APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

MAGNIRAM KHUPCHAND MARWADI (ORIGINAL PLAINTIFF), APPELLANT, *v.* LAXMINARAYEN RAMPRATAP MARWADI (ORIGINAL DEFENDANT), RESPONDENT.* *1908 February 6.*

Accounts - Settled Accounts—Settlement of accounts by passing a promissory note—No fraud or coercion used—Waving of examination of accounts by plaintiff of his free will—Accounts not to be re-opened.

The plaintiff and defendant had mutual dealings and accounts. In settling these accounts, the plaintiff of his own free will and accord and without any fraud practiced or undue influence exerted by the defendant waived his right to an examination of the accounts for the purpose of ascertaining the balance due and agreed to treat a gross sum of Rs. 3,556 as due from him and accordingly executed a promissory note for that amount. The plaintiff then sued for a declaration that the promissory note in question was fraudulent and had been obtained from him by undue influence, and was good only to the extent of such sum as might be found due on taking account between the parties. At the trial, the allegations of fraud and undue influence on the part of the defendant and want of free consent on the part of the plaintiff were held not proved.

Held, that, on the principle enunciated by the Privy Council in *McKellar* v. *Wallace* (1), the promissory note must be treated either as the result of a settled account or as a settlement by compromise. In either case, it could not be re-opened.

SECOND appeal from the decision of C. Fawcett, District Judge of Ahmednagar, reversing the decree passed by Karpurram M., First Class Subordinate Judge at Ahmednagar.

Suit for a declaration that a certain promissory note was good only for the amount that might be found due on taking account between the parties.

The plaintiff alleged that there were dealings between him and defendant for a very long time. In May 1904, the defendant took the plaintiff to his (defendant's) shop and got from him a promissory note for Rs. 3,556 by fraud and threats and without showing accounts.

* Second Appeal No. 374 of 1907.

(1) (1853) 5 Moo. I. A. 372 at p. 395.

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The defendant in his written statement contended that the plaintiff's allegations were untrue and that he should not be allowed to go into the accounts.

The Subordinate Judge held that the amount actually due by the plaintiff to the defendant at the date of the note was Rs. 2,740-9-4; and that the promissory note was not passed by the plaintiff with free consent in the strictest sense. He, therefore, declared that the promissory note was good to the extent of Rs. 2,740-9-4 only.

Against this decree, cross-appeals were preferred to the District Court. The learned Judge in appeal came to the conclusion that there was no fraud or coercion used by the defendant on the plaintiff; he therefore dismissed the suit with costs.

The plaintiff appealed to the High Court.

B. N. Bhajekar for the appellant.

G. S. *Mulgaonkar* for the respondent.

CHANDAVARKAR, J.—The suit was brought by the appellant for a declaration that a certain promissory note executed by him in favour of the respondent agreeing to pay the sum of Rs. 3,556 had been fraudulently and by undue influence obtained from him, and was good only to the extent of such sum as might be found due on taking accounts between the parties. The respondent in his written statement denied the allegations of fraud, undue influence, and of want of free consent on the part of the appellant in the execution of the promissory note. Issues were raised on the question of fraud, undue influence, and free consent, and the Subordinate Judge who tried the suit held the allegations as to them proved. Accordingly he re-opened the accounts between the parties and passed a decree in favour of the appellant.

On appeal by the respondent the learned District Judge has held the pleas of fraud, undue influence, and want of free consent not proved. And he has come to the conclusion that the promissory note in suit was executed by the appellant as being in substance the result of a compromise between the parties. It is true that in answer to the claim of the appellant, the respondent

did not in his written statement raise any defence based upon a compromise. But upon the facts found proved by the learned District Judge the transaction which led to the execution of the promissory note by the appellant must be held in law to be one in the nature either of a settled account or of a compromise. Those facts are that the parties had mutual dealings and accounts; that the appellant of his own free will and accord, and without any fraud practised or under influence exerted by the respondent, waived his right to an examination of the accounts for the purpose of ascertaining the balance due and agreed to treat a gross sum—Rs. 3,556—as due from him and accordingly executed the note in dispute. To this the respondent consented. These facts bring the case within the principle of law enunciated by the Judicial Committee of the Privy Council in *McKellar* v. *Wallace*[1], where their Lordships say:—"If persons meet and agree, not to ascertain the exact balance; but agree to take a gross sum as the balance, a sum which one is willing to pay, and the other is content to receive as the result of those accounts; it is obvious, that the production of vouchers is entirely out of the question, and errors in the account are so also, for the very object of the parties is to avoid the necessity for producing those vouchers, upon the assumption that there are or may be errors in the account so settled, therefore, it is either an account stated and settled, in the formal sense of that expression, or, it is the case of a settlement by compromise. In either case it may be vitiated by fraud; in either case it is good for nothing, if, either from the collusion of the parties, upon the circumstances under which the settlement takes place, it is proved in a Court of Equity, that the transaction was not so fairly and so fully understood between the parties, either from the confusion in which it was involved, or, from misrepresentations made on the one side or the other, as it ought to have been, and that injustice has been done to either side."

Here the allegations of fraud, and undue influence on the part of the respondent and want of free consent on the part of the appellant have been held not proved. Under these circumstances

(1) (1853) 5 Moo. I. A. 372 at p. 395.

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the promissory note must be treated, on the principle enunciated by the Privy Council, either as the result of a settled account or as a settlement by compromise. In either case it cannot be re-opened. For these reasons we confirm the decree with costs.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice and Mr. Justice, Batchelor

1904
August 10.

LAKSHMANDAS NARAYANDAS (ORIGINAL PLAINTIFF), APPELLANT, *v.* ANNA R. LANE (ORIGINAL DEFENDANT 1), RESPONDENT *

Civil Procedure Code (Act XIV of 1882), section 586—Small Cause Suit—Character of the Suit—Second appeal—Framing issues—Exact words of the Legislature relating to issues—Contract Act (IX of 1872), section 231—Agent - Undisclosed principal—"Disclosed himself"—Strict construction.

In determining whether no second appeal lies under the provisions of section 586 of the Civil Procedure Code (Act XIV of 1882) the original character of the suit is to be regarded rather than the character it may subsequently assume by operation of the findings of the Court.

Ramchadra Gopal v. Sadashiv Narayan (1) followed.

Where the rights in a case have to be determined by reference to the words of the Legislature then those words should be used for the purposes of the issues so far as circumstances permit.

Section 231 of the Contract Act (IX of 1872) deals with the rights (*a*) of the principal and (*b*) of the third party in cases where the contract is entered into by the agent without disclosing the principal. The first clause refers to the general case and the rule is that the third party shall have as against the undisclosed principal the same rights which he would have against the agent if the agent had been the principal. The second clause deals with the particular case where the principal discloses himself before the contract is completed. The second clause should be read as governed by the first clause.

The words "discloses himself" in section 231 of the Contract Act (IX of 1872) should be construed strictly.

Per BATCHELOR, J.:—It has been warmly urged that the third party's right to repudiate, which is allowed if the principal himself makes the disclosure, should not be refused merely because the disclosure is

* Second appeal No. 115 of 1904.

(1) (1885) P. J. p. 219.