

(1868) 09 CAL CK 0013

Calcutta High Court

Case No: Appeal No. 3 of 1868

Kali Krishna Pal Chowdhry

APPELLANT

Vs

Srimati Jagattara and Another

RESPONDENT

Date of Decision: Sept. 3, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

In order to decide whether this case is barred by limitation, we must ascertain what is the cause of action. It is admitted, I think on both sides, that the deceased was the general agent of the plaintiff in the management of his business, and that he did, in fact, draw out of the business moneys which belonged to the plaintiff. I do not think that it would lie in the mouth of the representatives of the agent to say that he drew that money without any authority, and that he was merely embezzling the money, nor was it so contended on the part of the plaintiff or of the defendants. We must, therefore, look upon the moneys which the agent drew out in the same light as if they were moneys advanced by the plaintiff to him for the general purposes of the business. In such a case the cause of action would not accrue immediately the money was advanced. There would be an obligation on the agent to render an account of his agency, and to account for the moneys in question. In using the word "account," I use it in its legal sense as not confined merely to rendering an account of what he has done with the money, but as including the payment of any balance which might be found due from him upon taking the accounts. The agent died before he was requested to account for, or to render an account of the moneys; and, then, I apprehend a cause of action accrued against his representatives so far as they had assets to repay to the principal any balance, which, upon the adjustment of the accounts, might appear due from the agent.

2. It appears to me, therefore, that the period of six years must be computed not from the time when the agent drew the moneys, but from the time of his death. That period not being six years before the commencement of the suit, it appears to me that the plaintiff is entitled to recover the full amount what, upon the taking of accounts, may appear to have been overdrawn by the agent. The result, therefore, is

that, according to the view taken, by Mr. Justice E. Jackson, the plaintiff's claim as laid is decreed; but considering that the case has not been clearly presented to the various Courts before which it has been brought, and that if the claim had been so presented, a different result might have been come to, it appears to us that the plaintiff ought to have his costs in the first Court, and that each party should bear his own costs in the lower Appellate Court and in this Court. There will be a decree for the plaintiff for Rs. 960, with costs in the first Court on that amount, and the defendant will obtain costs in that Court, calculated on Rs. 125.