the consignors, or that the relation of principal and agent exists - Ex parte White, In re Nevill (1871), 6 Ch. 397 - A purchaser had not to account to his vendor; his only duty is to pay him; and all the other rights and duties which exist between principal and agent do not exist between vendor and purchaser - Ex parte Bright, In re Smith (1879), 10 Ch. Div. 566; Ex parte White, In re Nevill - (1871) 6 Ch. 397 -."

For the reasons already given we are of the opinion that the defendants were purchasers of the plaintiff's goods under the several contracts and not his agents for sale and the view taken by the High Court on this aspect of the case is not correct and must be overruled.

We pass on to consider the second question involved in this case, viz., whether there was a settled account between the parties and whether it is open to the plaintiff to reopen it.

It is admitted in this case that for almost every shipment the defendants prepared a statement of

account and sent it to the plaintiff giving full particulars of the amount due to him together with the deduction and showing the net balance payable to him and enclosing a cheque for such balance or giving a credit for the sum in the accounts. Copies of such accounts are Ex. P-1A, P-2A and P-3A corresponding to the contracts Exs. P-1, P-2 and P-3. Copies of other accounts have been filed by the defendants in the Court and marked Ex. D-18 series. The plaintiff in his evidence did not deny the receipt of these accounts. On the contrary, he admitted in cross-examination that for every shipment he was getting accounts and cheques for the balance due. It is an admitted fact that to these statements of account no objection was raised by the plaintiff at any time. Nor a single document has been produced on his side to show that he ever wrote to the defendants raising an objection to the statements of account. Not only the plaintiff failed to raise objection to the several statements of account but at one stage sent a memorandum to the defendants accepting the accuracy of the accounts. On June 20, 1949, the defendants wrote a letter, Ex. P-16, to the plaintiff stating that there was a balance of Rs. 1,26,379/7/2 payable by him, and that against the balance they were holding certain goods belonging to the plaintiff and asking him to confirm the statements. On June 22, 1949 the defendants again wrote a letter - Ex. D-5, enclosing a statement of account Ex. P-17 showing the said balance of Rs. 1,26,379/7/2 and asking the plaintiff for confirmation. On receipt of this statement the plaintiff signed the memorandum, Ex. D-4 on June 22, 1949 and sent it to the defendants confirming the correctness of the balance as due by him and also confirming the stock of his goods remaining with the defendants. The plaintiff conceded in his evidence having signed Ex. D-4 after the receipt of the statement of account, Ex. P-17. The plaintiff explained that he did not look into the correctness of the figures but believed Ex. P-17 to be correct '&as it was sent by an English firm". The plaintiff also said that he was told by the defendants' broker that if he did not sign it, it would be harmful to him. The trial Judge refused to accept the explanation of the plaintiff and held that the plaintiff had accepted all statements of account as correct and, therefore, it must be held in law that the accounts were settled and the plaintiff could be allowed to reopen it only by proof of fraud or mistake or any other sufficient equitable ground.

The legal position is that the accounts are settled or stated if they are submitted and accepted as correct by the other side to whom the accounts have been rendered. Such a statement of accounts need not be in writing, nor is it necessary that before the accounts are settled, they should be gone into by the parties and scrutinised and supported by vouchers. It is sufficient if the accounts are accepted and such acceptance may be inferred by conduct of parties. As observed in Daniell's Chancery Practice, eighth edition, Vol. I, p. 419 :

> "The mere delivery of an account will not constitute a stated account without some evidence of acquiescence which may afford sufficient legal presumption of a settlement."

There is also the following passage in Bullen and Leake's Precedents of Pleadings, ninth edition, p. 584 :

> "It is not enough for the accounting party merely to deliver his account; there must be some evidence that the other party has accepted it as correct. But such acceptance need not be express; contemporaneous or subsequent conduct may account to a sufficient acquiescence."

Again, in Willis v. Jernegan [(1741) 2 Atk. 251] the Lord Chancellor was dealing with the two objections raised by the plaintiff's counsel to the defendant's plea of a stated account. It was observed by the Lord Chancellor that there was no absolute necessity that the account should be

signed by the parties who had mutual dealings to make it a stated account, for even where there were transactions, suppose, between a merchant in England and a merchant beyond sea, and an account was transmitted to England from the person who was abroad, it was not the signing which would make it a stated account, but the reason to whom it was sent, keeping it by him any length of time, without making any objection which should bind him and prevent his entering into an open account afterwards. In another case, Tickel v. Short, [(1750-51) 2 Ves. (Sen.) 239] the Lord Chancellor expressed the opinion that it is the rule of the Court that where a merchant kept an account current by him for about two years without objection, the Court will consider that the accounts are stated or settled. The same principle has been expressed by the Bombay High Court in Seth Maneklal Mansukhbhai v. Jwaladutt Rameshwar Pillani [I.L.R. [1947] Bom. 378] in which it was pointed out that it was sufficient if the accounts were accepted and such acceptance might be inferred by conduct of parties.

The contention on behalf of the defendants is that there has been a "stated" or "settled" account in this case and in the absence of fraud, mistake or any other sufficient equitable ground it is not liable to be reopened at the instance of the plaintiff. In this connection it is necessary to state that the expression "account stated" has more than one meaning. It sometimes means a claim to payment made by one party and admitted by the other to be correct. An account stated in this sense is no more than an admission of a debt out of court, while it is no doubt cogent evidence against the admitting party, and throws upon him the burden of proving that the debt is not due, it may, like any other admission, be shown to have been made in error. Where the transaction is of this character, it makes no difference whether the account is said to be "stated" or to be "stated and agreed"; the so-called agreement is without consideration and amounts to no more than an admission. There is however a second kind of account stated where the account contains items both of credit and debit, and the figures on both sides are adjusted between the parties and a balance struck. This is called by Mr. Justice Blackburn, in Laycock v. Pickles [4 B. and S., 497] a "real account stated," and he describes it as follows :

> "There is a real account stated, called in old law an insimul computassent, that is to say, when several items of claim are brought into account on either side, and, being set against one another, a balance is struck, and the consideration for the payment of the balance is the discharge of the items on each side. It is then the same as if each item was paid and a discharge given for each, and in consideration of that discharge the balance was agreed to be due. It is not necessary, in order to make out a real account stated, that the debts should be debts in praesenti, or that they should be legal debts. I think equitable claims might be brought into account, and I am not certain that a moral obligation is not sufficient. It is to be taken as if the sums had been really paid down on each side; and the balance is recoverable as if money had been really taken in satisfaction; subject to this, that where some of the items are such that, if they had been actually paid, the party paying them would have been able to recover them back as on a failure of consideration, the account stated would be invalidated."

In the present case, the "settled account" between the parties falls within the second kind of "account stated" and it is to on account of this description that the equitable doctrine of "settled account" had to be considered.

This statement of the law has been affirmed by Lord Wright in delivering the opinion of the Judicial Committee in Bishnu Chan v. Birdhari Lal [A.I.R. 1934 P.C. 147] as the follows :

> "Indeed, the essence of an account stated is not the character of the items on one side or the other, but the fact that there are cross items of account and that the parties mutually agree the several accounts of each, and by treating the items so agreed on the one side as discharging the items on the other side pro tanto, go on to agree that the balance only is payable. Such a transaction is in truth bilateral and creates a new debt and a new cause of action. There are mutual promises, the one side agreeing to accept the amount of the balance of the debt as true (because there must in such cases be, at least in the end, a creditor to whom the balance is due) and to pay it, the other side agreeing the entire debt as at a certain figure and then agreeing that it has been discharged to such and such an extent, so that there will be complete satisfaction on payment of the agreed balance. Hence, there is mutual consideration to support the promises on either side and to constitute the new cause of action. The account stated is accordingly binding, save that it may be re-opened on any ground for instance, fraud or mistake which would justify setting aside any other agreement."

In the present case, the correctness of the statements of account furnished by the defendants has been challenged by the plaintiff under 13 heads. In view of our finding that the transactions between the parties were not on the basis of an agency but on the basis of an outright sale the accounts cannot be reopened under any of these heads of challenges. The trial court has already gone into the evidence and has reached the finding that there was no fraud, mistake or any other sufficient equitable ground for reopening the finality of the accounts. As regards one item, viz., rebate in marine insurance, the trial court has ordered that the plaintiff should be given credit for a small sum of Rs. 157/- though there was no evidence of fraud on the part of the defendants. The trial court has rejected the claim of the plaintiff for reopening the accounts on any other ground and in view of our finding that the legal relationship between the parties was not one of agency, we see no reason for interfering with the decision of the trial court on this aspect of the case also.

For the reasons expressed, we allow this appeal and set aside the judgment and decree of the High Court in O.S. Appeal No. 22 of 1955 dated the 15th December, 1959 and restore the judgment and decree of the trial Judge dated May 6, 1954 dismissing the suit of the plaintiff and granting a decree for the counter-claim of the defendants. The defendants are entitled to the costs of this appeal in this Court and in the High Court.

Appeal allowed.

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