

Lawless Vs. the Calcutta Landing and Shipping Co., Ld.

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Court : Kolkata

Decided On : Aug-19-1881

Reported in : (1881)ILR7Cal627

Judge : Wilson, J.

Appellant : Lawless;The Calcutta Landing and Shipping Co., Ld.

Respondent : The Calcutta Landing and Shipping Co., Ld.; Lawless

Judgement :

Wilson, J.

1. These are cross-suits. The one is brought by the administrator of Captain Lawless for arrears of salary and commission due to Captain Lawless before his death as manager of the Calcutta Landing and Shipping Company. The other suit is for money for which the defendant is said not to have accounted. There is no dispute as to the amount of the administrator's claim. On the other hand, it is admitted, that Captain Lawless was bound to account for the money which came to his hands as manager. Two grounds of dispute were raised to the cross-claim: first, they claim to set off what is due, and in the cross action they claim the same relief. The objection to their claim is this: first, it is said the claim is barred by limitation. Now in the case of a person employed as manager the right of the employer is to have an account rendered by the person employed whenever he is called on to do so under reasonable circumstances. There is nothing to show that

Captain Lawless was ever called on to account for those moneys or to account generally. He died on the 29th August 1877, and his agency terminated, I think, by his death, the Company acquired a fresh right to have an account rendered by his representative, and that right is recognized by art. 89* of the second schedule of the Indian Limitation Act. As he died on the 29th August 1877, the right accrued then but no administration was taken out till the 27th July 1880. The case, therefore, is protected by Section 17 of the Limitation Act, which says, 'when a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.' Therefore time did not begin to run against the Company till the 27th July 1880, and inasmuch as the cross suit was brought on the 22nd day of February 1881, and the written statement in the other suit was filed earlier, the Company is not barred, nor precluded, from setting off the amount in the first suit. The second objection to the right of the Company is this. It is said the Company's claim is barred by their having obtained a decree in suit No. 699 of 1879, against Shoshee Coomar Gangooly. It is admitted that the aggregate sum for which the decree was obtained in that suit, is the same as is claimed in this suit, and made up of the same items. On these facts it is contended, though recovery was not obtained of the whole amount claimed, that the decree is a bar to the present suit. In support of this contention, *Kendal v. Hamilton L. R.*, 4 P. C., 504 and *Hemendro Coomar Mullick v. Rojendrolall Moonshee I. L. R.*, 3 Cal., 353; *Section c.*, 1 C. L. R., 488 were cited. But they do not bear on this case. In those cases the liability was a joint liability, and the recovery was against one of the persons jointly liable. There is no trace in this case of a joint liability, the claim against Shoshee Coomar Gangooly was as banian, and the claim against Lawless is as manager, and, as such, liable for sums which came to his hands. The liability was not joint, they are based on distinct contracts, one by Shoshee Coomar Gangooly as banian, and the other by Lawless as manager. The liability is distinct. The fact is, that money came to Shoshee Coomar Gangooly as banian, and the same money came to Lawless as manager. There is no ground for saying that the recovery of a decree in the former suit is a bar to the present suit, or to the Company's right of set-off. There

will have to be an account taken of the moneys which come to Lawless's hands, and the hearing of the two suits will be reserved till after the account has been taken.

[Art.89:--

Description of suit. Period of limitation. Time from which period begins to run.

By a principal against Three years When the account is, during the

his agent for moveable continuance of the agency, demand- property received by the ed and refused, or where no such

latter and not accounted for. demand is made, when the agency

terminates.]

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