

opposed, as they are, to the first principles of equity, whatever technical form they may assume.

The decree of the Assistant Judge is reversed and that of the Subordinate Judge restored. Costs on respondents.

1873.

DHARMA'JI  
VA'MAN  
v.  
GURBA'V  
SHRINIVA'S.

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 34 of 1873.*

August 19.

PREMA'BHA'I HEMA'BHA'I and others ..... *Appellants.*

T. H. BROWN ..... *Respondent.*

*Principal and Agent—Extent of Authority—Known limit—  
Divisibility of Claim.*

A firm of carriers authorize one of their partners to draw bills on the firm to the extent of Rs. 200 each. The partner, acting in excess of his authority, and without the knowledge of the firm, made two promissory notes, in the name of the firm, for Rs. 1,000 each. The plaintiff knew the partner was limited to a particular sum, but also knew that two of his bills for Rs. 300 each had been previously accepted by the firm. In an action on the notes :—

*Held*, 1st, that the firm was not liable for the whole amount drawn; and 2ndly, that the contract, whereon the action was founded, was not capable of division, and, therefore, the firm was not liable to the extent of Rs. 200.

THIS was a special appeal from the decision of F. D. Melvill, District Judge of Ahmadabad, affirming the decree of the Second-Class Subordinate Judge of the same place.

The action was brought by T. H. Brown, as indorsee of two promissory notes, drawn by T. D. Hewett, in the name of Hewett and Co. of Ahmadabad, for Rs. 1,000 each. The plaintiff sought to recover the amount from the members of the firm of Hewett and Co.

The defendants pleaded that Hewett had no authority to draw the notes, or incur any debts on account of the firm

1873. and denied there liability to pay the plaintiff's claim. Both  
 PREMA'BHAI the Lower Courts held the notes binding on the firm, and  
 HEMA'BHAI awarded the plaintiff's claim. The following extract from  
 v  
 T. H. BROWN. the District Judge's judgment will show his reasons for the  
 decision :—

“ Mr. Hewett was a partner in the firm of Hewett and Co. The firm was formed for the purpose of carrying on a kind of carting agency at the Ahmadabad Railway Station. Differences, however, arose between the firm and the Railway Company, and Mr. Hewett was sent to England in order to obtain a removal of the difficulties and obstructions encountered by the firm. While in England, he, undoubtedly, transacted business on account of the firm, and he drew bills on the firm which were honoured in this country. Finally, he made the promissory notes now sued on, signing them as ‘Hewett and Co.’ But one conclusion seems possible from these facts, namely, that the firm is liable. Mr. Hewett was really and ostensibly a member of the firm, and transacting business in England for the firm. There was nothing unusual in the fact of his requiring money for necessary expenses, and, as a matter of fact, other bills, which he had drawn, had been honoured. In the absence, then, of any notice to the public, that any restriction had been placed on Mr. Hewett's authority, persons with whom he had dealings were entitled to look upon him as representing the firm, and as having full authority to bind all the partners. There was nothing in the amounts drawn on the promissory notes now sued on, which would show that he must be necessarily exceeding his authority.”

In special appeal one of the grounds urged was that Mr. Hewett having been deputed to England as an agent of the firm, to do a particular thing, strictly defined in an agreement made with him by the firm, and no power to borrow money or make promissory notes having been expressly given therein, or being necessary or incidental to the doing of that thing, the Lower Court was wrong in holding his principals in Ahmadabad bound by such notes made by him

in England, not only without any authority, but in opposition to their express instructions.

The special appeal was argued before MELVILL and PINNEY, JJ.

*Dhirajlál Mathurádis* for the appellants :—The Managing Agent of a non-trading partnership, such as a carting agency, has no implied authority to bind his partners by bills or promissory notes. Express authority must be carried out literally.

*Vatsudev Jaganáth* and *Pándurang Balibhadra* for the respondent.

*Ireland v. Livingston (a)* and *Arlápa Náyak v. Narsi Keshavji & Co., (b)* were referred to.

MELVILL, J. :—The plaintiff in this case sues as the indorsee of two promissory notes, each for £100, dated, respectively, the 10th and 15th September 1869, and made by F. D. Hewett, in the name of Hewett and Co. of Ahmadabad.

At the time when he made these notes, Hewett was in England, engaged in certain negotiations in the interest of the Ahmadabad firm; and in the agreement executed to him by the firm, he is described as “the managing member of Messrs. Hewett & Co.,” and as having “agreed to proceed to England for the business of Messrs. Hewett & Co.”

Under these circumstances, we should probably have no difficulty in holding that Hewett had an implied authority to bind his firm by raising a loan: *Rothwell v. Humphreys (c)*, *Thicknesse v. Bromilow (d)*, *Brown v. Kidger (e)*. But the question whether he had authority to draw a bill on the firm, or to make a promissory note in the name of the firm, depends upon special considerations arising out of the peculiar incidents of such negotiable securities.

It is clear that one partner of a partnership *in trade*, has an implied authority to bind the firm by drawing a bill, or

(a) L. R. 5 Q. B. 516.

(b) 8 Bom. H. C. Rep. A. C. J. 22.

(c) 1 Esp. 405.

(d) 2 C. & J. 431.

(e) Hurl. & N. 853.

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giving a promissory note in the name of the firm ; but in the case of partnerships which are not of a mercantile character, there is no such implied authority. Thus, in the case of a mining company, *Dickinson v. Vulpy* (f), or a farming company, *Greenslade v. Dower* (g), or a firm of attorneys, *Hedley v. Bainbridge* (h), a partner cannot bind the firm by a bill of exchange or a promissory note, unless he has express authority to draw or make it. In the present case, the firm of Hewett & Co. was certainly not an ordinary trading partnership. It was merely a carrying company, formed for the purpose of carting goods from the railway to the town of Ahmadabad, and the drawing and accepting of bills, or making of promissory notes, was in no way necessary for the purpose of carrying on the business of such a partnership. We must hold, therefore, that Hewett had no implied authority to make the notes on which the plaintiff sues.

Then had he an express authority? The only authority shown in the case is a telegram, dated the 19th June 1869, which is in these terms—"Draw on Mayábhái" (one of the partners in the firm) "Rs. 200 each time." This is very vague, for the words do not in any way limit the number of bills for Rs. 200, which Hewett might have drawn. But they are sufficiently clear as to one point, viz., that the firm did not authorize Hewett to draw any single bill for a larger sum than Rs. 200. As Hewett had no general authority, arising from the nature of the partnership, to draw bills, it was incumbent upon any person taking his bills or notes to satisfy himself of the extent of his special authority; and the plaintiff, in his evidence, says that the telegram authorizing Hewett to draw was shown to him. We feel constrained to hold that the special authority contained in the telegram limited Hewett to the drawing of single bills for Rs. 200, and vague though the telegram is, it is sufficiently explicit on this point to prevent the plaintiff from urging that he was misled into the belief that it authorized Hewett to draw for £100 at a time.

(f) 10 B. & C. 128. (g) 7 B. & C. 635.

(h) 3 Q. B. 316.

It remains to consider the finding of the District Judge, that, notwithstanding any want of authority on the part of Hewett, the plaintiff is entitled to succeed to the full extent of his demand, because other bills, which Hewett had drawn had been honoured by the firm. We think that this proposition is stated much too broadly. The principle, on which a principal may, in certain cases, be held bound by acts of his agent, in excess of the agent's authority, is that the principal has, by his words or conduct, induced a third person to believe that the agent's acts were within the scope of his authority. The plaintiff, in his evidence, says that he was aware that the firm had previously accepted two bills drawn upon them by Hewett for about Rs. 300 each. Was this circumstance sufficient to induce in him a belief that the firm had authorized Hewett to make notes for £100, in the face of the telegram, which he had seen, limiting Hewett to the drawing of bills of Rs. 200 only? It seems to us impossible to hold that it was sufficient. In *Morris v. Bethell* (i), the defendant had honoured three bills, which had been accepted in his name without his authority, and one of these bills had been held by the plaintiff himself; but it was held that he was not thereby estopped from dishonouring a fourth bill similarly drawn. It would be a very dangerous doctrine that a person, who honours two or three bills drawn upon him for an amount slightly in excess of that for which he has specially authorized his agent to draw, thereby holds out to the world that he will pay any promissory note which his agent may make.

On these grounds, we have arrived at the conclusion that the plaintiff's claim must be disallowed. We were at first inclined to think that he might recover to the extent specified in the telegram, viz., Rs. 200 on each note. But, on further consideration, and after referring to the decision of the Court of Exchequer in *Baines v. Ewing* (j), which is a case very strongly in point, we think that we must treat the contract as not capable of division, and reject the plaintiff's claim in *toto*.

(i) L. R. 5 C. P. 47. (j) L. R. 1 Exch. 320.

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1873.

PREMA'DHIA'I  
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T. H. BROWN.

We reverse the decrees of the Courts below, so far as they affect the special appellants, and reject the claim against them.

Costs of special appellants in Court of first instance on plaintiff. Under the circumstances of the case, we order that each party pay his own costs in appeal and special appeal.

*Decree reversed.*

[APPELLATE CIVIL JURISDICTION.]

August 28.

*Special Appeal No. 242 of 1873.*

NA'RA'YAN VISA'JI ..... *Appellant.*

LAKSHU'MAN BA'PUJI and others ..... *Respondents.*

*Landlord and Tenant—Yearly Tenancy—Mirásdár—Inámdár—Khot—Custom of the Country—Perpetual and hereditary occupancy—Ejectment.*

The defendants entered on land as tenants of a *Mirásdár* on terms which they could not prove, but held it at a uniform rent for three generations and for more than fifty years.

*Held*, that the defendants, in the absence of any special agreement to the contrary, had not acquired by prescription a right of permanent tenancy.

Whatever right of permanent tenancy a tenant may, by prescription, acquire as against an *Inámdár*, or a *Khot*, it would be contrary to the custom of the country and to the nature of *mirás* tenure, to hold that he could acquire such a right as against a *Mirásdár*.

THIS was a special appeal from the decision of S. Hammick, Assistant Judge at Poona, reversing the decree of the Subordinate Judge of Kheda.

Naráyan Visáji brought this suit to recover possession of certain land from Lakshúman, son of Bápúji, and from Sakháram and Máhádú, sons of Sankroji. The land was originally the *mirás* property of Bhikáji Rámchandra, and cultivated, on payment of rent, by an ancestor of Sakháram and Máhádú. In 1826, Bhikáji mortgaged the land to