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The result is that the appeal is allowed with costs both here and in the Court below. The order of the lower Court is set aside and the suit is stayed. The parties will be at liberty to proceed with the arbitration in the Chamber of Commerce with the Tribunal reconstituted under Rule VIII in the manner indicated above.

FLETCHER J. I agree.

N. G.

Attorneys for the appellant: *O. C. Gangoly & Co.*
Attorney for the respondent: *A. K. Rudra.*

APPEAL FROM ORIGINAL CIVIL.

Before Mookerjee and Chaudhuri JJ.

D. N. SHAHA & Co.

v.

THE BENGAL NATIONAL BANK, LTD.*

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March 16.

Promissory Note—When overdue—Negotiable Instruments Act (XX of 1882), s. 118.

Where a promissory note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title, of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

The analogy of the rules applicable to questions of limitation is not to be followed in such cases.

Norton v. *Ellam* (1), *Rowe* v. *Young* (2) *Maltby* v. *Murrels* (3), *Brooks* v. *Mitchell* (4), *Barough* v. *White* (5), *Glasscock* v. *Balls* (6) referred to.

* Appeal from Original Civil, No. 48 of 1919, in Suit No. 1003 of 1915.

(1) (1837) 2 M. & W. 461.
(2) (1820) 2 B. & B. 165.
(3) (1860) 5 H. & N. 813.
(4) (1841) 9 M. & W. 15.
(5) (1825) 4 B. & C. 325.
(6) (1889) 24 Q. B. D. 13.

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D. N. SHAHA & Co.
v.
THE BENGAL NATIONAL BANK, LTD.

Brajendra Kishore v. *Hindustan Co-operative Insurance Society* (1) distinguished.

APPEAL by D. N. Shaha & Co., the defendants, from a judgment of Fletcher J.

On 28th August 1912, the firm of D. N. Shaha & Co. through one Narayan Chandra Shaha executed a promissory note in favour of B. N. Das & Co. for Rs. 2,500. On 10th January 1914, B. N. Das & Co. endorsed the note in favour of the Bengal National Bank, to whom he was heavily indebted at the time. The Bank instituted a suit on 27th August 1915 for realising the money. The defence of D. N. Shaha & Co. was that there were other monetary transactions between the firms of D. N. Shaha & Co. and B. N. Das & Co.; and as such transactions resulted in a balance in favour of D. N. Shaha & Co. so the promissory note was discharged long before the 10th January 1914. The suit was decreed; on that this appeal was preferred.

Mr. A. A. Avetoom (with him *Mr. B. L. Mitter*), for the appellant. The Bank was not a *bonâ fide* holder in due course for value. The promissory note became due the moment it had been executed and was discharged by the firm before it was negotiated. *Brajendra Kishore* v. *Hindustan Co-operative Insurance Society* (1).

Mr. H. D. Bose and *Mr. A. K. Roy*, for the respondents, were not called upon.

MOOKERJEE J. This is an appeal under clause 15 of the Letters Patent from the judgment of Mr. Justice Fletcher in a suit for recovery of money due on a promissory note.

(1) (1917) I. L. R. 44 Calc. 978.

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On the 28th August, 1912, the defendant firm executed a promissory note in favour of B. N. Das & Co. in the following terms:

"On demand I promise to pay to B. N. Das and "Company or order the sum of Rs. 2,500 only, with in-"terest thereon at the rate of 12 per cent. per annum "till the date of realisation, for value received in cash."

On or about the 10th January, 1914, B. N. Das & Co. for valuable consideration endorsed the promissory note in favour of the plaintiff Bank. Notice was duly given by the plaintiff Bank to the defendant firm, but as no payment was made in response to repeated demands, the Bank instituted this suit on the 27th August, 1915. The defendant firm urged that the Bank were not *boná fide* holders in due course and for value, and that the note had been discharged by the firm before the endorsement to the Bank. Mr. Justice Fletcher has overruled these contentions and has decreed the suit.

The evidence leaves no room for doubt that, at the date of the endorsement, B. N. Das & Co. were heavily indebted to the Bank and that the Bank were endorsees for value. This, indeed, would be the presumption under section 118, clause (*a*) of the Negotiable Instruments Act (1881). Section 9 shows that the Bank became holders in due course if they obtained the note before the amount became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom they derived title. There can be no question, we think, that the Bank acted in good faith, and the controversy has centred round the question, when did the amount mentioned in the promissory note become payable? Mr. Avetoom has contended that the promissory note became payable from the moment of execution, and

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has relied upon the decision in *Brajendra Kishore* v. *Hindustan Co-operative Insurance Society* (1). In our opinion, that case is clearly distinguishable. There it was ruled that, for purposes of the law of limitation, a note payable on demand is a present debt and is due and payable at once without demand. As explained in *Norton* v. *Ellam* (2), *Rowe* v. *Young* (3), *Maltby* v. *Murrels* (4) no demand is necessary before bringing an action upon a note payable on demand, because its payment is a duty which attaches the moment the loan is given and the note is made. To put the matter differently, the creditor cannot extend the period of limitation by omission to make a demand and time runs against him from the date of the note, on the principle that the cause of action arises instantly on the loan and the contract on the note is in a state of being broken perpetually. Clearly, these principles have no application to a case under section 9 of the Negotiable Instruments Act. The true rule applicable is that where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title, of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. In *Brooks* v. *Mitchell* (5) Baron Parke observed: "if a promissory note payable on demand is after a certain time to be treated as overdue, although payment has not been demanded, it is no longer a negotiable instrument. But a promissory note payable on demand is intended to be a continuing security; it is quite unlike the case of a cheque which is intended to be presented speedily." The Court accordingly overruled the contention

(1) (1917) I. L. R. 44 Calc. 978.
(2) (1837) 2 M. & W. 461; 46 R. R. 646.
(3) (1820) 2 B. & B. 165.
(4) (1860) 5 H. & N. 813.
(5) (1841) 9 M. & W. 15.

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based on the analogy of the rule applicable to the decision of the question of limitation. Similarly, in *Barough* v. *White* (1), Bayley J. observed that the fact that the note was made payable with interest implied that it would be in negotiation for sometime. The same view was adopted by the Court of Appeal in *Glasscock* v. *Balls* (2). Consequently, this promissory note was not overdue when it was transferred to the Bank who became holders in due course. The suit has been rightly decreed by Mr. Justice Fletcher and the appeal must be dismissed with costs.

CHAUDHURI J. I agree.

N. G.

Attorney for the appellant: *P. N. Sen.*

Attorneys for the respondents: *Dutt & Sen.*

(1) (1825) 4 B. & C. 325. (2) (1889) 24 Q. B. D. 13.