

## ORIGINAL CIVIL.

Before Mr. Justice Beaman.

AHMED SULEMAN JUMANI AND ANOTHER (PLAINTIFFS)  
v. BHAGWANDAS VISRAM & Co. (DEFENDANTS).\*

1909.

September 14

*Suit for partnership accounts—Limitation Act (IX of 1908), Art. 106—  
Specific assets realised within period of limitation.*

If a suit for general partnership accounts and a share in partnership profits is itself barred, the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partnership asset which may have been realised by the defendant after dissolution and within the period of limitation.

*Merwanji Hormusji v. Rustomji Burjorji*(1) distinguished.

On 7th November 1903, the plaintiffs entered into an agreement with the defendants to carry on a Commission Agency and brokerage business in partnership till 7th November 1904. The partnership was actually dissolved on or about 8th October 1904. This suit was filed by the plaintiffs on 7th November 1907 for the taking of partnership accounts and the payment of their share of the assets. The defendants in their written statement raised the defence (*inter alia*) that the suit was barred by limitation.

*Desai* with *Jinnah* for the plaintiffs:—

If the date mentioned in the agreement be taken as the date of dissolution, the suit is not barred. Further, clause 9 of the agreement provided that the partnership accounts were to be made up on the expiration of 13 months, namely on 9th December 1904; so that time should be deemed to run from that date. In any case, even if it is held that this suit is barred, the plaintiff should be allowed to recover such outstandings as were realised by the defendants after dissolution and within the period of limitation.

See *Knor v. Gye*(2), *Dayal v. Khatar*(3), *Merwanji v. Rustomji*(1).

\* Original Suit No. 882 of 1907.

(1) (1882) 6 Bom. 628.

(2) (1872) L. R. 5 H. L. 656.

(3) (1875) 12 B. H. C. 97.

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*Wadia* with *Pirbhai* for the defendants.

BEAMAN, J. :—I think one of the preliminary objections taken by the defendants proves fatal to the plaintiffs' present claim. Mr. Desai, who has argued the case for the plaintiffs, admits that he is not in a position to call any further evidence upon the question of fact when the partnership was dissolved. The Court must, therefore, come to its conclusion on that point upon the papers which Mr. Wadia for the defendants has put in. The Court has the agreement, an advertisement, and a letter (Exhibits 1, 2 and 3). According to the agreement it would appear that the intention of the parties, when the partnership was formed in 1903, was that it should last till 7th November 1904 with a month over in which to collect outstandings and settle all accounts. The advertisement to which the first plaintiff is himself a party and the letter of April 1907, written on behalf of the second plaintiff, prove conclusively that as a matter of fact, the partnership was dissolved at the latest by the 19th October 1904. That being so, I see no escape from the conclusion that this suit, which was brought for a partnership account and share in partnership profits on the 7th of November 1907 is clearly time-barred. Article 106 of the second Schedule of the Limitation Act enacts that where a suit is, as this suit is, for taking partnership accounts or share in partnership profits, the date from which limitation begins to run is the dissolution of the partnership. The plaintiffs apparently laid considerable stress upon the agreement contained in clause 9 of Exhibit 1, which they appear to think extended, as between the parties themselves, the duration of the partnership by one month beyond the date, whatever that date may have been upon which it was actually and in fact dissolved. But I am unable to accede to any such argument. If partners make an agreement of that sort between themselves, it appears to me that the only effect which could be given to it is that, assuming the partnership lasted up to the contemplated date, neither party could press the other for accounts until the added grace period had expired. But what that has to do with the law of limitation, or how it can operate to extend the period allowed by the Limitation Act, I must own I entirely fail to understand. In this view of the case,

it appears to me too clear to admit of serious argument that the plaintiffs' claim is time-barred. But they have strenuously contended that although so much of their claim, as relates to the taking a general partnership account, may, upon that view of the law, be time-barred, they are at least entitled to ask for a share of any outstandings recovered by the defendants after the 7th of November 1904 and within the period of limitation applying to a suit for moneys had and received. In support of that contention I have been referred to *Knox v. Gye*<sup>(1)</sup>, *Dayal Jairaj v. Khatav Ladha*<sup>(2)</sup> and *Merwanji v. Rustomji*<sup>(3)</sup>. But after giving those cases careful consideration I am unable to see that they do sustain the plaintiffs' contention.

In *Dayal v. Khatav*<sup>(2)</sup>, which was decided by Mr. Justice Green, the suit was not for a general partnership account at all. The learned Judge there referred, with approval, to the opinions of three of the learned law Lords who decided *Knox v. Gye*<sup>(1)</sup>. And Latham, J., in giving judgment in *Merwanji v. Rustomji*<sup>(3)</sup> rests upon the decision of Green, J., quoting his excerpts from the decision of their Lordships in *Knox v. Gye*<sup>(1)</sup>. But in *Merwanji v. Rustomji*<sup>(3)</sup>, it appears to me that the facts are again easily distinguishable from the facts in this case. There, it is true, the suit was by an ex-partner against a former partner in a firm, which had been dissolved, to share in a definite sum of money which the defendant appears to have admitted to be a partnership asset; and no doubt there are observations, both in the judgment of Latham, J. and in the judgments of their Lordships of appeal in *Knox v. Gye*<sup>(1)</sup>, which may appear on the first reading to lend some colour to the plaintiffs' contention that where a suit for general partnership accounts is barred, the plaintiffs may yet be allowed to proceed as for moneys had and received in respect of any outstanding partnership assets which have come into the defendants' hands within the period of limitation. I am very doubtful myself whether taking the decision in *Knox v. Gye*<sup>(1)</sup> as a whole and keeping it strictly to its own facts, it can be

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legitimately used to support the reasoning and conclusion which have subsequently been based upon it. As a matter of fact the Lords of Appeal in that case found that the suit by an executor of a deceased partner against a surviving partner was time-barred. Much of their Lordships' reasoning and arguments no doubt turn upon the fact that the surviving partner had received a sum of £2,500 as a partnership asset more than six years after the partnership had been dissolved and, standing alone, no doubt within the period of limitation. But it appears to me that excepting some observations by Lord Hatherley, the gist of the decision, at any rate of the majority, was that that fact alone would not remove the bar of limitation which had been interposed by the lapse of six years since the partnership was dissolved. Nor, speaking with all respect for any observations or opinions of other learned Judges who may seem to favour a contrary view, am I able to understand how, if a suit for general partnership accounts and a share in partnership profits is itself barred, the plaintiff in such a suit can be allowed to proceed speculatively against any and every partnership asset which may have been realized by the defendant after dissolution and within the period of limitation. In such a suit, it seems to me, questions would inevitably arise which could not be resolved without opening up the whole partnership account. It appears to me that allowing the plaintiffs to pursue such a course, might result in real hardship and great injustice to the defendants. I have said that this case is clearly distinguishable on its own facts from the authorities I have just been discussing. There is not a word in the plaint asking for any relief of the kind which the plaintiffs now think the Court should grant them. The plaintiffs never so much as allege that any assets have been recovered after November 1904. All their specific prayers are prayers proper to a suit of the kind they really meant to bring, prayers, that is to say, for a general partnership account, to be given their share of any partnership profits which such an account might disclose and that the defendants should bear the costs of resisting them in this suit. Since that is so and I am quite clear that the suit is time-barred, I feel unable to accede to the plaintiffs' alternative contention that they should now be allowed to convert this defective plaint into a plaint merely for the

recovery of moneys had and received on their account by the defendants subsequently to November 7th, 1904.

This being my view, I must dismiss the plaintiffs' suit with all costs upon them, including costs reserved, if any.

*Suit dismissed.*

Attorneys for the plaintiffs: Messrs *Tayabji, Dayabhai & Co.*

Attorneys for the defendants: Messrs. *Thakordas & Co.*

K. M. L. K.

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## ORIGINAL CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

JOSHI NARBADASHANKAR HURJIVAN, APPELLANT AND DEFENDANT,  
v. MATHURADAS GOKULDAS AND ANOTHER, RESPONDENTS AND  
PLAINTIFFS.\*

1910.

January 31.

*Contract—Wagering—Intention of the parties—Payment of  
differences—Contract Act (IX of 1872), s. 57.*

There is no authority for the proposition that, because under the terms of a contract an obligation to pay or receive differences may arise on the happening of a particular event, the contract is void as a wager if that event does not happen. Such a result would be inconsistent with the principle underlying section 57 of the Contract Act.

THIS was a suit for damages for breach of contract. The plaintiffs alleged that by certain contracts entered into on 26th and 27th October 1903, the defendant agreed to purchase from the plaintiffs 800 tons of Rangoon rice, delivery to be taken of 400 tons between 22nd February and 7th March 1909, and of the remaining 400 tons between 23rd March and 5th April 1909. On the due dates delivery orders were forwarded to the defendant, but the latter refused to take delivery. As a result the plaintiffs sold the rice by auction and an aggregate loss of Rs. 12,605-6-9 was sustained. The plaintiffs now claimed this sum as damages.

\* Original Suit No. 356 of 1909,  
Appeal No. 23 of 1909.