APPELLATE CIVIL.

Before Gosain and Grover, JJ.

MESSRS THE RAJ SPINNING MILLS,—*Plaintiff-Appellant.*

versus

MESSRS. A. AND G. KING, LIMITED, RAGLAN MILLS, GIBSON STREET BRADFORD (ENGLAND),—*Defendant-Respondent.*

Regular First Appeal No. 237 of 1950.

1958

Feb., 21st

C. I. F. Contract—Incidents of—Vendor—Obligations of—Buyer—Whether bound to make payment on presentation of the documents.

Held, that in a C. I. F. Contract the vendor is bound to do certain things. First, to make out an invoice of the goods sold. Second, to ship at the port of shipment goods of the description contained in the contract. Third, to procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract. Fourth, to arrange for an insurance upon the terms current in the trade which will be available for the benefit of the buyer. Fifthly, with all reasonable despatch to send forward and tender to the buyer these shipping documents, namely, the invoice, bill of lading and policy of assurance; delivery of which to the buyer is symbolical of delivery of the goods purchased, placing the same at the buyer's risk and entitling the seller to payment of their price.

Held further, that in a C. I. F. Contract payment must be made on presentation of documents, and, if there is any breach of any term or condition or there is any excess in the charges, that can be agitated separately, but it is not open to the buyer to refuse to make payment. The buyer can make a claim for a refund of any excess charges later.

Johnson v. *Taylor Bros. and Company, Limited* (1), *Biddell Brothers* v. *E. Clemens Horst Company* (2), and *Urquhart Lindsay and Co.* v. *Eastern Bank, Ltd.* (3), relied on.

(1) 1920 A.C. 144.
(2) (1911) 1 K.B. 214.
(3) (1922) 1 K.B. 318.

First Appeal from the decree of Shri Mani Ram Khanna, Sub-Judge, 1st Class, Amritsar, dated the 11th July, 1950, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

A. M. SURI, for Appellant.

D. K. MAHAJAN and SHANKER NATH, for Respondent.

JUDGMENT

Grover, J.

GROVER, J. This appeal arises out of a suit for recovery of a sum of Rs. 30,000 filed by an Amritsar firm against an English Limited Company; the suit having been dismissed by the trial Court by its judgment, dated 11th July, 1950. The plaintiff and the defendant seem to have had business relations prior to November, 1946, and the plaintiff had opened a letter of credit through the Punjab National Bank, Limited, Amritsar, but the previous deal fell through, and actually on the 14th of November, 1946, the defendant wrote a letter, Exhibit D. 3, saying that the plaintiff's method of business was somewhat irregular and, therefore, business transactions would be discontinued.. But it seems that later on the parties decided to enter into another transaction. By means of a letter, dated the 26th of November, 1946, Exhibit D. 2, the Midland Bank, London, informed the defendant at Bradford that advice had been received from the Punjab National Bank, Ltd., Amritsar, issuing confirmed credit in its favour on account of Raj Spinning Mills to the extent of £ 13,000 valid until 15th March, 1947, and available by their drafts at sight accompanied by—

"Certified Invoice in three copies along with	Certificate of origin (form A) if
Shipped Bills of Lading in complete set to order	goods of British make. Insurance Policy of Certificate covering
and blank endorsed. "freight paid"	Marine and war risks.

Evidencing shipment of the under-mentioned goods by S. S. or M. V. from U.K. to Karachi Worsted Spinning Plant complete with Bobbins, wheels and all spares c.i.f. Karachi." Later on the proprietor of the plaintiff-firm himself went over to Bradford and bought one complete spinning plant for the sum of £ 12,000, and an agreement was also made with regard to the dismantling, packing, carriage, etc., of the plant; the entire transaction being evidenced by a letter addressed by the defendant to the plaintiff as follows:—

"Dear Sirs,

We beg to confirm the sale to you today of ONE complete Spinning Plant as per the enclosed inventory, for the sum of £ 12,000, where it stands. All charges for dismantling, packing carriage to port, marine insurance and freight, and dock charges to Karachi.

Please note that all charges over and above the price of the plant cannot be given exactly but these will be charged to you at Net Cost as per invoices received from the various people. The prices charged on the invoices are estimated as near as possible.

We would suggest Letter of Credit is made out to us for £ 14,500 against part shipment of machinery and sundry charges c.i.f., Karachi.

As the various invoices for packing, freight carriage, etc., are received by us we will then present these to the bank for payment. The same applies to the plant with regard to shipping documents.

We remain,
Yours faithfully,
X X X "

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A sum of £ 2,000 was paid by the plaintiff to the defendant by way of deposit. Along with this letter two other documents were attached giving the cost of the plant and the estimated removal charges, the total amount coming to £ 16,500. The first lot of ten cases containing parts of the machinery was despatched by the defendant and a sum of £ 1,320 equivalent to Rs. 18,000 was drawn on the plaintiff. This amount was paid to the defendant on the bank's delivering the documents to the plaintiff. Later on another sum of £ 250 was deposited by the plaintiff for the purchase of a boiler and engine from the defendant, but this contract was cancelled by mutual consent, and it was agreed that the aforesaid amount be credited towards the amount deposited by the plaintiff for the worsted spinning plant. The validity of the letter of credit was extended up to 30th June, 1947, and the amount of credit increased by £ 1,500, bringing the total to £ 14,500,—*vide* Exhibit D. 4. The validity date was further extended up to 31st August, 1947,—*vide* Exhibit D. 8. Thus the time for delivery was also extended up to 31st August, 1947. As already stated, the first lot was shipped, and, in accordance with the agreement, it was sent to Karachi. The second lot was also shipped to Karachi, the Bill of Lading being dated 30th June, 1947, which was forwarded to Midland Bank, Ltd., on 8th August, 1947. At the request of the plaintiff contained in the letter, dated the 19th June, 1947, the balance of machinery was shipped to Bombay; the third lot being shipped on 13th August, 1947, the Bill of Lading being dated 2nd August, 1947; and the fourth and final lot was shipped on 28th August, 1947, the Bill of Lading being dated 31st August, 1947. The plaintiff, however, did not take delivery of the second lot sent to Karachi, and the third and the fourth lots sent to Bombay, and instituted the present suit in January, 1948, for recovery of the

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sum of Rs. 30,000, on the allegations that the plaintiff had deposited £. 2,250 with the defendant and on being required to furnish the details of the costs incurred in packing, dismantling, rust-proofing and packing materials and carriage, etc., the defendant had failed to furnish the same as undertaken in the agreement and, therefore, a breach of contract had been committed by him with the result that the plaintiff was entitled to recover the amount paid as advance money apart from the loss and damage caused by failure to perform the contract. The defendant pleaded that the entire machinery had been despatched in four ~~lost in~~ lots accordance with the instructions of the plaintiff, the particulars of the despatches and the necessary documents having also been forwarded through the bankers. The defendant had also sent particulars of the cost of packing and dismantling, etc., and the plaintiff never raised any objection to that. It was asserted that the breach had been committed by the plaintiff and not by the defendant and, therefore, the suit was liable to dismissal. The trial Court framed the following issues:—

(1) Did the defendants commit the breach of the contract ?

(2) To what damages, if any, is the plaintiff entitled ?

It was found that the contract which was a c.i.f. contract had been duly performed by the defendant and that the necessary documents had also been tendered. The plaintiff's main contention that the invoices and details about the expenses incurred on the dismantling and packing charges had not been sent to him, as was required under the terms of the contract, was considered and the trial Court held that there had been non-compliance with the stipulation with regard to furnishing of details and invoices regarding the amount spent on dismantling

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and packing of the machinery, but the plaintiff was not entitled to the return of the amount, or to any amount by way of claim paid by him as part of the contract of purchase as such a non-compliance did not give the plaintiff a right to avoid the contract. The suit was consequently dismissed.

Mr. Anand Mohan Suri, who appears for the plaintiff-appellant, has referred to the relevant correspondence and has laid a good deal of emphasis on the condition in the contract that the various invoices for packing, freight, carriage, etc., as and when received by the defendant would be presented to the bank for payment as also the shipping documents. His contention is that the amount of £ 4,500 was only an estimate of the dismantling, packing and other charges, and as the plaintiff was liable according to the contract to pay only such charges as had been proved to have been actually incurred it was an essential term of the contract that all the relevant documents relating to aforesaid charges should have been forwarded before the plaintiff could be called upon to carry out his part of the contract and accept the goods. It is pointed out that the plaintiff kept on writing various letters to the defendant making such a demand. In particular, attention is invited to the letters, dated 22nd May, 1947, Exhibit D. 25, dated 4th September, 1947, Exhibit D. 13, dated 3rd October, 1947, Exhibit D. 11, the telegram received by the defendant on 12th October, 1947, Exhibit D. 10, the letter dated 11th October, 1947, Exhibit D. 9, and the letter dated 28th October, 1947, Exhibit D. 8, in which repeated demands were made for all the bills and invoices pertaining to the dismantling, packing, transport, freight and other charges. On the 30th of October, 1947, the defendant wrote a letter, Exhibit D. 7. giving an account of what is stated "claims against

letter of credit". In this letter the cost of packing cases and packing, cost of dismantling, etc., were separately stated. The plaintiff wrote a letter, dated 4th November, 1947, Exhibit D. 6, in which no reference seems to have been made to the defendant's letter of 30th October, which probably might not have reached by then. In this letter also it was reiterated that a statement of account giving the dismantling, packing, transport, freight and other charges had not been sent nor the copies of bills and invoices pertaining thereto had been made available. It was requested that the aforesaid papers be sent at the earliest. Mr. Suri has further referred to the evidence of Harry King, the Managing Director and Secretary of the defendant-company, and that of his son Gordon King, and of Mrs. Vera Bentley, the Secretary of Harry King, and has criticised the same. Harry King in answer to question No. 257 stated that the defendant had undertaken to present the invoices as and when they were presented to the defendant-company showing the net cost of dismantling, packing and other charges. When asked as to why no information was sent about the same to the plaintiff and as to why the original documents were not sent, he stated that the dismantling and packing, etc., had been carried out by the defendant and for that reason the same had not been sent (answer to question No. 259). One matter in particular seems clear from the evidence of Mrs Vera Bentley. Certain work had been got done by other firms and there were invoices relating to those items, e.g., Messrs Fletcher Bolton had been paid £ 470-18s-2d. There were other similar invoices. With regard to the item of £. 240, which had been included in the account under the heading of packing in the letter, dated 30th October, Mrs. Bentley stated that it had originally been included as estimated payment to Messrs Boards

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and Cases, but it was admitted that this payment in fact had never been made (*vide* questions Nos. 1083 to 1089). Thus there can be no doubt that although certain work, so far as dismantling and packing was concerned, might have been got done by the defendant-company through its own employees, but other work had been done and expenses incurred for which payment had been made to other firms and for which invoices were in existence. These invoices could have been sent and ought to have been sent as was being demanded by the plaintiff. Admittedly the sum of £. 240 also was included in the final account although that item of expense could not validly have been so included. But the essential question is whether a breach of the term relating to despatch of these invoices, etc., could entitle the plaintiff to repudiate the contract. According to Mr. Suri the stipulation in the contract with regard to this matter was a condition within the meaning of section 12(2) of the Indian Sale of Goods Act, 1930, and its breach gave rise to a right to treat the contract as repudiated. He has laid emphasis on the rule that in construing mercantile contracts it must be assumed that every clause in it was inserted by the parties for some good purpose and with some definite meaning as merchants are not in the habit of inserting stipulations to which they do not attach value and importance *Adam Haji Peera Mohamed Ishack v. Sakavath Hussain Akbari* (1). It is urged that it was absolutely essential for the plaintiff to know and be satisfied about the exact cost of dismantling, packing, etc., as he was not liable to pay any estimated charges but only the actual cost incurred by the defendant and the latter was bound to satisfy him by production of relevant invoices and details with regard to the same, and that he was entitled to refuse to accept the consignments in case excess amount was being demanded

(1) A.I.R. 1923 Mad. 103.

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Reliance for this purpose has been placed on M.R. *Mehta and Co.* v. *Joseph Heureux* (1). In that case it has been laid down that with regard to goods shipped on c.i.f. terms where documents are sent to a bank to be delivered on acceptance of the draft, the property in the goods does not pass to the buyer until the draft is accepted. In such cases, however, the draft should not include amounts which may be due to the consignor from the consignee on other accounts. In that case a sum of 15s. only had been included wrongly and the defendants had objected to its payment, and it was held that the defendants were entitled to refuse to accept the draft as it did not comply with the terms of the contract. It is submitted that clearly at least the sum of £ 240 had been included by the defendant which admittedly could not have been charged from the plaintiff, and, therefore, he was within his rights in not accepting the goods and making the payment.

Mr. Daya Kishan Mahajan submits on behalf of the defendant that on a true construction of the contract it could not be said that the term with regard to the sending of various invoices for packing, freight, etc., as also with regard to dismantling, was a condition within the meaning of section 12(2) of the Indian Sale of Goods Act, 1930. He says that the contract was with regard to the machinery which had been sold at the spot and the undertaking with regard to sending it after getting the plant dismantled was only a subsidiary one for the facility and convenience of the plaintiff and the same could not be regarded to be the main purpose of the contract. It was open, in spite of the above terms, to the plaintiff to get the dismantling done through any other agency if he so wished and at the most such a term might fall within the meaning of the expression "warranty", but neither

(1) A.I.R. 1924 Bom. 422.

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on principle nor on authority it could be characterised as a condition. It is then urged that assuming the aforesaid term was a condition, the plaintiff could not now be heard to say that it was so in view of the terms of section 13 of the Sale of Goods Act. The contract of sale was not severable as it related to the plant as a whole and as the property had passed to the plaintiff the breach of the aforesaid condition could be only treated as a warranty as the goods had been accepted in part, the plaintiff having taken delivery of the first lot and paid for it. Mr. Mahajan has laid stress on the fact that according to the letter dated 30th January, 1947, which was the sole repository of the terms of the contract, the sale had been made of the complete spinning plant "where it stands". This meant that the sale was complete and property had passed to the plaintiff. Reliance is placed on section 20 of the Indian Sale of Goods Act, which relates to the passing of specific goods in a deliverable state. On the other hand Mr. Suri relies on section 21 according to which property does not pass until the seller does what he is bound to do to the goods for the purpose of putting them in a deliverable state and the buyer has notice thereof. Mr. Mahajan further refers to section 34 of the Act which provides that a delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of part of the goods with an intention of severing it from the whole, does not operate as a delivery of the remainder. It seems that there is a good deal of force in the contentions canvassed on behalf of the defendant with regard to the passing of property. But it is unnecessary to finally decide this point as the position seems to be quite clear on another point which has been raised by Mr. Mahajan. It is urged that there are two peculiar conditions with regard

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to the nature of the contract in question: (1) it was a c.i.f. contract and, in such a contract, payment must be made on presentation of documents, and, if there is any breach of any term or condition, that can be agitated separately, but it is not open to the buyer to refuse to make payment, (2) the incidents of a transaction carried out by means of opening of a letter of credit are quite different. In *Johnson* v. *Taylor Bros and Company, Limited* (1), Lord Atkinson laid down the well-known rule containing the incidents of a c.i.f. contract. According to this rule "the vendor is bound by his contract to do six things. First, to make out an invoice of the goods sold. Second, to ship at the port of shipment goods of the description contained in the contract. Third, to procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract. Fourth, to arrange for an insurance upon the terms current in the trade which will be available for the benefit of the buyer. Fifthly, with all reasonable despatch to send forward and tender to the buyer these shipping documents, namely, the invoice, bill of lading and policy of assurance, delivery of which to the buyer is symbolical of delivery of the goods purchased, placing the same at the buyer's risk and entitling the seller to payment of their price." In *Biddell Brothers* v. *E. Clemens Horst Company* (2), a c.i.f. contract came up for consideration. The buyer contended that he was not bound to pay for the goods until their arrival at the destination and a reasonable opportunity had been allowed for examination to see if they were in conformity with the contract. It was held that the seller was entitled to payment against shipping documents upon delivery of goods on board ship at the port of shipment, the buyer's right to reject the goods remaining unimpaired if upon arrival they were found

(1) 1920 A.C. 144.
(2) (1911) 1 K.B. 214.

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upon examination not to be in conformity with the contract. At page 220, Hamilton, J., observed—"Such terms constitute an agreement that the delivery of the goods, provided they are in conformity with the contract, shall be delivery on board ship at the port of shipment. It follows that against tender of these documents, the bill of lading, invoice, the policy of insurance, which completes delivery in accordance with that agreement, the buyer must be ready and willing to pay the price." In Exhibit D. 2, which relates to the letter of credit, the only documents that are mentioned are those which have already been mentioned before and there is no mention at all of invoices, etc., relating to dismantling, packing and other charges. It is clear from the evidence of P.W. 3, the Manager of the Punjab National Bank, who were the bankers of the plaintiff, that all these documents were duly sent. It is true that P.W. 4, the plaintiff, stated that the Putlighar Branch of the Bank, did not present the bills of lading, invoices, certificates of insurance, etc., but this seems to be a lame excuse as the main Branch of the Bank at Amritsar, namely, the Hall Bazar Branch, did receive these documents as has been admitted by P.W. 3, the Manager, and it is difficult to believe that these documents could not be forwarded to the smaller branch of Putlighar for being presented, if required. It must, therefore, be held that the plaintiff was bound according to the contract to make payment on presentation of the documents. In England the rule has been accepted that in such contracts the buyer is taken, as between himself and the banker, to accept the seller's invoices as correct and any adjustment, if claimed, must be made by way of refund by the seller later (*Urquhart Lindsay and Co.* v. *Eastern Bank, Ltd.* (1). In that case the plaintiffs had entered into a contract with buyers in Calcutta to manufacture

(1) (1922) 1 K.B. 318.

and ship machinery by instalments over several months at agreed prices, but subject to a stipulation that should the cost of labour or wages increase, there should be a corresponding increase in the purchase price. The buyers were to open a confirmed irrevocable credit in favour of the plaintiffs with a bank in England, and to pay for each shipment as it took place. Two instalments were shipped and payments were received under the letter of credit. The buyers then considered that the invoices included some increase in the purchase price, and they refused to pay the bill presented on the next shipment. The plaintiffs cancelled the contract claiming damages from the defendants. It was held that the credit being irrevocable, the refusal of the defendants to take and pay for the particular bills on presentation of the proper documents constituted a repudiation of the contract as a whole, and that the plaintiffs were entitled to damages so reckoned. It was observed by Rowlatt, J.—".....the defendants undertook to pay the amount of invoices for machinery without qualification, the basis of this form of banking facility being that the buyer is taken for the purposes of all questions between himself and his banker or between his banker and the seller to be content to accept the invoices of the seller as correct." Halsbury's Laws of England, Volume II, contain the following statement at page 217:—"A banker issuing an irrevocable credit or a confirmed credit usually under takes to honour drafts negotiated, or to reimburse in respect of drafts paid, by the paying or negotiating banker, and is thus in the hands of the beneficiary binding against that banker. The credit contract is independent of the sales contract on which it is based, unless the sales contract is in some measure incorporated." The credit contract in this case covered only such documents as were mentioned in Exhibit D. 2, and,

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therefore, the bills sent along with such documents were bound to be honoured, and as has been laid down in *Urquhart Lindsay and Co.* v *Eastern Bank, Ltd* (1), the plaintiff was not entitled to refuse to carry out his part of the contract, and if he had any complaint on account of any excess in the charges made for dismantling, packing, etc., it was open to him to make a claim for a refund of any such charges. In the present case it would be quite legitimate to say that the Midland Bank which had advised the defendant about the credit, *vide* Exhibit D. 2, was the agent of the plaintiff and was, therefore, bound to make payment as soon as the proper documents mentioned in the aforesaid letter were presented which indeed has been proved to have been done. As a matter of fact the payments had been made to the defendant by the Midland Bank, but because the plaintiff had refused to make payments of the drafts, the Midland Bank recovered back all the payments made in terms of certain indemnity agreements executed by the defendant.

As a result of what has been stated above, the decision of the trial Court must be affirmed. The appeal is, therefore, dismissed. As the defendant had included a sum of £. 240 in the amount which was being demanded from the plaintiff, which could not legally be done, the defendant will not be entitled to costs in this Court.

B. R. T.

legislature—How to be gathered—Suit for accounts by a principal against the legal representatives of his agent—Whether competent—Burden of proof—On whom lies.

Held, that Article 89 of the Indian Limitation Act applies to suits for accounts not only between the principal and the agent but also between their legal representatives.

Held, that the intention is to be judged from all the provisions of a statute taken together and anomalous results have always to be avoided. The Limitation Act does nowhere make any separate provision for a suit by or against the legal representatives of a person entitled to any right or subject to any obligation. That ought to be taken to be included in the provisions with respect to the latter, if under the law the right or obligation subsists and the suit by or against the legal representatives is competent.

Held, that a suit for accounts will lie against the representatives of the agent with the difference that the burden of proof will be upon the plaintiff to establish the case. The plaintiff in such a case must prove that each item was actually realized by the agent and that it was not accounted for or paid to the principal.

Appeal under clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Dulat in S.A.O. No. 3 of 1953 (Dehru, etc. v. Jagir Singh), *dated the 3rd July, 1953, reversing the order, dated 17th January, 1953; passed by Shri Shiam Lal, Senior Sub-Judge, Jullundur, with enhanced appellate power who reversed that of Shri Inderjit Pipat, Sub-Judge, IV Class, Jullundur and dismissing the plaintiffs suit.*

K. C. NAYAR and HARKISHANLAL JANDAL, for Appellant.

H. R. SODHI, for Respondents.

JUDGMENT.

CHOPRA, J. The only point involved in this Letters Patent Appeal is one of limitation. The facts which are not disputed before us are these: Chopra, J.

Jagir Singh, appellant appointed one Nathu his *mukhtar-i-am* (general attorney), on 15th October,

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1937. Leaving Nathu to manage his affairs and look after his property in India, Jagir Singh, appellant proceeded to Singapore in 1937. He returned from there in January, 1951. Nathu, his attorney, had died on 25th May, 1945, without rendering accounts for the moneys realised by him on behalf of the appellant in his absence. The appellant asked Dheru and others, respondents, the legal-representatives of Nathu, to render accounts and to deliver the documents relating to his property. This having been refused the present suit for the said purpose was instituted against the legal representatives on 1st May, 1951. A preliminary objection with regard to limitation was raised by the defendants. It was contended that the suit was governed by Article 89 of Limitation Act and the same having been instituted more than three years after Nathu's death, when the agency terminated, was barred by time. The trial Court decided the issue against the defendants, holding that the suit was governed by Article 120, and passed a preliminary decree in favour of the plaintiff. On appeal by the defendants, the District Judge agreed with the finding that Article 120 applied and that the suit was within time. However, the preliminary decree was set aside on some other grounds and the case remanded for fresh decision after framing of further issues on merits. The defendants preferred a second appeal which was heard and accepted by a learned Single Judge of this Court. The learned Judge is of the view that the suit, though not brought against the agent but against his legal-representatives, is covered by Article 89 and having been instituted more than three years after the termination of the agency on the agent's death was barred by time. This is an appeal by the plaintiff under the Letters Patent.

The only question that has to be determined is whether the case is governed by Article 89 of

Schedule I of the Limitation Act. If it is, the suit would certainly be barred by time; for the limitation of three years under the Article began to run on the death of Nathu on 25th May, 1945, when the agency terminated. On the other hand, if the Article does not apply, the suit would be governed by the residuary rule of limitation of six years under Article 120 and would be well within time. Article 89 of the Limitation Act, says—

Description of suit	Period of Limitation	Time from which period begins to run
By a principal against his agent for movable property received by the latter and not accounted for	Three years	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates

The present is certainly a suit by a principal for movable property received by the agent and not accounted for. By virtue of the provisions of section 201, Contract Act, the agency terminated on the death of the agent and that gave rise to a cause of action to the plaintiff and would be the starting point of limitation under the Article. The only point that remains to be seen is whether the present suit by the principal can be regarded as one "against his agent".

According to the appellant the term "agent" used in the Article does not include legal-representatives of a deceased agent and, therefore, the Article is inapplicable. The argument is that if that were the intention of the legislature, it would have been so declared in section 2 relating to "definitions", as it is done in the case of "applicant", "plaintiff", and "defendant". In section 2(4) "defendant" is laid down to include any person

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from or through whom a defendant derives his liability to be sued. Similarly, "applicant" and "plaintiff" are declared to include any person from or through whom he derives his right to apply or sue. To me the contention appears to be without force.

The explanatory definitions of the particular terms in section 2 afford no indication that "agent" in Article 89 was not intended to include the legal-representatives of a deceased agent. Context of the provisions where the terms "plaintiff" and "defendant" occur shows that the explanation was absolutely necessary; otherwise the provisions would have led to absurd results. For instance, section 14 provides that in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting another civil proceeding shall, under the specified circumstances, be excluded. The benefit is not to be denied to the plaintiff if the prior proceeding was prosecuted by a predecessor-in-interest of the plaintiff. Under Articles 90, 91, 92, 94, 95, 96 and 114 of the First Schedule, limitation begins to run when the particular fact giving rise to the cause of action becomes known to the plaintiff. The explanation was necessary for the purpose of impressing that knowledge of that fact of the person from or through whom the plaintiff derives his right to sue would also give a start to the period of limitation. No such explanation was needed in the present case. It is not the case of a predecessor-in-interest but is one of a successor-in-interest. The successor is generally liable to the obligations and responsibilities incurred by the person he succeeds, at least to the extent of the assets to which he has succeeded. He should, therefore, be deemed to be included in the provisions with respect to his predecessor-in-interest, The definition of "defendant" in sub-

section (4) of section 2 rather lends support to this intention of the legislature.

The intention is to be judged from all the provisions of a statute taken together and anomalous results have always to be avoided. The Limitation Act does nowhere make any separate provision for a suit by or against the legal-representatives of a person entitled to any right or subject to any obligation. That ought to be taken to be included in the provisions with respect to the latter, if under the law the right or obligation subsists and the suit by or against the legal representatives is competent. To accept the appellant's contention would mean that every suit by or against the legal representative would fall under the residuary Article 120. The proposition cannot be readily accepted. Undoubtedly, a suit for accounts brought against an agent can be continued against his legal representative after his death and it would still be governed by Article 89. Again, if an agent dies after the termination of the agency and a suit for accounts is brought against his legal-representative, the limitation will be counted fom the date when the agency terminated: the death of the agent will not furnish any fresh cause of action against the legal-representative. There seems to be no reason why the matters should be different when the agency terminates on the agent's death and the suit is brought against the legal-representative.

If "agent" in Article 89 were not to include legal representatives of a deceased agent, the Article would also have no application to a suit of the description mentioned in the Article brought by the legal representatives of a deceased "principal". Article 89 was held to be applicable to such a case by their Lordships of the Privy Council in

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Nobin Chandra Barua and others v. *Chandra Madhab Barua* (1). A suit for accounts brought by the legal-representatives of a deceased principal was held to be governed by Article 89 and not to fall under the residuary Article 120 in a number of decisions of the Calcutta High Court *Mohendra Nath Ghose* v. *Jadu Nath Mullik* (2), *Sarashibala Dasi* v. *Chuni Lal Ghose* (3), and *Bikram Kishore Manikya* v. *Jabab Chandra Choudhury and others* (4). A contrary view that Article 89 is not applicable to a suit brought not against the agent but his representatives had, however, been taken by the same court in *Kumeda Charam Bala* v. *Asutosh-Chattopadhyaya* (5). The reasons for arriving at this conclusion in the case were considered in a decision of the Madras High Court in *Appa Rao* v. *Subba Rao* (6), and it was observed—

> "It was faintly suggested on the authority of the case in *Kumeda Charan Bala* v. *Asutosh-Chattopadhyaya* (5), that as legal-representatives are not mentioned in Article 89, that article can have no application to a suit like the present. That in my view, is distinctly overruled by the case in *Arunachelam Chetty* v. *Raman Chetty* (7), and it is pointed out by Mr. Varadachariar that there are many articles which would be reduced to absurdity if this contention were applied to them, for instance Articles 78 and 79. The column under which these articles appear is headed 'description of suit'. To my mind the omission of any mention of legal-representatives in the

(1) A.I.R. 1916 P.C. 148.
(2) 3 I.C. 684.
(3) A.I.R. 1922 Cal. 53.
(4) A.I.R. 1935 Cal. 817.
(5) 16 I.C. 742.
(6) A.I.R. 1927 Mad. 157.
(7) 27 I.C. 807.

word under 'description of suit' does not mean that the article is not intended to apply to a suit against the legal representatives in order to let in Article 120."

This view was accepted as the correct view and followed in *Bikram Kishore Manikya* v. *Jadab Chandra Choudhury and others* (1), and it was reiterated that the omission of any mention of legal representatives in the words under "description of suit" in Article 89 does not mean that the article is not intended to apply to a suit against the legal representatives.

Suits by the payee or acceptor of a bill of exchange against the drawer and by a surety against the principal debtor or co-surety are provided for in Article 78, 79 and Articles 81, 82 of the 1st Schedule of the Limitation Act. Similar provisions are also made in a number of other Articles. In all these, it is difficult to believe that legal-representatives of either party were not intended to be included and the suit by or against tnem is to be governed only by the residuary Article 120.

The latest decision on the point referred to at the bar is *Deorao Zolba* v. *Laxmansingh Bania* (2), This was a suit for accounts brought by the principal against the legal-representatives of his deceased agent. The suit was instituted more than three years after the agent's death. The Courts below following the rule laid down in *Rao Girraj Singh and others* v. *Rani Raghubir Kunwar* (3), had rejected the suggestion that Article 89 was

(1) A.I.R. 1935 Cal. 817.
(2) A.I.R. 1943 Nag. 227.
(3) 31 All. 430.

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applicable. Bose, J., did not find favour with this view and observed—

> "That, however, overlooks the definition of 'defendant' given in section 2(4), Limitation Act, which is in these words: 'Defendant' includes any person from or through whom a defendant derives his liability to be sued. Applying that definition here, it is clear that Article 89 would apply assuming that this is a case of agency."

The decisions relied upon by Mr. K. C. Nayar, learned counsel for the appellant, have all been considered and distinguished or dissented from in most of the cases referred to above. The earliest decision of the Punjab Chief Court on the point is *Seth Chand Mal* v. *Kalian Mal* (1). In this case, the plaintiff sued on the allegations that one Sais Mal who was his agent and as such agent held his (plaintiff's) property for which he was accountable, died on 24th December, 1880, without accounting, that the balance on that date in plaintiff's favour stood as Rs. 3,700 and that the defendant, his son, was in possession of the property of the deceased Sais Mal. The plaintiff also desired that an account might be taken of the amount recoverable by him and a decree be made for that amount in his favour. The suit was instituted on 14th December, 1883. As regards the objection on the ground of limitation, it was held:—

> "The suit having been brought within three years from the date of the agent's death was within time, whether it was governed by Article 62 of the 2nd Schedule of the Limitation Act, being a suit for money received by the defendant in

(1) 96 P.R. 1886.

the suit to the use of the plaintiff, the date of such receipt being certainly within three years of suit, as the money was not received by defendant till after the death of S. M.; or whether Article 120 applied, in which case the suit was undoubtedly within time."

Reference to Article 89 was also made and with respect to it Plowden, J., no doubt observed that the terms of the Article show it to be inapplicable to a case where the agency is terminated by death. However, the decision did not rest on the point. The learned Judge, concluded the objection regarding limitation with the observation—

"There remains the question of limitation, I think it is clear that whatever provision of the Limitation Act applies to this suit, it is not barred by time, being within three years from the date of the agent's death."

In another case of the Punjab Chief Court, Mus*sammat Fatma* v. *Mussammat Imtiazi Jan* alias *Chuni Jan and others* (1), also, the suit for accounts against legal-representatives was instituted within three years of the agent's death. The plea taken up by the defendants was that the accounts were demanded and refused by the agent during the pendency of the agency and, therefore, the suit was barred under Article 89. The plea was rejected on the ground that refusal of an agent to render accounts mentioned in Article 89 must be an express refusal on a definite date and not merely a virtual refusal to be inferred from the omission or failure on his part to fulfil a promise made by him to render the account to the principal, in answer to a demand by the latter, and that no such refusal

(1) 1. P.R. 1912.

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was proved in the case. Article 120 was found to be applicable on the basis of the decision in Seth *Chand Mal* v. *Kalian Mal* (1).

Gurudas Pyne v. *Ramnarain Sahu* (2) is a case decided under the Limitation Act of 1871. The corresponding Article 90 of that Act was differently worded and the time therein ran from the date "when the account was demanded and refused". Tne Article did not contain any provision with respect to the start of limitation on the termination of the agency, in case no such demand was made. Moreover, as already noticed, the later decisions of the Calcutta High Court have taken the contrary view that Article 89 is the appropriate Article applicable in such cases.

The last decision relied upon by Mr. Nayar is *Rao Girraj Singh and others* v. *Rani Raghubir Kunwar* (3). This was a suit against the legal-representatives to recover the money from time to time withdrawn by the deceased agent from the chest of his principal's estate and placed in the chest of his own estate, without adjusting the same in the accounts. Properly construed, the suit was not for accounts but one for recovery of a specified sum of money. An earlier suit brought against the agent ended in a compromise, the fresh suit against the legal representatives was instituted because of the violation of the terms of the compromise. In view of the peculiar facts of the case, Article 120 was held to be applicable and the suggestion of the defendants that either of the Articles 57 or 62 or 89 applied was turned down. Application of Article 89 was ruled out simply by saying, without giving any reasons,

(1) 96 P.R. 1886.
(2) 10 Cal. 860.
(3) 31 All. 430.

that the defendants were not and never were the agents of the plaintiff.

It is thus clear that none of these cases is really helpful to the appellant. On the other hand, there are a number of decisions which support my view that Article 89 applies to suits for accounts not only between the principal and the agent but also between their legal-representatives.

Lastly, it was faintly submitted that a suit for accounts was not competent against the representatives of the agent. No such objection on behalf of the defendants was taken in any of the Courts below, it cannot be raised for the first time in this appeal. In fact, it has throughout been admitted that the present is a suit of the description giving in column (1) of Article 89, except that the suit is not against the agent but against his legal-representatives. Moreover, the general trend of opinion now is that a suit for accounts will lie against the representatives of the agent with the difference that the burden of proof will be upon the plaintiff to establish the case. The plaintiff in such a case must prove that each item was actually realised by the agent and that it was not accounted for or paid to the principal. *Prem Das* v. *Charan Das* (1), *Sree Rajan Parthasaradhi Appa Roa* v. *Subba Rao and others* (2), *Girjabai Shivdeorao Vinchurkar* v. *Narayan Rao Gurpatrao Vinchurkar* (3), *and Lal Singh* v. *Jiwan Ram* (4).

For all these reasons, I do not see any force in this appeal and would, therefore, dismiss it with costs.

BHANDARI, C. J.—I agree.

B.R.T.

(1) A.I.R. 1929 Lah. 362.
(2) A.I.R. 1927 Mad. 157.
(3) A.I.R. 1925 Bom. 148.
(4) A.I.R. 1928 Nag. 256.