

APPEAL FROM ORIGINAL CIVIL.

Before Sanderson C. J. and Woodroffe J.

1918

Aug. 21.

DEUTSCH ASIATISCHE BANK

v.

HIRA LALL BARDHAN & SONS.*

Alien Enemy—Suit on promissory notes—Order of the Government of India restricting right to sue—Subsequent removal of the restriction—Period during which right to sue suspended, whether to be reckoned in computing limitation—“Disability” and “inability” to sue—Limitation Act (IX of 1908), ss. 6, 7, 9 and 15.

On the outbreak of war between England and Germany on the 4th August, 1914, the plaintiff Bank, which was an alien enemy concern carrying on business in Calcutta, had its right to bring suits suspended by an order of the Government of India. By a subsequent order of the Government, this restriction was removed on the 1st November, 1915, and sanction was given to the said Bank to institute suits in Civil Courts. On the 9th May, 1918, the said Bank brought a suit on four promissory notes payable on demand and executed on the 4th, 11th, 30th and 30th June, 1914, respectively :—

Held, that this case was covered by s. 9 of the Limitation Act and that the period between the 4th August, 1914, and the 1st November, 1915, could not be excluded from the time prescribed by the Act of Limitation.

Per WOODROFFE J. Section 15 of the Limitation Act does not apply.

APPEAL by the Deutsch Asiatische Bank, the plaintiffs.

The plaintiff Bank was a German Corporation which carried on its Banking business in Calcutta, and the defendants were a firm of merchants and traders carrying on business in co-partnership as Hira Lall Bardhan & Sons in Calcutta. On the 4th June,

* Appeal from Original Civil No. 57 of 1918 in suit No. 591 of 1918.

1914, the 11th June, 1914, the 30th June, 1914, and the 30th June, 1914, the defendants executed in favour of Messrs. Worman & Co. for valuable consideration four separate promissory notes, whereby they agreed to pay on demand the amounts mentioned in each promissory note with interest thereon. These promissory notes were subsequently endorsed by Messrs. Worman & Co. to the plaintiff Bank. On the 4th August, 1914, war broke out between His Majesty's Government and the German Government and the business of the plaintiff Bank in Calcutta was closed by the order of the Government of India and the officers of the Bank who were enemy subjects were interned. On the 22nd December, 1914, the Governor-General in Council under the provisions of clause 4 (1) of the Hostile Foreigners (Trading) Order granted a license to Mr. Edward Gros, as Official Liquidator on behalf of the plaintiff Bank, to trade only for the purpose of liquidating assets and paying debts and by a subsequent Order made on the 1st November, 1915, express power was given to the Official Liquidator to institute suits on behalf of the plaintiff Bank. On the 9th May, 1918, the plaintiff Bank instituted the present suit on the abovementioned promissory notes. Mr. Justice Chaudhuri dismissed the same. The plaintiff Bank, thereupon, appealed.

The Advocate-General (Mr. T. C. P. Gibbons, K. C.) (with him *Mr. A. A. Avetoom*), for the appellant Bank. The cause of action on the four promissory notes arose on the 4th, 11th, 30th and 30th June, 1914, respectively. The outbreak of war on the 4th August, 1914, closed the Courts to alien enemies and the plaintiff Bank was restricted by an order of the Government of India from instituting suits. The rights of the plaintiff Bank were suspended from and

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after that date and were not revived until the restriction imposed on it was removed and sanction to institute suits was given by a further order of the Government made on the 1st November, 1915. If the Courts were closed to the plaintiff Bank, it would be but equitable to say that the period between the 4th August, 1914, and the 1st November, 1915, did not apply to it in computing limitation in the present suit. Therefore, the present suit brought on the 9th May, 1918, was not barred by limitation. See *Porter v. Freudenberg* (1), *De Wahl v. Braune* (2), *Ex parte Boussmaker* (3), *Lakhan Chunder Sen v. Modhu Sudan Sen* (4), *Mussumat Ranee Surno Moyee v. Shooshee Mokhee Burmonia* (5) and *Hurro Pershad Roy Chowdhry v. Gopal Chunder Dutt* (6). The last two cases showed that under the circumstances therein set out the rights, which had accrued before, had been suspended. The Limitation Act must be construed strictly and as a whole. Section 9 applied only to cases of subsequent disability or inability as created by the Act itself and set out therein, *viz.*, to cases of infancy, lunacy and idiocy; see ss. 6 and 7 of the Act. Section 9 did not apply to the case of impossibility of an alien enemy bringing suits owing to the outbreak of the war. The words "disability" and "inability" used in that section practically meant the same thing, the latter being merely a covering word for the former, and nowhere else in the Act is the word "inability" used: see the definition of these two words in Murray's Dictionary. Lord Halsbury in his *Laws of England*, Vol. 19, p. 94, stated the law in England on this question and it corresponded to

(1) [1915] 1 K. B. 857

(3) (1806) 13 Ves. 71.

(2) (1856) 25 L. J. Exch. 343;

(4) (1907) 12 C. W. N. 326.

1 H. & N. 178.

(5) (1868) 12 Moo. I. A. 244

(6) (1882) L. R. 9 I. A. 82; I. L. R. 9 Cal. 255.

the law contained in section 9 of the Limitation Act. *Poorno Chunder Ghose v. Sassoon* (1) defined "disability" and "inability" to sue. Section 15 of the Limitation Act referred to.

Mr. N. Sircar and *Mr. S. C. Bose*, for the respondents, were not called upon.

SANDERSON C. J. This is an appeal from a judgment of my learned brother Mr. Justice Chaudhuri; and, the facts may be gathered from the plaint to this effect. A suit was brought by the Deutsch Asiatische Bank, a German Bank, which used to carry on business in Calcutta and is now in liquidation under the orders of the Government of India, and the defendants are Messrs. Hira Lall Bardhan and Sons who carry on business as merchants in Calcutta. The suit was brought in respect of four promissory notes which were made payable on demand, and their respective dates were 4th of June, 1914, 11th of June 1914, 30th June, 1914 and 30th June, 1914. These notes were endorsed to the plaintiff Bank, and it is agreed that the cause of action in respect of the notes, which were payable on demand, arose on the dates of the notes. Consequently, the periods within which a suit or suits in respect of the notes would have to be brought would expire in June, 1917. The suit was brought on the 9th of May, 1918, and, therefore, *prima facie* it was out of time. But the appellants allege that a certain period ought to be excluded from the time specified by the Act of Limitation. They refer to the fact that the war with Germany broke out on the 4th of August, 1914, and that thereby they, the plaintiffs, were debarred from suing in Civil Courts in this country, and they allege that it was not until the 1st of November, 1915, that the plaintiff Bank

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(1) (1898) I. L. R. 25 Calc. 496.

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obtained a license from the Governor-General in Council to carry on their business in British India with a power to sue for the recovery of debts which were owing to the Bank. Consequently, they urge that the period from the 4th of August, 1914, to the 1st of November, 1915, ought to be excluded from the time prescribed by the Act of Limitation. The learned Judge has come to the conclusion that that period cannot be excluded, and I think that the learned Judge has come to a right conclusion.

I need not deal with all the reasons that the learned Judge has relied upon in his judgment, but I am not sure that I am prepared to adopt all the reasons which he has given. There is no doubt that when the war broke out on the 4th of August, 1914, the plaintiff Bank being an enemy alien had no right to sue in Civil Courts in this country until the Bank obtained a license or authorisation from the Crown or from the Governor-General in Council as the representative of the Crown.

I think it is clear further that in the circumstances of this case the right of the plaintiff Bank to recover upon the promissory notes was suspended for the time being. In November, 1915, the license which was given to the plaintiff Bank was as follows. It was addressed to Deutsch Asiatische Bank, and authorised them to carry on their business to the extent and in the manner therein specified, and one of the clauses was: "To continue legal proceedings already instituted and with the sanction in each case of the said Controller to institute further suits for the recovery of debts due to the Company."

After that license was given, it was within the power and the right of the plaintiff Bank to sue in the Civil Courts of this country for the recovery of debts owing to the Bank.

In the case of each of the notes, the time for the purpose of the Limitation Act began to run from a date in June, 1914, which was before the outbreak of the war, and the question is whether there is any statutory provision or common law rule which would avail the plaintiffs in their contention that the period between the 4th of August, 1914, and November, 1915, ought to be excluded in computing the period prescribed by the Limitation Act within which the suit should be brought. Section 9 of the Limitation Act IX of 1908 provides as follows:—

“Where once time has begun to run, no subsequent “disability or inability to sue stops it.” Now *primâ facie* that section covers this case, because I think that either of the words “disability” and “inability” would be applicable to the position of the plaintiff Bank when the war broke out. I think it can truly be said that the plaintiff Bank by reason of the outbreak of the war was “disabled” from suing, or it may be said that by reason of the outbreak of the war the plaintiff Bank suffered from “inability” to sue. *Primâ facie* the words of the section will cover this case. But the learned Advocate-General on behalf of the plaintiff Bank argued that the section was not intended to deal with the contingency of the outbreak of war, but was intended to deal only with such disability or inability as might be referred to in the Act itself, and he drew our attention to the “disability” which is referred to in section 6 and also in section 7. I am not prepared at present to accede to that argument, for I think the section is in accordance with the general rule that once the time for the purpose of Limitation has begun to run, “disability” to sue will not avail to stop it, in the absence of express statutory provision.

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But even if the learned Advocate-General's argument on that point is correct, there remains the word "inability," to which the above argument does not apply, unless the word "inability," means no more than "disability," for the learned Advocate-General has drawn our attention to the fact that section 9 is the only section in the Act where the word "inability," occurs. We are bound to give some meaning to the word "inability." I do not think we are entitled to assume that the Legislature in enacting this section, when it used the word "disability" and the word "inability," meant exactly the same thing by the use of the two words. Consequently, I do not see how we can escape from the conclusion that this case is covered by section 9. I agree, therefore, with the conclusion at which the learned Judge has arrived.

As regards there being any common law rule, which would avail the plaintiffs upon this point, I do not know of any and even if there were, here we have express statutory provision which I think would have the effect of overriding any such rule.

As regards the question of hardship to which the learned Advocate-General referred, I do not think that he was referring to any hardship in this particular case, but that he was referring to other cases where it might arise. In this case there is no doubt that there is no hardship, inasmuch as, although the plaintiff Bank's business in Calcutta was put an end to in August, 1914, when its officers were interned, the Governor-General in Council appointed a gentleman, whose name was Mr. Gros, so long ago as December, 1914, for the purpose of liquidating assets and paying debts of the Bank, and then in November, 1915, the Governor-General in Council gave an express authority to the plaintiff Bank to institute proceedings in order that it might recover the debts which were

owing to it, and if this suit had been brought within a reasonable time from November, 1915, there can be no doubt that the suit could have been brought within the time specified by the Act of Limitation. Instead of that, a period of time, which extended from November, 1915, to May, 1918, was allowed to pass before the suit was brought. In these circumstances, I think in this particular case there has been no hardship.

In my judgment, for the reasons that I have stated above, this appeal should be dismissed with costs.

We think that in this case the appeal must be treated as an appeal from a decree, and we leave it to the discretion of the Taxing Officer to do what is right in respect of the taxation of costs. We may say for his guidance that, as far as the appeal is concerned, it was not a long matter and that the appeal was disposed of in less than three hours. With reference to this question, I may mention that the appellant himself in the memorandum of appeal purports to appeal from a decree.

WOODROFFE J. The general rule is that when limitation has commenced to run it will continue to run. Has anything been shown to us which creates an exception to this general rule by reason of the suspension of rights due to the existence of the state of war? There is in my opinion none shown: nor does section 15 of the Limitation Act apply, for the word "order" there clearly refers to orders of Civil Courts and not to the condition of things with which we have here to do. As the suit is admittedly barred unless the period mentioned in the plaint is excluded, I am of opinion that this appeal should be dismissed with costs.

O. M.

Appeal dismissed.

Attorneys for the appellant: *Orr, Dignam & Co.*

Attorneys for the respondents: *B. N. Basu & Co.*

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