

Privy Council Appeal No. 45 of 1930.

R. S. Rochi Ram - - - - - *Appellant*

v.

Faizullah Khan and others - - - - - *Respondents*

Same - - - - - *Appellant*

v.

Same - - - - - *Respondents*

(Consolidated Appeals.)

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE NORTH-WEST
FRONTIER PROVINCE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 30TH JANUARY, 1933.

Present at the Hearing :

LORD ATKIN.

LORD MACMILLAN.

SIR JOHN WALLIS.

[Delivered by LORD ATKIN.]

These are two appeals from a judgment and two decrees of the Court of the Judicial Commissioner of the North-West Frontier Province, in which the plaintiffs were Faizullah Khan in the first suit and Mauladad Khan, since deceased, in the second suit, who were suing to recover their shares on a settlement of certain partnership transactions between them and the respective defendants. It appears that the plaintiffs had been partners in a contract for supply and transport, which had been obtained from the Commissariat Department, and which ran from September, 1919, to March, 1920. There was a second contract obtained afterwards in continuation of the first, but with that their Lordships are not concerned in these two suits. The accounts of the parties were not finally adjusted until the year 1924, and at that date it is alleged by each of the plaintiffs that a settlement was

arrived at between all the partners under which each plaintiff became entitled to the amount of money for which he is suing, and an account is produced which is in the handwriting of the principal defendant, Rochi Ram, who is the appellant here, and who appears to have been the manager of the particular business for the partners, in which a statement is drawn up of the amount due standing to the credit of the partners, and the shares of the respective partners are shown under a heading "To be distributed," the shares being the shares for which the two plaintiffs sue. This settlement is said to have been arrived at towards the end of 1924, and the suits were brought in 1927, so that no question of limitation could possibly arise in respect of the amount due under the settlement. There are two defences: One is that no settlement was in fact arrived at, but there was a draft settlement that was never signed by the parties and was not intended to be a final arrangement between them. Upon that matter, both the trial Judge and the Judicial Commissioner have found that in fact a final settlement was arrived at. There seems to have been ample evidence upon which they could so find, and these are concurrent findings of fact with which the Board would not interfere except on very special grounds. Their Lordships see no reason at all for dissenting from this view, which is the view in fact taken by the two Courts and, therefore, it must be taken that there was at the end of 1924 a final settlement of the partnership accounts under which the respective plaintiffs would have become entitled to the sums for which they respectively sued.

The only other point that was raised was that there was no consideration for such a settlement because it is said that Article 106 of the Limitation Act provides a period of limitation for suits for an account and share of profits of a dissolved partnership, the period of limitation being three years, and that the time from which the period begins to run is the date of the dissolution, and inasmuch as this settlement was arrived at more than three years from what is said to be a dissolution of the partnership, namely, the determination of the joint adventure, it is said that the partners had only agreed to settle something which they were not bound to account for. In fact this seems to be due to a misapprehension of the law in respect of consideration. It may be true, and their Lordships say nothing on that point one way or the other, that one partner could only have asked for an account under Article 106 within three years of March, 1920, but that has no bearing at all upon the question when in fact they have come together and have agreed to an account between themselves, and have made mutual promises to abide by such settlement. There is ample consideration in such a case for the promise given by each partner in the mutual promises made by the other partners; and the fact, if it be a fact, that they could not have sued originally for an account, seems to have nothing to

do with the situation which arises when they do meet together and agree that an account shall be taken and make mutual promises upon that footing.

The Court of the Judicial Commissioner, in their Lordships' opinion, was quite correct in coming to the conclusion that in this case there was consideration for the contract, and in the result, therefore, it follows that the judgments below were right, and that these appeals must be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

R. S. ROCHI RAM

v.

FAIZULLAH KHAN AND OTHERS

SAME

v.

SAME.

(Consolidated Appeals.)

DELIVERED BY LORD ATKIN.