

Sohrabji Dhunjibhoy Medora and another - - - *Appellants*

*v.*

The Oriental Government Security Life Assurance  
Company, Limited - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 10TH OCTOBER, 1945

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*Present at the Hearing :*

LORD THANKERTON

LORD GODDARD

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

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This is an appeal from a decree dated 18th November, 1943, made by the High Court of Judicature at Bombay in its appellate jurisdiction affirming a decree dated 14th April, 1943, of the same Court passed in its ordinary original civil jurisdiction. In the suit the appellants who were plaintiffs claimed damages against the respondents for breach of contract. Both Courts in India held that the contract between the parties was terminable by the respondent on reasonable notice and that in the circumstances of the case two years' notice was a reasonable notice and accordingly that the notice of 3½ months by which the respondents had purported to terminate the agreement was not reasonable; and damages were awarded to the plaintiffs on that basis. On a counter-claim judgment was given for the respondents.

Before their Lordships' Board the appellants have raised five questions:—

(1) Whether the contract under which the appellants were employed as agents for the respondents was terminable by the respondents on giving reasonable notice. The appellants maintain that it was not so terminable.

(2) If the said contract was terminable by reasonable notice, whether two years was a reasonable notice, the appellants maintaining that the notice should be a three years' notice.

(3) Whether under the terms of the said contract the appellants were entitled to commission on renewal premiums on life policies effected through their agency after the termination of their appointment.

(4) Whether the appellants were entitled to commission on renewal premiums under the provisions of the Insurance Act (Act IV of 1938) after the termination of their appointment.

(5) Whether the appellants were entitled to retain and cash a cheque for Rs.75,000 sent to them by the respondents with a request that they should sign and return a certain form of receipt, although they did not sign or return the said form of receipt.

This last question was raised by the counter-claim, and their Lordships may say at once that they agree with the views of the High Court that the appellants could not retain the sum of Rs.75,000 without complying with the conditions on which it was sent. This question was not seriously argued, and their Lordships need say no more about it. The amount will be set off against any damages due to the plaintiffs.

The contract between the parties was contained in certain letters which passed between them or their predecessors in the years 1892, 1899, and 1917.

In the year 1892 the respondents who were then, and still are, a company registered in Bombay under the Indian Companies Act carrying on business of life insurance, were minded to appoint one D. J. Medora, the father of the present appellants, who carried on business in the name of D. J. Medora & Co. as agent of the respondents for the district of Gujarat. There is no dispute about the area covered by the agency from time to time, but it may be noticed that such area was subsequently extended to embrace Kathiawar and Cutch, so that the area was extensive and could only be worked by the employment of a large number of sub-agents and canvassers. After considerable correspondence terms were agreed, and the only terms which are in question in this appeal are as to the duration of the agency, and the right to commission on renewal premiums after the termination of the agency. On these two points two letters comprised in the 1892 series are material. On the 6th July, 1892, D. J. Medora wrote to the respondents agreeing to accept the agency, though regretting that the terms were not more generous, but stating that his acceptance was subject to a clear understanding on two points, the second of which was

“(2) that the premium of persons assured through my agency should be always subject to my commission so long as they remained within the province of Gujerat whether the premium be remitted through my offices or direct.”

The manager of the respondents replied to that letter on the 9th July in the following terms so far as material:—

“With reference to the two conditions you now mention I see from our letter of the 18th ultimo that the first has been already disposed of. As the second goes further than was contemplated in ours of the 28th ultimo I would add that we have no objection to agree to it as now put.

I accordingly have pleasure in formally appointing you Chief Agent for Gujerat. The Agency would stand in the name of D. J. Medora & Co. but as already explained you alone would be our recognised agents and would be solely responsible. On your retiring or otherwise discontinuing the work the agency would cease and your partner would have absolutely no claim thereunder.”

On the 9th February, 1899, D. J. Medora wrote to the respondents a letter containing the following passages:—

“While going through the old papers of the terms of our Agency we came across a passage, a copy of which is herewith attached, and it startled us immensely. Up to now we had no idea of such a passage and when we now try to think over it we find it very discouraging and is likely to keep us back from sacrificing our money every year for furthering the business of the Company for, it appears that any day our pains and expenses would come to nothing. . . .

Mr. D. J. Medora is, although his name is connected with the Agency, already from our standpoint, a retired member of the firm so far as the Oriental Life Business is concerned, which is managed by other members. That under such circumstances the other members of the firm or his sons (now minors) should be deprived of the advantage expected to be derived from the sacrifice of our money and from the pains now taken for increasing the business is a serious anomaly.

We beg therefore the favour of your being so kind as to cancel the paragraph above referred to and to replace the same by the words ‘The firm of Messrs. D. J. Medora & Co. should, so long as it stands, have all the rights of the existing Agency whether managed by partners or by Mr. D. J. Medora’s sons.’”

It is admitted by Counsel both for the appellants and the respondents that the passage a copy of which was said to be attached to the last mentioned letter, was the passage already quoted from the letter of the 9th July, 1892, saying that the agency would cease on D. J. Medora retiring or otherwise discontinuing the work, and that his partners would have no interest.

In a further letter dated 7th March, 1899, D. J. Medora suggested to the respondents that the following men might be admitted as partners for D. J.

Medora in their Life Assurance business and recognised as such by the Company:—

- (1) Mr. Dhunjibhoy Jamsetji Medora,
- (2) Mr. Cawasji Hirjibhoy Medora,
- (3) Mr. Phirozshaw Dhunjibhoy Medora.

On the 13th March, 1899, the manager of the respondents replied to these letters stating that the respondents had pleasure in agreeing to cancel the passage in the letter of appointment to which Mr. Medora objected and they went on to state: "From this date we therefore acknowledge the following as our agents working under the title of D. J. Medora & Co.:—

Mr. Dhunjibhai Jamsetji Medora.

Mr. Cowasji Hirjibhai Medora.

Mr. Pherozeshaw Dhunjibhai Medora.

It is of course understood that the agency hold themselves bound by the conditions of our agents institution so far as they have not been altered by letter and that arrangements or conditions with the exception of this concession remain as before."

D. J. Medora died in the year 1899. By 1917 one of the two other agents had retired, and the other had died, and in April of that year D. J. Medora's widow asked the respondents to recognise the appellants, who were the sons of herself and the said D. J. Medora and were then aged respectively 24 and 21, as the respondents' agents.

On the 19th April, 1917, the manager of the respondents wrote a letter in the following terms so far as material:—

"I duly received a letter of the 16th instant signed by Mrs. Kharshedbai D. Medora intimating it was desired that Mr. Sorabjee Dhunjibhoy Medora and Mr. Jamshedjee Dhunjibhoy Medora should be acknowledged as partners in the firm of D. J. Medora & Co., and I have to advise you that at yesterday's Board Meeting sanction was given to these two sons coming into the firm as partners in connection with our Agency. It is understood that both will give their full time to the Agency doing all in their power to keep up to past records and that they will make every endeavour to increase the business by opening fresh connections throughout every part of the large district under the Agency control."

On the question as to the duration of the agency, Mr. Sellers for the appellants contends that in 1892 when the agency started it was clear to the parties, as the correspondence shows, that the building up of the agency business would involve the expenditure of much time and money by the agent, and that it cannot be supposed that D. J. Medora would have agreed to his agency being terminable by notice, so as to enable the respondents at any time to appropriate the goodwill of the business which he had built up. He contends that the letter of the 9th July, 1892, shows that the appointment of D. J. Medora was for his life or so long as he continued in business, and that a corresponding term must be deemed to have been imported into the appointment of subsequent agents. Their Lordships think there is some force in the contention that the original appointment was to last for the life-time of D. J. Medora if he so long continued in business, and that it could not have been determined by notice, but they are quite unable to accept the view that the appointment of subsequent agents was for the life-time of those agents. It will be noticed that the respondents' letter of the 13th March, 1899, cancelled the passage in the letter of the 9th July, 1892, under which D. J. Medora might have claimed an agency for his life-time, and nothing whatever was said in the letter of the 13th March, 1899, about the duration of the new agency, the suggestion of D. J. Medora that it should last so long as the firm of D. J. Medora & Co. stood being ignored. Nor was anything said about the duration of the agency when the appellants were appointed agents on the 19th April, 1917. As already noticed the appellants then were young men and to have extended the period of the agency for their lives and the life of the survivor would have been a very different matter from extending the original appointment of D. J. Medora for his life. In the absence of any reference in the correspondence to the duration of the agency of the appellants their Lordships agree with the Courts in India in thinking that the agency was terminable by reasonable notice.

On the question as to what notice was reasonable, if their Lordships had agreed with the High Court upon the other questions at issue, they would have accepted without question the concurrent findings of fact that two years was a reasonable notice; nor must their Lordships be taken as dissenting from that view. But as the case will have to be remitted to the High Court for the assessment of damages on the basis that the appellants have certain rights in relation to commission on renewal premiums after the termination of their contract, their Lordships think that the High Court should be free to reconsider the question of length of notice. The only opinion on the matter which their Lordships feel called upon to express is that the notice of 3½ months given by the respondents was inadequate to determine an agency which had lasted for nearly 50 years, under which a very large business had been built up, and great expense incurred by the agents.

Upon the third question raised as to the right of the agents to commission on renewal premiums under the terms of the contract after its termination the appellants rely on the passage in the letter of the 6th July, 1892, which was accepted by the respondents that "the premiums of persons assured through my agency should be always subject to my commission so long as they remained within the Province of Gujerat whether the premium be remitted through my offices or direct" as entitling the agents to commission on renewal premiums so long as the policies were extant whether the agency continued or not. On this contention their Lordships agree with the views of the learned judges of the High Court that the word "always" in the passage quoted is not used in the sense of "for all time" but in the sense of "in all conditions," a meaning which the word often bears. The passage only means that commission should be payable so long as the policy holder remained within the Province of Gujerat, although the premium might be remitted direct and not through the agents. Prima facie, as the Courts in India have held, the right of an agent to commission ceases on the termination of his employment, except in cases in which the whole of the work necessary to earn the commission has been done by the agent before his employment ceases. It is clear from the evidence of appellant 2 that a good deal of work had to be done by the agents to prevent policies from lapsing, and that the payment of renewal premiums did not follow automatically from the original issue of the policy. Their Lordships therefore agree with the view of the Bombay High Court that commission on renewal premiums is not payable to the appellants under the terms of their contract after its termination.

That leaves for consideration the question whether the appellants can claim commission on renewal premiums after the termination of the contract under the Indian Insurance Act of 1938 which came into force on the 1st July, 1939. The material provisions of that Act as modified up to the 28th July, 1941, are the following:—

Section 2. "In this Act, unless there is anything repugnant in the subject or context—

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(8) "insurance company" means any insurer being a company, association or partnership which may be wound up under the Indian Companies Act, 1913, or to which the Indian Partnership Act, 1932, applies;

(9) "insurer" is defined in terms which include the respondents but is expressed not to include an insurance agent licensed under section 42 or a provident society (as defined in Part III);

(10) "insurance agent" means an insurance agent licensed under section 42 being an individual who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business.

Section 40.—(1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent . . . or a person acting on behalf of an insurer who for the purposes of insurance business employs . . . insurance agents.

(2) No insurance agent . . . shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life assurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium, or, in the case of business of any other class, fifteen per cent. of the premium:

Provided that insurers, in respect of life assurance business only, may pay, during the first ten years of their business, to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums.

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to any person, whether an insurance agent within the meaning of this Act or not, or to his representatives after his decease in respect of insurance business effected through him before the said date."

(Section 42 deals with the licensing of insurance agents.)

(Section 43 requires a register of insurance agents to be kept and imposes a penalty on an individual not holding a licence who acts as an insurance agent, and on a person employing such an individual.)

"Section 44. Notwithstanding anything to the contrary in a contract between any person and an insurance agent . . . forfeiting or stopping payment of renewal commission to such insurance agent, no such person shall in respect of life insurance business done in India refuse payment to an insurance agent, of commission on renewal premiums due to him under the agreement by reason only of the termination of his agreement except for fraud:

Provided that such agent has served such person continually and exclusively for at least ten years, and provided further that, after his ceasing to act as agent, he does not directly or indirectly solicit or procure insurance business for any other person."

Both the Courts in India held that the appellants were not insurance agents within the meaning of the Act and, on that view, no further question under the Act arose. Both the Courts took the view that the appellants came within the description of a "person acting on behalf of an insurer who for the purposes of insurance business employs insurance agents" in section 40 (1) and that they could not also be insurance agents. Their Lordships are not in agreement with that view. The appellants are individuals who received payment by way of commission in consideration of their soliciting or procuring insurance business and, subject to the question of their being licensed under section 42, they clearly come within the definition of insurance agents in section 2 (10).

Section 40, sub-section 1, forbids the payment of commission for soliciting or procuring insurance business in India to any person except (1) an insurance agent; (2) a person acting on behalf of an insurer who for the purposes of insurance business employs insurance agents. Sub-section 2 limits the amount of commission which may be paid to an insurance agent, but does not restrict the amount which may be paid to the other class of persons entitled to commission under section 40 (1). Their Lordships see no reason for thinking that the two classes enumerated in section 40 (1) are mutually exclusive. If an agent falls within the definition of an insurance agent he cannot receive commission or remuneration in excess of the rate allowed whether or not he falls within the other class. All insurance agents who are appointed directly with power to employ sub-agents who are themselves insurance agents would fall within the second class in section 40 (1) and to hold that such direct agents are not insurance agents would open the door to extensive evasion of the restrictions on the amount of commissions payable under section 40 (2). The language of the section gives no scope for such a construction. In their Lordships' view the appellants were insurance agents provided they were duly licensed during the currency of their employment under section 42, and this question must now be considered.

The employment of the appellants was terminated by the respondents by a letter dated 14th September, 1939, from the manager stating: "I am instructed by the Board of Directors to advise you that they have with regret resolved as a matter of uniform policy to terminate your Chief Agency as from 1st January next." The appellants were licensed as insurance agents on the 1st January, 1940. It is argued by the appellants that the termination of their agency as from the 1st January, 1940, meant that it terminated as from the expiration of the 1st January, and that accordingly, for the last day of their employment, they were licensed insurance agents. Reliance was placed on *South Stafford Tramways Co. Ltd. v. the Sickness and Accident Assurance Association Limited* [1891] 1 Q.B.D. 402 to support this view. In that case an insurance policy cover extended for 12 calendar months from 24th November, 1887, and it was held that the policy covered the 24th November, 1888. Their Lordships would observe that a period limited as from a particular date is more appropriate to the commencement, than to the termination, of a period. In their Lordships' view no fixed rule of construction can be laid down that the termination of a contract as from a particular day means from the end, rather than from the beginning, of the day, and the question must always depend to a large extent on the circumstances of the case. In the present case the day stated was the first day of a new calendar year and it would seem probable from the particulars delivered with the written statement, Exhibit No. 3, that the financial year of the respondents ended on the 31st December, 1939. It would certainly seem remarkable that the agency of the plaintiffs should have continued for one day in a new financial year. Their Lordships have no doubt that the notice of the 14th September, 1939, terminated the employment of the appellants as from the beginning of the 1st January, 1940, and it is clear from the correspondence that the appellant so understood the notice. In their Lordships' view therefore the appellants never became insurance agents within the definition in the Act, but that does not dispose of their claims under the Act. The termination of the agency by the letter of 14th September, 1939, was clearly a breach of contract on the part of the respondents and, if such breach has prevented the appellants obtaining the advantages which they would otherwise have derived under section 44 of the Act, they are entitled to damages on that account.

Mr. Pritt for the respondents has argued that section 44 in any case does not apply to the appellants because they do not qualify under the proviso. Under the first part of the proviso the agent must have served continually and exclusively for at least ten years, and Mr. Pritt points out that in the evidence of appellant No. 2 he stated that his firm's main business was the business of the agency in suit and then he added "we also do a little fire insurance business with the knowledge of the defendants." There appears to have been no cross-examination on this passage in the evidence, and the question as to whether the appellants would fall within the proviso to section 44 is not discussed in the judgments of the Courts in India. The appointment of the plaintiffs under the letter of the 19th April, 1917, was a full-time appointment, and their Lordships think that the fact that a full-time agent has with the consent of the employer done a small amount of outside business of a character not engaged in by the employer is not sufficient to deprive him of the advantages conferred by section 44. A second objection taken by Mr. Pritt to the applicability of section 44 is that it refers in the opening words to a contract between any person and an insurance agent, and, as an insurance agent is a creation of the Statute, Mr. Pritt argued that the section cannot apply to any contract made before the Act came into operation. The section is not well drafted but their Lordships do not think that this is its effect. It confers a right on an insurance agent which takes effect on the termination of his appointment, and their Lordships think that if at that time the agent is an insurance agent he comes within the section although at the time of his original employment he was not an insurance agency.

Their Lordships therefore feel no doubt that but for the wrongful termination of the appellants' contract they would have been entitled to the benefits conferred on an insurance agent by section 44, and it is necessary to consider the nature of those benefits. The section provides that notwithstanding anything to the contrary in the contract employing the agent

the employer shall in respect of life insurance business done in India not be entitled to refuse payment to an insurance agent of commission on renewal premiums due to him under the agreement by reason only of the termination of the agreement except for fraud. In their Lordships' view, if the agreement of the appellants had not been terminated they would have been entitled under their agreement to commission on renewal premiums on all policies effected through their agency, so long as the policies remained in force, and the policyholder continued within the Province of Gujerat, subject to possible determination under the second part of the proviso to section 44. In their Lordships' view the appellants are entitled to damages for loss of these rights. In assessing the damages the rate of commission should be 5 per cent. which is less than the contract rate but the maximum allowed by the Act, unless in any case a higher rate can be claimed under s. 40 (3). Any claims of sub-agents are outside the present suit. Some allowance must be made under the second part of the proviso for the possibility that the appellants may in the future solicit or procure insurance business for some other person. It is obvious that the damages will have to be entirely reassessed as the general damages allowed for breach of contract will be reduced by the amount allowed for loss under the Act, and, as already indicated, the Judge will be free to reconsider what is a reasonable notice.

Their Lordships will humbly advise His Majesty that this appeal be allowed and that the decree of the High Court in its appellate jurisdiction dated 18th November, 1943, be set aside and that the decree of the High Court in its original jurisdiction dated 14th April, 1943, be set aside except so far as it deals with the counterclaim of the defendants and with the costs of the suit but that the order as to costs be varied by including the costs of issue 12 in the general costs of the suit; and that the suit be remanded to the High Court of Judicature at Bombay with directions to assess the damages suffered by the appellants by the wrongful determination of their contract of agency referred to in the plaint by the Respondents and to pass judgment for such damages, the costs of the further hearing to be in the discretion of the said Court. The respondents shall pay half the costs of the appellants of this appeal to His Majesty and of the appeal to the High Court in its appellate jurisdiction.

In the Privy Council

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SOHRABJI DHUNJIBHOY MEDORA AND  
ANOTHER

2.

THE ORIENTAL GOVERNMENT  
SECURITY LIFE ASSURANCE COMPANY  
LIMITED

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DELIVERED BY SIR JOHN BEAUMONT

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