

Privy Council Appeal No. 33 of 1927.

Raja Bhawani Singh - - - - - *Appellant*

v.

Maulvi Misbah-ud-Din - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 26TH FEBRUARY, 1929.

Present at the Hearing :

LORD SHAW.

LORD ATKIN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD ATKIN.]

This is an appeal from a decree of the High Court at Lahore who reversed two decrees of the Subordinate Judge of Delhi in a suit brought by the plaintiff against the defendant, claiming an account of monies entrusted to the defendant as agent, and payment of the amount found due. The plaintiff at the time of the transactions in question was the Rais or Chief of the State of Sheopur-Baroda. In August, 1918, he entrusted the defendant as his agent with the sum of Rs. 5,000, and in January, 1919, with the sum of Rs.12,250 to be applied for the purposes of the plaintiff. The receipt of these sums is admitted. It has been found that the defendant has not accounted for the greater part of the sums so received. The defendant, however, has relied on a plea that the money he received was State money : and that the plaintiff had no right to sue, because in January, 1919, he was deposed from his position as Rais or Chief by the authorities of the State of Gwalior. What the precise relations are between Sheopur-Baroda and Gwalior is a matter which their Lordships deem unnecessary to consider in this case. It appears that up to the 19th January, 1919, the plaintiff was in possession of

the revenues of Sheopur, and controlled their administration. There was some dispute at the hearing whether the money entrusted to the defendant was entrusted to him for public purposes or private purposes of the plaintiff: whether it came from the public revenue or from the private purse of the plaintiff. The Subordinate Judge appears to have inclined to the view that it was a private transaction: the High Court held that it concerned public money. In January, the authorities of the State of Gwalior were apparently dissatisfied with the plaintiff's administration: and sent to Baroda a Superintendent, to control the collection and administration of the revenue. The Superintendent appeared with sufficient force to execute his orders, and thenceforward the control of the revenues of the State appears to have passed from the plaintiff to the Superintendent. No question arises at all in this case as to the validity of these proceedings. The High Court find that the plaintiff was deposed. If this finding were material their Lordships can discover no evidence to support it. The evidence of the plaintiff's witnesses is to the contrary, while the defendant admitted that the plaintiff is still entitled Rais and that all ceremonial functions are performed by him. Finding, however, that the money belonged to the State and that the plaintiff had been deposed before the institution of the suit and had been divested of all control over the State treasury, the learned judges of the High Court find that he had no *locus standi* to recover the amount due. Even assuming the correctness of the premises their Lordships consider the conclusions incorrect. The principle is well established that an agent entrusted with money or goods by a principal to be applied on his principal's account cannot dispute the principal's title unless he proves a better title in a third person and that he is defending on behalf of and with the authority of the third person. The same principle controls the relation of bailor and bailee, which may come into existence without the added relation of principal and agent. The agent is certainly in no better position than the bare bailee. It may also be remarked that as between principal and agent there is a contractual position fortified by fiduciary relations, and that one of the contractual terms is that the agent should render an account to the principal of his dealings with the property entrusted to him in the course of the mandate. It is difficult to see how this obligation can in any way disappear except by transfer of the contractual right by novation or operation of law: and it may well subsist, notwithstanding that the property proves to belong to someone other than the principal. In the present case, however, it is unnecessary to distinguish between the right to have an account, and the right to receive the balance found to be in the agent's hands. The agency is admitted: the defendant does not suggest that he is defending for or with the authority of the State of Gwalior. He must therefore account to his principal, and leave him to settle his affairs with Gwalior if there is anything to settle. But in.

this particular case the defendant entirely fails to prove that Gwalior makes any claim to the money, or alleges that there has been any divesting of the plaintiff of his rights contractual or otherwise ; indeed, it is quite consistent with the evidence that Gwalior acquiesces in the plaintiff's dealings with State money before the date at which intervention of the Superintendent took place. The learned Subordinate Judge, in their Lordships' opinion, came to a correct conclusion : he made a preliminary decree that the defendant should account, and after a lapse of some months during which the defendant had failed in spite of opportunity to render any account, he made a decree for the amount claimed, less Rs. 5,000 which the plaintiff was willing to treat as expended on his account. Their Lordships are of opinion that the appeal should be allowed, that the decree of the High Court should be set aside with costs here and below, and that the decree of the Subordinate Judge should be restored : and they will humbly advise His Majesty accordingly.

In the Privy Council.

RAJA BHAWANI SINGH

vs.

MAULVI MISBAH-UD-DIN.

DELIVERED BY LORD ATKIN.

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