

Privy Council Appeal No. 6 of 1919.

The Official Trustee of Madras - - - - - *Appellant*

v.

A. Sundaramurthi Mudaliar and another - - - - *Respondents*

FROM

THE COURT OF THE BRITISH RESIDENT IN MYSORE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH APRIL, 1920.

Present at the Hearing :

VISCOUNT HALDANE.

LORD MOULTON.

LORD PARMOOR.

[*Delivered by* VISCOUNT HALDANE.]

Their Lordships do not think it necessary to trouble the respondents' Counsel, as, although the case is one of some complication, the matter stands out in their Lordships' minds so clearly that they propose making their report to His Majesty at once.

This is an action brought by the appellant, the Official Trustee of Madras, who represents a Company called the Mysore Sugar Company, against the respondents, who are a firm of Indian merchants and agents carrying on business in the State of Mysore and in Bangalore. The question at issue arises out of the insolvency of a well-known firm of Arbuthnot and Company, who carried on a large business of a miscellaneous character as merchants, sugar manufacturers, and bankers. Arbuthnot and Company, in the year 1901, had made a factory for the production of sugar at Goribidnur, in Mysore, and they required agents to represent them and sell the sugar which they produced, and, possibly, any other sugar which they had to sell in the State of Mysore and in Bangalore.

The respondents had their place of business at Bangalore, and in September, 1901, a correspondence took place which resulted in a relationship of agency being established between the respondents and Arbuthnot and Company. That went on for a short time, when it was agreed that the respondents should

also make deposits of money with Arbuthnot and Company, who, as bankers, were in the habit of taking such deposits. That was a very natural arrangement, because the respondents were receiving considerable sums from the purchasers of Arbuthnot and Company's sugar, and were *del credere* agents in respect of those transactions, and generally, when money came into their hands, and it was for the convenience of everybody that there should be security, however high their credit, in the shape of the deposits which the respondents had with Arbuthnot and Company. Whatever was the motive for the arrangement, that arrangement was made and it fitted into the transactions. The course of business, therefore, which went on between 1901 and 1906 was this: that the respondents sold the sugar and received the proceeds, for which they were answerable, and, having those moneys in their hands, Arbuthnot and Company had the satisfaction of knowing that they had deposits of considerable amounts from the respondents, which were security for such sums as were due from them.

This action is brought by the liquidator of the Mysore Sugar Company, under circumstances to be alluded to presently, for the purpose of recovering the proceeds of sugar in the respondents' hands, without reference to the cross-claim or set off, whichever it was, for the deposits, which the respondents might have had for a larger amount, as events proved, against Arbuthnot and Company. On the 22nd October, 1906, Arbuthnot and Company became insolvent and the Official Assignee took over their assets. All the consignments of sugar to which this action relates had taken place before the insolvency, although, in some cases, the money was not received till shortly afterwards, and some of the deliveries to purchasers were not made until just after the insolvency. Nothing seems to turn upon that.

The case has been investigated by two Courts and several points have been raised. It is only necessary to mention the main one of those points because if a decision adverse to the appellant is given upon it, it disposes of the whole action. The point made against the claim of the appellant, that is to say, the Official Trustee of Madras, as representing the Mysore Sugar Company, to recover the proceeds of sugar in the respondents' hands is met, as already stated, by the counter-claim or alleged set off on the part of the respondents in respect of the deposits they made with Arbuthnot and Company—not with the Mysore Sugar Company, but with Arbuthnot and Company—and which exceed the amount of the claims that were made against them on the other branch of the account.

The learned Judges in both Courts have taken this view. They say: It is quite true that there was a Company intimately connected with Arbuthnot and Company called the Mysore Sugar Company; that Company was incorporated by Arbuthnot and Company themselves in 1905, a year prior to the insolvency, for their own purposes; it consisted entirely of representatives of Arbuthnot and Company, or persons under their control; the

whole of its capital came from Arbuthnot and Company; it was directed and handled by Arbuthnot and Company, and, although it was a legal entity no doubt separate from the contractual *persona* of the firm of Arbuthnot and Company, it was completely under their control. Moreover, the Courts below found that the respondents knew nothing whatever of the existence of this Mysore Sugar Company. The purpose of the Mysore Sugar Company was to take over the factory at Goribidnur, and it did take the factory over technically, but the factory continued to be run and maintained in exactly the same way as it was before, and the respondents had no notion of what had happened. Under those circumstances the learned Judges in the Court below have agreed in holding that you cannot separate, for the purposes of the relation of agency and deposit which existed between the respondents and Arbuthnot and Company, the claims which might be made by the separate legal *persona* of the Mysore Sugar Company from any claims which Arbuthnot and Company themselves might have made in so far as concerns the counter-claim which would have met those claims. They say that the relationship between Arbuthnot and Company and their agents, the respondents, was one so personal, so dependent upon relations of confidence, that it could not be split up in the fashion proposed to be done by the appellant, and the result is that they have come to the conclusion, inferring the terms of the agency from the correspondence and the course of business, that there is no such right available to the Mysore Sugar Company as is set up in this action. If the Mysore Sugar Company could bring actions for sums due from the respondents in respect of sales of sugar, they could bring them only as principals in this sense, that they take the benefit of these sums subject to every equity which affects these sums in the hands of Arbuthnot and Company themselves. If that is so, then we are face to face with a situation in which there was an ordinary personal contract with rights on both sides which could not be altered without the consent of both parties. It is perfectly plain there was no novation of that contract, because, as has been said, it is found by both Courts that the respondents knew nothing even of the existence of the Mysore Sugar Company, much less of the factory, or of the consignments, having passed out of the hands of Arbuthnot and Company into the hands of that Company.

Under these circumstances the Courts below dismissed the action and their Lordships entirely concur in the view taken by those two Courts and will humbly report to His Majesty that the appeal must fail, and that the appellant must pay the costs in the usual way.

In the Privy Council.

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v.

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DELIVERED BY VISCOUNT HALDANE.

Printed by Harrison & Sons, St. Martin's Lane, W.C.
1920.