**SUIT FOR ACCOUNT BY AN INSURANCE AGENT AGAINST A COMPANY**

*IN THE COURT OF THE....................*

*Suit No..................... of 19....................*

C. D.................................................................... Plaintiff

*versus*

C. F................................................................. Defendant

The abovenamed plaintiff most respectfully submits as under: —

1. That the plaintiff was appointed by the defendant Company as their Insurance Agent for the District of.................... The defendant Company agreed to pay the plaintiff a commission @.................... per cent on all the premia to be paid on the policies to be effected through the plaintiff.

2. That the plaintiff acted in pursuance of the agreement dated..................... from that date to.................... and introduced the policies described in the Schedule annexed to the plaint.

3. That the defendant Company paid to the plaintiff during the aforesaid period only a sum of Rs..................... on account of commission; but has not rendered any account of premia on the policies detailed in the Schedule annexed hereto, even at the demand made by the plaintiff through a registered notice..................... received by the defendant on.....................

4. That the plaintiff is not aware of the policies lapsed, matured or forfeited, and as such is ignorant as to how much money is due to him as commission under the agreement referred to above.

5. That the cause of action arose on.................... 19.................... within the jurisdiction of this Court when the defendant company received the notice of demand of the plaintiff, but did not render account.

6. That the suit is valued at Rs......................................... an approximate insurance commission due after deduction of Rs..................... already received by the plaintiff from the defendant company and the court fees is paid according to the reliefs claimed.

**RELIEFS CLAIMED:**

The reliefs claimed by way of this suit are:

(1) To have full and true account. of the moneys realised by the defendant company as premia on the policies detailed in the Schedule and of the commission due to the plaintiff.

(2) Payment of the sum found to be due to the plaintiff after deduction of Rs..................... already received by the plaintiff from the defendant Company;

(3) Costs of the suit to the plaintiff.

Plaintiff

Through

Advocate

**VERIFICATION**

I, abovenamed plaintiff, do hereby verify that the contents of paras .................... to.................... of the plaint are true to my personal knowledge and those of paras.................... and.................... thereof are based on legal advice which I believe to be true.

Verified on this................. day of.................... 19.................... at....................

Plaintiff

**CASE LAW**

***Section 216***

The commission agent need not disclose name of firm from which he had purchased the goods but he cannot supply goods at a particular rate.1

**PRINCIPAL’S RIGHT TO BENEFIT GAINED BY AGENT DEALING ON HIS OWN ACCOUNT IN BUSINESS OF AGENCY.**

No agent in the course of agency can make profit without the knowledge of his principal.2

Where an agent by utilising money of his principal makes profit he cannot treat that transaction an independent transaction.3

The Court has no inherent power to issue Commission for determining liability of agent for secret profits.4

***Section 230***

**AGENT CONTRACTING IN THE NAME OF HIS PRINCIPAL AND NOT** **IN HIS OWN NAME.**

Personal liability of the agent is concluded by Section 230 of the Contract

Act. In the absence of any contract to the effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal and conversely he is not personally liable also except to the extent of the liability as agent. But a contract in favour of or against the agent entitling him to enforce the contract or making him liable will be presumed (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad, (2) where the agent does not disclose the name of the principal, or (3) where the principal, though disclosed, cannot be sued. The test in such cases is on whom the opposite party gave credit for entering into the contract or presumed to have given credit. A party cannot be supposed to rely exclusively on a foreign principal whom the agent’s contract is not understood to bind, or on a person whom he does not know and whose standing and credit he had no occasion to verify or on a person who is in the face of the transaction not legally liable. Ordinarily an agent contracting in the name of his principal and not in his own name is not entitled to sue, nor can be sued, on such contracts. When in making a contract no credit is given to the agent, but credit is given exclusively to the principal, the agent is not personally liable.5

**RIGHT OF AGENT TO SUE PRINCIPAL NOT STATUTORY BUT EQUITABLE.**

The principal’s right to sue an agent for rendition of accounts is thus recognised by statute. There is no corresponding provision in favour of the agent. But the Contract Act cannot be taken as exhaustive. The right of the agent to sue the principal for accounts is not statutory, but equitable arising under special circumstances. There are usually exceptions to all rules. Where the principal has kept the accounts between him and his agent and the transactions in the course of the agency are within the peculiar knowledge of the principal or the agent is not having any records with him to quantify the amounts, he may ask for accounting. The same is the position in cases where the accounts are so complicated that a suit for a definite sum of money is not possible. In cases where settlement of accounts alone could do complete justice between the parties, the agent can sue the principal for accounting even if he is having some evidence of the transactions with him. The agent’s right to sue the principal is thus recognised and it is accepted, what has been stated above are only illustrative and not exhaustive. The right must depend upon the fact and circumstances of each case.6

If the agent purports to act as such and in that capacity enters into a transaction on behalf of the principal he will have to render an account to the principal if the latter chooses to require him to give an account on the footing of his being an agent.7

***Section 214***

**AGENT’S DUTY TO COMMUNICATE WITH PRINCIPAL**

Where the principal effected insurance due to non-communication by agent the insurance was held to be void.8

It is the duty of the agent to communicate with his principal in case of difficulty.9

***Section 215***

**RIGHT OF PRINCIPAL WHEN AGENT DEALS ON HIS OWN ACCOUNT IN BUSINESS OF AGENCY WITHOUT PRINCIPAL’S CONSENT.**

Where the agent obtains any information in the course of his agency he should not use the same against his principal.10

The agent must make full disclosure of the nature and extent of his interest.11

Where a person acts as agent for the principal as also for the contracting party he cannot obtain remuneration from both without the knowledge of the principal.12

Neither the broker employed to sell become himself buyer nor seller when employed to buy without notice to the principal.13

**RIGHTS OF PRINCIPAL WHEN AGENT DEALS ON HIS OWN ACCOUNT IN BUSINESS OF AGENCY WITHOUT PRINCIPAL’S CONSENT.**

The principal could repudiate the transaction where the agent employed to procure loan lent his own money.14

When an agent pays the price to the principal he can become a purchaser.15 An agent cannot convert himself into principal when employed as broker.16

The transaction of lease can be avoided where principal is acquainted with facts of creation of lease in favour of his son.17

**RIGHTS OF PARTIES TO A CONTRACT MADE BY AGENT NOT DISCLOSED.**

Under Section 230 of the Act a partner an agent for an undisclosed principal can enforce the contract personally.18

Where before completion of contract the buyer was informed that goods in question belonged to a third person then in that event he could not set off the debt due to him from agent.19

Business done by a commission agent in his own name though for the benefit of an undisclosed principal who is liable to indemnify the commission agent against loss is not business done by such undisclosed principal through the agent but business done by the agent.20

The second paragraph of Section 231 has to be read in the context of the first paragraph of Section 231 and the expression " if the principal disclosed himself before the contract is completed in para 2, " must be read in the context where the agent made the contract with a person who did not know or had reason to suspect that he was an agent.21

***Section 232***

**PERFORMANCE OF CONTRACT WITH AGENT SUPPOSED TO BE PRINCIPAL.**

Where one of the contracting party has principal then that principal has right to intervene and may even sue upon it.22

The principal right to require the performance of the contract is subject to rights and obligations subsisting between the agent and the other party to the contract. Therefore it has to be read as a qualification of first portion of para 1 of section 231 of the Contract Act.23

Where a contract is made with an agent in his own name for an undisclosed principal either the agent or the principal may sue upon it; the defendant in the later case being entitled to be placed in the same situation at the time of the disclosure of the legal principal as if the agent had been the contracting party.24

A plaintiff who has a right to sue both an agent and his principal under Section 233 of the Contract Act, is not competent after he has sued one of them to judgment, to sue the other in a second suit.25

Section 233 of the Contract Act, enacts substantive law, laying down who shall be held liable and not adjective law, defining the procedure by which the liability may be enforced. This section merely creates a joint liability so that judgment may be obtained against both principal and agent.26

1. A. I. R. 1922 All. 400.

2. All. 1942 Mad. 634: (1939) 3 All. E. R. 235.

3. A. I. R. 1927 Mad. 478: A. I. R. 1937 Mad. 810.

4. A. I. R. 1975 Cal. 303.

5. 1991 (2) C. C. C. 205.

6. 1991 (2) C. C. C. 220: A. I. R. 1967 S. C. 333.

7. A. I. R. 1961 A. P. 143.

8. (1867) 2 Q. B. 511.

9. A. I. R. 1927 M. W. N. 578.

10. (1913) 2 Ch. 239: (1909) 1 Ch. 413.

11. (1873) 10 H. L. 180: (1874) 18 Eq. 524.

12. A. I. R. 1933 Rang. 184.

13. (1924) A. C. 566: (1844) 8 E. R. 1273: (1940) Ch. D. 359.

14. A. I. R. 1928 Cal. 727.

15. A. I. R. 1967 S. C. 181.

16. 1933 Bom. L. R. 703.

17. A. I. R. 1983 H. P. 32.

18. I. L. R. 1953 Bom. 110: I. L. R. 1924 Mad. 130.

19. I. L. R. 1932 Bom. 356: I. L. R. 1924 Cal. 504.

20. A. I. R. 1929 Sind. 24: 18 Bom. 294 (P. C. ).

21. A. I. R. 1960 Cal. 752.

22. L. R. 5 Q. B. 656.

23. (1879-80) 4 Bom. 447.

24. A. I. R. 1931 Sind. 4.

25. A. I. R. 1917 Bom. 268.

26. A. I. R. 1917 Bom. 268.