

(1926) 03 MAD CK 0046
In the Madras High Court

Pootheri Illath Kuttikrishnan Nair, Proprietor, Malabar Tile Works

APPELLANT

Vs

Kallil Appa Nair and Another

RESPONDENT

Date of Decision : 22-03-1926

Acts Referred:

Contract Act, 1872 — Section 233

Citation : (1926) ILR (Mad) 900 : 97 Ind. Cas. 475 : (1926) 24 LW 451 : (1926) 51 MLJ 311

Judgement

1. In this case a point of some little interest arises because the plaintiff on a contract for supply of timber sued two defendants, the first of whom he alleged to be the principal and the second he alleged carried the transaction through. What the learned Judge has done is to give judgment against

both of them. In my opinion that cannot be done. The liability of principal and agent is not joint but alternative see *Morel Bros and Go., Ltd. v. The*

Earl of Westmorland (1904) A C 11 which really confirms the very careful examination of the subject in the judgment of the Master of the Rolls in

the Court below. Now it is said that the English Law has been altered by Section 233 of the Indian Contract Act together with its illustration. The

section runs:

In. cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable

and then the illustration is,

A enters into a contract with B to sell him 100 bales of cotton and afterwards discovers that B was acting as agent for C. A may sue either B or C,

or both, for the price of the cotton.

2. In my opinion the wording of that section is very unfortunate because it gives

rise to the argument and doubt as to whether it was not intended in cases of principal and agent to create by this section a joint liability in the action and that the section must be construed as meaning that he may get judgment against both of them on one and the same transaction. In my opinion that is so utterly contrary to all accepted principles of law that it cannot be right and I have come to the conclusion that what the section means is that the person dealing with the principal through the agent may at his election sue either or he may sue both of them alternatively in a case where he is not sure whom, his exact remedy is against; but I am quite clear on this point that the section can only be construed as meaning that he may sue both principal and agent in the alternative and that he cannot get judgment against both of them jointly for the amount sued for. That would be to turn a liability which is clearly mutually exclusive into a joint liability, and, as pointed out by the House of Lords, the liability of an agent and principal cannot be joint. The whole conception of the law of principal and agent excludes all idea of joint liability. The plaintiff in this case has elected, if he is forced to his alternative, to keep his judgment against the principal and let that against the agent go. There was evidence on which the learned Judge could find that the principal was liable in this case and the result will be that the decree will be modified by striking out that part which inflicts liability upon the agent and retaining that part of it which inflicts liability on the principal. It is quite true that the person who complains is the principal and the principal only and that he has failed; but I shall not give any costs in this Court because I think that the creditor invited this appeal by taking judgment against both principal and agent. So this Civil Revision Petition is dismissed without costs.