

(1879) 07 PRI CK 0001

Privy Council

Case No: None

Seth Samur Mull and
Another

APPELLANT

Vs

Choga Lall

RESPONDENT

Date of Decision: July 18, 1879

Citation: (1880) 5 ILRPC 421

Hon'ble Judges: M. E. Smith, R. P. Collier, H. S. Keating, JJ.

Judgement

R.P. Collier, J.

1. Although this case has undergone several lengthened investigations, it appears to their Lordships that the facts material to its decision lie in a small compass. The plaintiffs are bankers carrying on business at Ajmere, and also at a place called Beawar, which is also at times called by another name, Nyanuggur. The defendant is a merchant at Nusserabad, and the transaction out of which this appeal arises, is a purchase of a quantity of cotton at Beawar. It appears that at Beawar there is a custom which seems to their Lordships to be fairly stated in the case of the respondent. That case says: "There is an admitted custom prevailing at Nyanuggur, according to which a merchant coming from any other district, is only allowed to trade in the name and upon the credit of a Nyanuggur firm. The actual dealings are effected by the stranger himself, or by his broker; but in each transaction the name of a Nyanuggur merchant is given, and his name is entered as the principal in the transaction. Credit is given to him, and the final settlement of the transaction is effected with him. He is known as the arath or agent. At the conclusion of such transaction a memorandum of it is sent to the arath by the person who makes use of his credit. This memorandum is known by the term panri." It appears that, towards the end of August 1870, about the 24th or 25th, the defendant came to Beawar for the purpose of extensively dealing in cotton. He remained there ten days, and during nine days he effected a number of purchases according to this custom, which he may be assumed to have been fully acquainted with and used the

plaintiffs as his "araths," in the sense in which that term has been used in the description of the custom given in the respondent's case. These transactions, extending over nine days, amounted to as much as 6,025 maunds of cotton; and with reference to all of these purchases, the defendant being on the spot, vouched the plaintiff's, who were also on the spot, and they must be taken to have perfectly well known that he represented them as his "araths" according to the custom.

2. There is no dispute with respect to these previous transactions, which form a continuous series of dealings, but the dispute arises with respect to the last transaction in which the defendant was engaged. On the night of the tenth day of his sojourn at Beawar, the defendant entered into another transaction of a similar character, but larger in amount, whereby he purchased, of various persons in the market, as much as 14,000 maunds of cotton, employing the same brokers as before, and referring again to the plaintiff's as his araths or guarantors. It further appears that the plaintiffs, or at all events their agents, were at the time in the bazaar, and one of the Commissioners who made investigations into this subject observes, that from the evidence recorded he is inclined to believe that they were cognizant of the proceedings, or took part in them. The defendant suddenly left Beawar on the next morning; he sent a "panri," which has been described as a memorandum of the transaction,—it does not exactly appear when, but probably very soon after,—to the plaintiff's, in which he acknowledged his liability as far as the 6,025 maunds were concerned, but in which he took no notice of this last transaction. Thereupon the sellers applied to the plaintiff's, as guarantors, to make good the purchase-money, and the plaintiffs undoubtedly at that time said that as they had not had a panri, they could not hold themselves responsible. It appears that a dispute arose, and subsequently the matter was referred to a punchait, and this punchait determined that the plaintiffs ought to pay to the vendors of the cotton the sum of one rupee per maund, amounting to Rs. 14,000, being the loss sustained by the vendors in consequence of the fall of the price of cotton, and for that sum they bring this action against the defendant.

3. The case has come before three Commissioners, the Deputy Commissioner, the Commissioner, and the Judicial Commissioner. The first Commissioner found in favor of the defendant, the second in favor of the plaintiffs, the third in favor of the defendant; and from the last judgment the appeal is preferred.

4. It appears to their Lordships, that the result of the evidence, and of the findings which have been come to by the Assistant Commissioners who were deputed to investigate the case, is, that the defendant, in the contract for the purchase of the 14,000 maunds, used the name of the plaintiff's, and that the vendors sold to him on the credit of that name; and further, that the defendant had the authority of the plaintiffs to use their name. The plaintiffs' name had been used with their full concurrence in a number of transactions during nine successive days; they were present, or some of their agents, when this further transaction of the same kind was

entered into, and it appears to their Lordships a fair inference, that they were cognizant of and allowed their name to be so used in, the last transaction, as they had in the other. If so, they were undoubtedly liable, according to the custom, to the vendors, and they would be entitled to recover over what they paid against the defendant.

5. But it further appears to their Lordships, that if there was no actual authority at the time, still, that the defendant having used the name of the plaintiffs as his guarantors, and treated them and held them out as liable to pay on his behalf the price of this cotton, thereby authorised them, if they thought fit, subsequently to make that payment on his behalf. They may not unnaturally have at first hesitated to undertake the responsibility, and endeavoured to avail themselves of the absence of a panri; still, when they subsequently made the payment, not indeed of the whole amount, but such as had been arrived at upon a reference to a kind of arbitration, they were entitled to treat the use of their name by the defendant as an authority to make that payment on his behalf, and the defendant cannot dispute their right to do so. In other words, they had a right to ratify the use which he had made of their name, and they have not deprived themselves of that right by their previous conduct in, for a time, repudiating their liability.

6. Under these circumstances, their Lordships are of opinion, that the judgment of the Judicial Commissioner was erroneous, and they will humbly advise Her Majesty that that judgment be reversed, and that the judgment of the Commissioner of Ajmere be affirmed, with costs of this appeal.