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Unfortunately, however, for that argument, Article 182 of the Indian Limitation Act, which was in force at the time of the last application to execute the decree, shows that the fresh periods which could be obtained under the provisions of that Article do not escape the provisions of section 48 of the Civil Procedure Code, the words of Article 182 being " For the execution of a decree...of any Civil Court not provided for by Article 183 or by section 48 of the Code of Civil Procedure, 1908." Section 48 of the present Code is more extensive in its application than the previous section 230 of the Code of 1882, and it is wide enough to cover the compromise decree of which execution is sought in the present case. The fresh application, therefore, with which we are concerned being made more than twelve years from the date of the default, the appeal must fail. We affirm the decision of the lower appellate Court and dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

PRIVY COUNCIL.*

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[On appeal from the High Court of Judicature at Bombay.]

KARMALI ABDULLA ALLARAKIA, PLAINTIFF *v.* VORA KARIMJI JIWANJI AND OTHERS, DEFENDANTS.

Partnership—Agreement for joint venture in business—Contract Act (IX of 1872), sections 239, illustration (a), 249, 251, 252—Liability of co-adventures against whom there is no document of debt binding on its face—Operations of buying and selling natural to a partnership, and for the partnership—Liability of both defendants on hundis drawn separately by each for payment of his own share of goods—Criterion as to transaction being or not being a partnership transaction.

* *Present* :—Lord Dunedin, Lord Shaw, Sir John Edge, and Mr. Ameer Ali.

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The respondents carrying on business in Mauritius and having separate offices in Bombay made an agreement for one year "for the purpose of doing business in partnership" in brown sugar to be shipped from Mauritius to Hongkong, and there disposed of on commission sale by the appellant, a Bombay merchant with an agency at Hongkong, the profits of the joint venture to be shared by the respondents equally. The shipments were to be made jointly in Mauritius, a half share by each of the respondents, each one drawing hundis against his own half share, and separate account sales of their respective shares to be rendered to them by the appellant who undertook to arrange for the necessary credit if the Banks in Mauritius would not discount the hundis drawn by the respondents; and an endorsement to that effect was made on the agreement and signed by the appellant. The terms of the agreement were carried out and shipments of sugar were made, but in respect of the hundis drawn by each respondent against his half share recourse was not had first to the Banks in Mauritius, but the hundis were at once drawn on and accepted by the appellant at Bombay. The shipments resulted in a loss. The first respondent had, when the hundis drawn by him became due, retired them, but the second respondent who had become insolvent, had not retired the hundis of which he was the drawer with the result that the appellant whose name was on the hundis as acceptor had to retire them. In a suit by the appellant against the respondents and the Official Assignee for the money advanced to pay the hundis, the first respondent alone defended it, his defence being that he had paid all the hundis drawn by him, and was not liable for those drawn by the second respondent.

Held (reversing the decision of the Court of Appeal in India) that the agreement created a "partnership" between the respondents within the definition in section 239 of the Contract Act (IX of 1872) which governed the case. But it was a partnership of a limited character, and consequently liability to be enforced against one partner, when there was no document of debt which on its face bound him, could only be justified if it was shown that what he did was within the operations natural to the partnership and for the partnership.

On the terms of the agreement the purchase of the sugar under it became a purchase for the partnership, and anyone who sold the sugar or advanced money by which the sugar was bought was crediting the partnership with goods or money. If either party in the case bought sugar and then re-sold it under the provision in the agreement for re-sale in Mauritius he could not refuse his co-adventurer a share of the profit he made. The joint adventure began not when the goods were shipped, but from the moment the sugar was bought. The appellant too was acquainted with the whole terms and conditions of the agreement, and knew therefore that by advance of credit he was helping the partnership in its purchase of sugar. That credit was not given in the precise way contemplated by the agreement; but that the respondents availed them-

selves of the appellant's credit appeared on the hundis themselves. When a drawer discounts an acceptance which is given at a time when the acceptor owes no money to the drawer, it is idle to say that the drawer does not avail himself of the acceptor's credit. Moreover on the evidence of the first respondent himself in cross-examination "the sugar purchased was all paid for by the hundis accepted by the appellant."

As to the criterion to be applied to the particular facts of each case in order to see whether the transaction is or is not a partnership transaction, the cases of *Gouthwaite* v. *Duckworth*[1]; *Saville* v. *Robertson*[2]; and *Heap* v. *Dobson*[3] in the English Courts; and *Cunningham* v. *Kinnear*[4]; *British Linen Company* v. *Alexander*[5]; and *White* v. *McIntyre*[6] in the Scottish Courts; and Bell's Commentaries on the Principles of Mercantile Jurisprudence, section 395, were referred to.

APPEAL 71 of 1913 from a decree (17th January 1910) of the High Court at Bombay in its Appellate Jurisdiction which reversed a decree (13th April 1909) of a Judge of the same Court in the exercise of its Original Civil Jurisdiction.

The suit giving rise to this appeal was brought by the appellant to recover Rs. 1,11,819-8-9, which he alleged to be due to him in respect of certain mercantile transactions between himself and Karimji Jiwanji the first defendant and Rashid Alladina and Company, the second defendant, the main question for determination being whether the first defendant was liable to the plaintiff in respect of hundis (bills of exchange) drawn upon the plaintiff by the second defendant's firm, now insolvent.

The first and second defendants who were separate firms carrying on business in Mauritius were in the habit of shipping sugar from Mauritius to China for sale there on commission. At the time of the transactions in suit Bombay was the principal place of business of the second defendant's firm, and a firm was opened

(1) (1810) 12 East 421 at p. 426.
(2) (1792) 4 T. R. 720.
(3) (1863) 15 C. B. N. S. 460.
(4) (1765) 2 Pat. App. Cas. 114.
(5) (1853) 15 D. 277.
(6) (1841) 3 D. 334.

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in Bombay also by the first defendant during the course of the transactions.

The plaintiff was a merchant in Bombay and carrying on business in Hongkong through an agent there. He had had previous transactions in sugar with the second defendant whose firm was then in a good position and was allowed extensive credit: but the plaintiff had not had many dealings with the first defendant who had hitherto employed a firm of Talati as his commission agent in Hongkong. To avoid unnecessary competition the two defendant firms Vora Karimji Jiwanji, and Rashid Alladina and Company, in 1906 agreed to make a joint shipment of sugar to Hongkong which was to be disposed of there by the plaintiff as commission agent for both firms. The agreement purported to create a partnership between the two firms for one year in respect of these particular transactions only and was made with the privity and co-operation of the plaintiff who undertook that if the Banks in Mauritius would not discount the hundis to be drawn by the two firms against their consignments, he would arrange for the necessary credit, and an endorsement to that effect was made on the agreement and signed by the plaintiff. The agreement further provided in effect that the shipments should be made half and half by each of the defendant firms; that each firm should draw against its own half share; that separate account sales of their respective shares should be rendered to them by the plaintiff; and that the profits of the joint venture should be divided between them equally.

The terms of the agreement are for the purposes of this report sufficiently stated in the judgment of the Judicial Committee.

In pursuance of the agreement sugar was purchased by the two firms in Mauritius, and shipments were made in two steamers to Hongkong. Of the sugar

shipped the larger quantity was purchased by the firm of Vora Khimji Jiwanji, but Rashid Alladina and Company took over their stipulated share of it, and paid Vora Khimji Jiwanji for it, the actual consignments being thus made half by each firm with separate bills of lading in the names of each.

Each of the defendant firms also drew hundis in their own names against their respective halves of the shipments as represented by the bills of lading. There was no special agreement between the parties as to these drawings of hundis, nor did the plaintiff allege that the first defendant at any time specifically agreed to be responsible for the hundis drawn by the second defendant.

The shipments were received and sold by the plaintiff in Hongkong, and separate account sales of their respective half shares thereof, with the name, at the head of each account, of the firm whose share it represented, were rendered by the plaintiff to the defendant firms from time to time until the insolvency of the second defendant which took place on or about 20th January 1908. The plaintiff being largely involved in the insolvency, thereafter sent instructions to his Hongkong firm to make out a fresh account of the whole of the shipments with the names of both firms at the head of it. An account so headed was duly made out in Hongkong and forwarded to the plaintiff in Bombay. It was produced at the hearing though apparently not put in evidence. It appeared from it that the plaintiff had another account prepared covering the whole of the shipments which he sent to the first defendant on 20th July 1908. The first defendant replied on 25th July 1908 that the account was entirely wrong, and referred the plaintiff to the previous account sales which comprised only the first defendant's share of the shipments. The plaintiff did not reply to

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that letter, but on 3rd September 1908 he filed the present suit in the High Court at Bombay against the two defendant firms, and the third defendant R. D. Sethna, the Official Assignee, as assignee of the effects of the firm of Alladina and Company, claiming the sum he alleged to be due on an account embracing the whole of the transactions between the parties.

The first defendant put in a defence denying any liability in respect of the hundis drawn by the second defendant, and disputing generally the correctness of the account. The second and third defendants did not file any defence, nor did they appear in the subsequent proceedings.

Issues were raised of which the nature of those material to this report appears in the judgment of Russell, J. before whom the suit came on. He said:—

"It is proved that prior to the agreement the plaintiff had been doing business for Rashid in sugar and other articles with China to a large extent. It is also proved that prior to the agreement Karimji had employed the wellknown firm of Talati as his agents in Hongkong . . . . and there can be no doubt that the plaintiff was desirous of getting Karimji's business, and taking it away from Talati."

And later on he continued as follows:—

"I agree with Mr. Davar in his argument for the plaintiff in reply that the most important point to be borne in mind in this case is the fact that this agreement was intended to be kept secret not only as regards Talati's people who had been connected in business with Karimji, as I have above said, but also with regard to other dealers in the market; and it must have been with that view that separate hundis were drawn and separate account sales were made out.

"I heard a very elaborate argument from the Advocate General to the effect that the condition implied by the endorsement not being performed, that endorsement did not come into operation. But bearing in mind the various documents which I have above referred to, the question is: Is para. 7 of the plaint established or not? That says 'All the hundis aforesaid were so drawn in respect of the partnership aforesaid of the 1st and 2nd defendants, and the plaintiff paid and advanced the monies on the said hundis for and on account of the said partnership.'

"Looking at the case from a common sense businesslike point of view, the way I shall put it is this. Had it not been for the credit given by the plaintiff in Bombay under this agreement to the partnership, the partnership could not have entered into the transactions in sugar which they did. The credit given by the plaintiff was given to the partnership and not to the individual firms which composed it. That being so, in the event of one partner failing to perform his liabilities on the hundis drawn by himself, it becomes incumbent upon the other partner to perform those liabilities and I cannot believe that the plaintiff who is a business man ever intended to treat these two firms as separate and distinct for the purpose of giving them the credit he did."

And he concluded his judgment with the following findings on the material issues :—

"1. There was a partnership between 1st and 2nd defendants' firms as alleged in the plaint.

"2. In the events that happened, the plaintiff financed the said two firms jointly and gave them credit jointly.

"3. The hundis in this issue mentioned were drawn by the defendants' firms respectively in pursuance of the agreement that the partnership between them should be kept secret, but in the drawing of those hundis each of the defendants' firms pledged and intended to pledge the credit of the other.

"4. The plaintiff paid and advanced moneys on the hundis for and on account and for the credit of the said partnership.

"5. In the events that happened and in order to carry out the objects of the partnership, each firm had authority to pledge the credit of the other."

In the result a decree was made in favour of the plaintiff. From this decision the first defendant preferred an appeal in which the other two defendants were joined as respondents with the plaintiff. The appeal was heard by Sir Basil Scott C. J. and Batchelor J., who reversed the decision of Russell J., and decreed the appeal in favour of the first defendant. Their judgment was as follows :—

"The argreement is elaborately drawn for the purpose of keeping the interests of the two shippers distinct, from the outset up to the close of the transactions, except in so far as a combination between them was desirable for the purpose of securing joint shipments and the sale of their sugar in Hongkong . . . .

"According to the decision of the learned Judge the events contemplated in the plaintiff's endorsement did not happen. It is, however, contended on

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behalf of the plaintiff that they did happen, and that the plaintiff in pursuance of the agreement contained in the endorsement opened a credit for the shippers in Mauritius which was availed of by them.

"There can be no doubt that a credit was opened as is evidenced by Exhibits C and C 1, but the first defendant's letter Exhibit 17 indicates that it was not availed of by him as he had no difficulty in making his own financial arrangements in Mauritius. He denies the story of the plaintiff that he accompanied the second defendant to the plaintiff and asked him to open a credit on the ground of the refusal of the Banks in Mauritius to discount their bills. It appears from what happened in connection with the two shipments from Mauritius that there was no refusal by the Banks in Mauritius to discount bills of exchange without a credit being opened by the plaintiff, for while as we have pointed out the first defendent had no difficulty in making his own financial arrangements with regard to the shipments in the 'Folsjo', it is not alleged that the plaintiff's credit was in any way availed of as acceptor in the drawing of the bills against the sugar in the 'Marie.' And as to this shipment, while the only credit alleged was opened with the Commercial Bank the bills were negotiated by the Bank of Mauritius. However even if a credit was availed of as contended by counsel for the plaintiff, it would not follow that either shipper was liable on the bills drawn by the other. This is a question which must be determined from an examination of the terms of the agreement which was the only agreement between the parties, and was formally accepted by the plaintiff as constituting the sole ground of his claim. From such examination we infer that the object of the arrangements contained in clause 4 was to enable each shipper to find funds for providing his quota, namely, one moiety of the assets of the venture, which were to be realised in Hongkong. But there is nothing in the agreement which could authorise either firm to pledge the other's credit. It may also be observed that the first defendant's name nowhere appears on the bills, which were drawn by the second defendant firm in their own name, and it is not suggested that that was the name of the combine.

"Treating the question as purely a question of liability between the parties to the bills of exchange it is manifest that the plaintiff cannot succeed in charging the first defendant with liability on bills of the second defendant and having regard to what appears to us to be the correct construction of the agreement between the parties, we cannot hold that there is any collateral agreement by which one shipper agreed to be liable for the default of the other in not taking up the bills of exchange drawn by him on the plaintiff."

On this appeal,

De Gruyther K. C. and *Henry O'Hagan* for the appellant contended that the law of partnership in

India was contained in the Contract Act (IX of 1872) which governed the present case; and the decisions in the English Courts had no bearing upon and were not applicable to the questions raised on the appeal, or to the interpretation of the agreement of 25th July 1906. That agreement in effect created, it was submitted, a partnership between the two respondent firms; and even though the events contemplated in the endorsement by the appellant on the agreement did not occur precisely as expected, both the respondent firms engaged in and proceeded with the transaction on the basis that both of them would be jointly liable on all the hundis drawn; and on the understanding that they were accepted and paid by the appellant on the joint credit, and at the joint request of each of the respondent firms. Reference was made to section 239 of the Contract Act, illustration (*a*). It was a joint venture on the part of the respondents each of whom had in such a case authority to pledge the credit of the others in any way necessary in the usual course of such business; and any liability so incurred by the second respondent firm was to be equally shared by the first respondent firm. Sections 249 and 251 of the Contract Act were referred to. The case turned, and the rights and obligations of the parties depended, entirely upon the construction of the agreement, which had not been annulled or amended; see section 252 of the Contract Act. Reference was made on the construction of the Act to *Norendra Nath Sircar* v. *Kamalbasini Dasi*[1] and to *Bank of England* v. *Vagliano Brothers*[2] referred to in that case.

Clauson K. C. and *G. R. Lowndes* for the first respondent contended that on the proper construction of the agreement between the respondent firms which

(1) (1896) 23 Cal. 563 at pp. 571, 572 : L. R. 23 I. A. 18 at p. 26.

(2) [1891] A. C. 107.

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had been made with the privity of the appellant, each of those firms was to be responsible only for their own share of the joint shipments. The agreement did not in law constitute a partnership between the two firms in the ordinary sense, but only a joint venture between them, and the appellant was cognizant of the limitation of the authority of each firm with respect to the transactions. It was in evidence that the word "majonoo" was used in respect of those transactions, which is used with regard to a joint venture; had it been a partnership, the word "bagidar" would have been employed in speaking of the parties to it. The hundis drawn by the second respondent firm were drawn in their own name, and for their own purposes; and there was no agreement by the first respondent to be responsible for the hundis drawn by the second respondent. Reference was made to *Heap* v. *Dobson*(1); *Gibson* v. *Lupton*(2); and Lindley on partnership 8th Ed. 247 (7th Ed. 233).

De Gruyther K. C., in reply referred to *Gouthwaite* v. *Duckworth*(3).

The judgment of their Lordships was delivered by

LORD DUNEDIN:—This action arises out of transactions connected with a venture in brown sugar entered into by the first and second respondents. The second respondent is now bankrupt and the third respondent is his official assignee: and neither of them defended the action or took part in the proceedings under appeal.

The first respondent, Karimji, and second respondent, Rashid, were both merchants carrying on business in Mauritius and had for some time been rivals in the sugar trade.

(1) (1863) 15 C. B. N. S. 460. (2) (1832) 9 Bing. 297 at p. 303.
(3) (1810) 12 East. 421.

Rashid had all along also had a Bombay house, and Karim was in the act of setting one up, but it was not at the date to be presently mentioned yet open.

The appellant, Karmali, is a merchant carrying on business in Bombay and Hongkong.

Karim and Ráshid resolved to have a joint speculation in brown sugar to be shipped from Mauritius to Hongkong. The terms of the arrangement they made between themselves were on 25th July 1906 embodied in a stamped agreement. The document is too long to quote, but may be summarised thus—It begins with a preamble that the parties "for the purpose of doing business in partnership in brown sugar from Mauritius to Hongkong agree to act as follows." Then follow the terms. Purchases were to be made "jointly" at Mauritius. These purchases were to be made by both firms after consultation with each other, and after taking advice from the Bombay houses. No limit as to purchase is imposed on either firm; but as soon as either firm buys, that firm is to give a delivery order on the Dock warehouse for half the quantity of the parcel to the other firm. When sufficient sugar to load a ship has been purchased, then a ship is after consultation to be chartered, and loaded with the purchased sugar and despatched to Hongkong. Invoices of the sugar, made out separately as half and half, were to be sent respectively to each of the Bombay firms. At the same time Rashid was to draw bills to the value of the sugar on his Bombay house, and Karim on his Bombay house when it came to be opened. But until that time came he was to draw bills on Karmali. If the banks at Mauritius refused to discount the bills on the Rashid or Karim house, the Bombay firms were to be informed by wire, in which case it was said that Karmali would come to the rescue by interposing credit according to arrangement made with him. On the ship arriving at Hongkong the

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arrangements as to sale of the sugar were to be carried through by the Bombay houses. Account sales were to come from Hongkong made up separately half and half to each. Then the invoices were to be added together and the surplus or deficit on the entire transaction was to be divided equally. Chartering was to be done in either one or both names; but all commissions were to be equally divided. In the event of the Hongkong market being bad and there being an opportunity of a profit by reselling at Mauritius, this was to be done after permission got from Bombay; and such profit on all sales was to be equally divided. The agreement was to remain good for a year from date of signing. There is then an addendum to the agreement written and signed by the plaintiff, in which he binds himself to come to the assistance of the partners if the Mauritius banks refuse to discount the bills drawn by the Mauritius firms of the two defendants on their own Bombay firms respectively.

Following on this agreement a venture was commenced, and the terms of the agreement were literally carried out, except in one particular. That is to say, sugar was bought, about 36,000 bags by Karim, and about 4,000 by Rashid. Delivery orders were then given by each to each for half of the sugar purchased by him, and the sugar so divided on shipment was consigned to the Hongkong firm of the plaintiff. The one particular in which the agreement was not literally complied with was that the bills were not drawn by Rashid and Karim at Mauritius on Rashid and Karim in the first instance and then, on refusal of the banks to discount, recourse had to the assistance of the plaintiff; but they were at once drawn on and accepted by the plaintiff's firm at Bombay. The bills were drawn by Rashid and Karim respectively for sums approximately representing the value of the sugar shipped

upon the separate invoices of each, *i.e.*, about half and half—an exact half being unattainable on account of the packages in which the sugar was put up.

The sugar arrived at Hongkong, and was sold by the plaintiff to whom it was consigned. The venture, however, turned out a failure instead of a success; the prices realised not being sufficient to give a profit after payment of the price of the sugar, the freight, and other expenses.

The plaintiff accordingly raised this action, which is truly an action of accounting against both Rashid and Karim. Now, when the bills drawn by the two defendants had become due, and were payable to the banks who held them, Karim had retired the bills of which he was the drawer, but Rashid, who had by this time become insolvent, had not retired the bills of which he was the drawer, with the result that the plaintiff, whose name was on these bills as acceptor, had to retire them. This necessarily brought out a considerable balance on the whole transaction as due to the plaintiff. The bankrupt respondent Rashid and his official assignee did not oppose judgment being entered against them; but the solvent partner Karim opposed judgment upon the ground that he had paid all sums due on bills signed by himself, and that he was not liable in respect of any monies raised on bills to which he was no party.

The case depended before Russell J. in the High Court at Bombay, who after trial found in favour of the plaintiff. The material ground of his judgment may be effectively summarised by quoting two of his findings on the issues which he incorporated with his judgment which were as follows :—

"I find (1) There was a partnership between first and second defendants' firms . . . (4) The plaintiff paid and advanced moneys on the hundis (bills) for and on account and for the credit of the said partnership."

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The Court of Appeal reversed that judgment. The gist of their judgment may be taken from the concluding paragraph thereof, which is as follows :—

"Treating the question as purely a question of liability between the parties to the bills of exchange it is manifest that the plaintiff cannot succeed in charging the first defendant with liability on bills of the second defendant, and having regard to what appears to us to be the correct construction of the agreement between the parties, we cannot hold that there is any collateral agreement by which one shipper agreed to be liable for the default of the other in not taking up the bills of exchange drawn by him on the plaintiff."

Their Lordships are of opinion that it is erroneous to treat the question as purely a question of liability on the bills. In other words, they think the issue proposed by the learned trial Judge to himself was right. The case of the *In re Adansonia Fibre Co.*[1] seems to have been much pressed on the Court by the learned counsel. But the very first sentence of the judgment of James L. J. shows that in that case the only question was whether in a winding up proof could be made on the bills alone; and that all questions of ultimate liability were left undecided.

No one doubts that there was here a partnership. It is stated to be a partnership in the agreement, and it amply falls within the definition of a partnership given by the Indian Contract Act, which rules parties in this case. It is, however, a partnership of a limited character, and consequently liability to be enforced against one partner, when there is no document of debt which on its face binds him, can only be justified if it was shown that what he did was within the operations natural to the partnership and for the partnership.

Their Lordships think that the law on these matters is accurately stated in the well-known judgment of Lord Ellenborough in *Gouthwaite* v. *Duckworth*[2]. In saying "the law," it would perhaps be more accurate to say,

(1) (1874) L. R. 9 Ch. 635. (2) (1810) 12 East 421 at p. 426.

a statement of the criterion which is to be applied to the particular facts of each case in order to see whether *the transaction is or is not a partnership* transaction. In that case it was sought to make Duckworth liable for goods purchased by Brown and Powel, and Lord Ellenborough says this: "There seems also to have been some contrivance in this case to keep out of general view the interest which Duckworth had in the goods; the other two defendants were sent into the market to purchase the goods in which he was to have a moiety; and though they were not authorised, he says, to purchase on the joint account of the three; yet if all agree to share in goods to be purchased, and in consequence of that agreement one of them go into the market and make the purchase, it is the same for this purpose as *if all the names* had been announced to the seller, and therefore all are liable for the value of them." He distinguishes the case of *Saville* v. *Robertson*[1] thus: "The case of *Saville* v. *Robertson*[1] does indeed approach very near to this; but the distinction between the cases is, that there each party bought his separate parcel of goods, which were afterwards to be mixed in the common adventure on board the ship, and till that admixture the partnership in the goods did not arise." And Bayley J. after describing *Saville* v. *Robertson*[1] in the same way says: "But here as soon as the goods were purchased, the interest of the three attached in them at the same instant by virtue of the previous agreement."

Mr. George Joseph Bell, in his celebrated Commentaries on *the Principles of Mercantile* Jurisprudence, after stating that the law of Scotland is the same as the law of England in this matter, quotes the judgment of Lord Ellenborough as correctly laying down the law, citing, *inter alia*, a case of *Cunningham* v. *Kinnear*[2]

(1) (1792) 4 T. R. 720. (2) (1764) 2 Pat. App. Cas. 114.

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on the same lines as *Gouthwaite* v. *Duckworth*(1) which was affirmed in the House of Lords in 1765, and the whole matter is comprehensively expressed in his Principles, section 395, in words which their Lordships think accurately give the result of the cases both old and modern. "Where goods are purchased or money raised for the joint adventure, and the dealing though ostensibly by an individual is truly and substantially a dealing of the joint adventure, the adventurers are liable as partners. But there is no such responsibility for goods, &c., purchased on the credit of an individual adventurer previously to the contract though afterwards brought into stock as his contribution ...."

It may be and often is a difficult matter to say on which side of the line thus indicated the facts of a particular case fall, and cases will be found illustrating both results. To the cases already cited may be added the case of *Heap* v. *Dobson*(2), while in the Scottish Courts may be taken as on the lines of *Gouthwaite's case* the case of *British Linen Co.* v. *Alexander*(3) (where the facts are strikingly similar to the present case), and on the lines of *Saville* and *Heap's cases*, *White* v. *McIntyre*(4).

Their Lordships are aware that Lord Lindley, in his capacity as an author but not as a Judge, expressed some doubts as to whether the case of *Gouthwaite* v. *Duckworth*(1) could be supported. They are of opinion that, whether that doubt is sound or not, it is not a criticism on the criterion of law indicated by Lord Ellenborough and the other Judges; but is only an indication that a different view might have been taken of the facts of that particular case.

(1) (1810) 12 East 421 at p. 426.
(2) (1863) 15 C. B. N. S. 460.
(3) (1853) 15 D. 277.
(4) (1841) 3 D. 334.

Turning then to the present case, their Lordships have come to the conclusion that the judgment of the trial Judge was correct. The considerations which lead them to that result are as follows.

It is clear from the terms of the agreement that either of the two partners by the mere fact of purchase (after consultation as to price) could subject any sugar independently of the action of the other to becoming partnership sugar. A purchase of sugar therefore becomes a purchase for the partnership, and anyone who sold the sugar, or advanced money by which the sugar was bought, was crediting the partnership with goods or money. This is further accentuated by the provision as to possible resale in Mauritius itself. If either party in the case bought sugar, and then came to resell it in terms of that article, he could not refuse his co-adventurer a share of the profit he made. These considerations make it impossible to say, as was said effectively in *Saville* v. *Robertson*[1] or *Heap* v. *Dobson*[2], that the joint adventure only began when the goods were shipped, as it is clear that the joint adventure began as regards each parcel from the moment that parcel was bought. The learned Judges of the Court of Appeal are impressed with the view that the agreement is "elaborately drawn for the purpose of keeping the interests of the two shippers distinct . . . except in so far as a combination between them was desirable for the purpose of securing joint shipments and a sale of the sugar at Hongkong." Their Lordships cannot take this view. It ignores the fact that notwithstanding the separate shipment and consignation documents, the sugar was admittedly to be accounted for as partnership sugar. Supposing that the particular parcels consigned by one had in someway been deteriorated, either by perils of the sea, with-

(1) (1792) 4 T. R. 720. (2) (1863) 15 C. B. N. S. 460.

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out insurance, or by the development of some intrinsic fault, it is perfectly clear that the other party would have had to bear his share of the loss resulting in the whole cargo. No doubt the anxious arrangements for shipping and consignation in separate names were peculiar. But the reason for them is amply explained by the fact that the parties desired secrecy, being afraid at Mauritius of the hostile action in breaking prices of a rival whose astuteness they deploringly acknowledged.

Moreover, it is clear not only that the facts as to the terms of a partnership in the sugar shipped are as have been stated, but that the plaintiff knew the whole terms and conditions of the agreement. He knew, therefore, he was helping by advance of credit the partnership in its purchase of sugar. The learned Appeal Judges say that the respondent Karim did not avail himself of the plaintiff's credit. That that credit was not interposed in the precise way originally contemplated by the 4th article of the agreement is true. But that they did not in fact avail themselves of the plaintiff's credit is obviously an error. The bills speak for themselves. When a drawer discounts an acceptance which acceptance is given at a time when the acceptor owes no money to the drawer, it is idle to say that the drawer does not avail himself of the acceptor's credit; and if anything more was wanted it is to be found in the evidence of Karim himself, who admits in cross-examination, "For the purchase of all that sugar neither I nor Rashid paid a rupee; it was all paid for by hundis accepted by the plaintiff."

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be allowed and the judgment of the trial Judge restored: the defendant Karim paying costs in the Courts below and before this Board.

Solicitors for the appellant: Messrs. *Ashurst, Morris, Crisp & Co.*

Solicitors for the first respondent: Messrs. *Latteys & Hart.*

Appeal allowed.

J. V. W.

1914.

KARMALI ABDULLA *v.* KARIMJI JIWANJI.

PRIVY COUNCIL.*

HAMABAI FRAMJEE PETIT, DEFENDANT, *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL, PLAINTIFF,

AND

MOOSA HAJEE HASSAM, DEFENDANT, *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL, PLAINTIFF.

P. C.* 1914. *October* 28, 29. *November* 18.

Two appeals consolidated.

[On appeal from the High Court of Judicature at Bombay.]

Resumption—Resumption for "public purposes" by Government of land granted by East India Company—Scheme to erect dwelling houses at adequate rent for the accommodation of Government Officials in Bombay—Construction of lease and sanad—English decision under 43 Eliz., c. 2 as to exemption from rating—Notice of resumption addressed to one party and served on another—Waiver.

In these appeals the Judicial Committee held (affirming the decisions of the Courts in India) that the providing of housing accommodation for Government Officials by the erection of dwelling houses for their private residences at adequate rents, was a "public purpose" within the meaning of a lease of land from the East India Company given in 1854, and a Sanad or Government Permit of land granted in 1839 by the same Company, which made such lands (situate on Malabar Hill, Bombay) liable to resumption for "public purposes" upon certain terms as to notice and compensation. The scheme was one which their Lordships agreed with the Courts below would under the circumstances in evidence redound to public benefit by helping the Government to maintain the efficiency of its servants.

Held also (agreeing with the Courts below) that the English decisions which construed the words "public purposes" as used in the Statute 43 Eliz., c. 2

* *Present:*—Lord Dunedin, Lord Shaw and Mr. Ameer Ali.