LETTERS PATENT APPEAL.

Before S. K. Ghose and Nasim Ali JJ.

1938

Feb. 17, 18.

PRAFULLA CHANDRA NAG

v.

JATINDRA NATH KAR.*

Limitation—Cheque, if 'acknowledgment of payment'—Indian Limitation Act (IX of 1908), s. 20.

When part payment of a debt is made and accepted by cheque, written in the handwriting of the person liable to pay the debt, it is evidence both of the fact of payment and of acknowledgment within the meaning of s. 20 of the Indian Limitation Act, and a fresh period of limitation shall be computed from the time when the cheque is handed over to the creditor.

Kedar Nath Mitra v. *Dinabandhu Saha* (1); *M. B. Singh and Co.* v. *Sircar and Co.* (2); *Mayahas* v. *Morley* (3); *Mandardhar Aitch* v. *Secretary of State for India in Council* (4); *Guljar Mandal* v. *Sariman Mandalini* (5); *Currie* v. *Misa* (6) and *Marreco* v. *Richardson* (7) referred to.

Jagtu Mal-Sada Sukh Rai v. *Charanji Lal-Fakir Chand* (8) and *Municipal Committee, Amritsar* v. *Ralia Ram* (9) relied on.

Mackenzie v. *Tiruvengadathan* (10); *Ram Chandar* v. *Chandi Prasad* (11) and *Muthiah Chettiar* v. *Kuttayan Chetty* (12) dissented from.

Beti Maharani v. *Collector of Etawah* (13) and *Manmohan Das* v. *Baldeo Narain Tandon* (14) distinguished.

Where there is one debt with several items, if once limitation is saved by acknowledgment of part payment, the debtor is liable for any sum which the Court after investigation finds to be due.

Panna Lal v. *Ram Singh* (15) distinguished.

LETTERS PATENT APPEAL by the defendant, appellant in the Second Appeal.

*Letters Patent Appeal, No. 6 of 1937, in Appeal from Appellate Decree, No. 341 of 1936.

(1) (1915) I. L. R. 42 Cal. 1043.
(2) (1929) I. L. R. 52 All. 459.
(3) (1925) 29 C. W. N. 496.
(4) (1901) 6 C. W. N. 218.
(5) (1922) 36 C. L. J. 228.
(6) (1875) L. R. 10 Ex. 153.
(7) [1908] 2 K. B. 584.
(8) (1933) I. L. R. 14 Lah. 580.
(9) (1936) I. L. R. 17 Lah. 737.
(10) (1886) I. L. R. 9 Mad. 271.
(11) (1897) I. L. R. 19 All. 307.
(12) [1919] A. I. R. (Mad.) 952.
(13) (1894) I. L. R. 17 All. 198; L. R. 22 I. A. 31.
(14) I. L. R. [1938] All. 326; L. R. 65 I. A. 132.
(15) (1928) I. L. R. 10 Lah. 750.

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The facts of the case and the arguments in the appeal are sufficiently stated in the judgment.

Bireswar Bagchi and *Jitendra Kumar Sen Gupta* for the appellant.

Nagendra Chandra Chaudhury for the respondent.

S. K. GHOSE J. This is an appeal under s. 15 of the Letters Patent from the judgment of my learned brother Henderson J. The relevant facts are these:— The plaintiff brought a suit, alleging that he had agreed to construct a house for the defendant according to an estimated cost of Rs. 7,555 less the sum of Rs. 555, claiming Rs. 1,776 as the amount due. The defendant contended that on account of the work being unsatisfactory it had to be stopped after a certain time, that the total dues were settled at Rs. 4,878 minus a rebate of Rs. 359 proportionate to the rebate of Rs. 555 upon the original estimates of Rs. 7,555, that he made certain payments and that only Rs. 31 was due from him except with regard to some scaffolding materials. The Munsif decreed the suit at Rs. 531. On appeal by the defendant the Subordinate Judge reduced the figure to Rs. 480. The defendant again appealed to the High Court. Our learned brother Henderson J. agreed with the Subordinate Judge but allowed further appeal. Hence this Letters Patent Appeal by the defendant.

In this appeal, two questions are raised. The first is that the defendant appellant is entitled to rebate as claimed by him proportionate to the rebate of Rs. 555 upon the original estimate. This argument is sought to be supported upon the principle of *quantum meruit*, but really what the appellant asks us to do is to make a new contract for the parties. Henderson J. pointed out that the appellant himself put an end to the work before it was concluded, the original estimate of the plaintiff was set aside and the suit is for the work actually done. Therefore there can be no question of rebate on the basis of the original estimate. The point, therefore, fails.

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The next point is that of limitation. The defendant's case is that he made a payment of Rs. 300 upon the settled account arrived at on the intervention of an engineer, Mr. B. Dhar. This payment was made by two cheques which were given to the plaintiff by the defendant on January 28, 1929. From the date of that payment, the present suit was instituted within three years. Henderson J. held that there was sufficient compliance with the proviso to s. 20 of the Indian Limitation Act. This finding is challenged in this appeal. Now it is admitted that the payment of Rs. 300 was made by two cheques as aforesaid and also that this payment was towards the plaintiff's claim and not on any other account. The question is whether the cheques are to be held to be acknowledgment of the payment in the handwriting of the appellant. The first point is whether the cheques are payments at all. This point was settled by the judgment of Jenkins C. J. in the case of *Kedar Nath Mitra* v. *Dinabandhu Saha* (1). There a cheque was delivered to a payee by way of payment and was received by him as such. Jenkins C. J. pointed out that there was no suggestion in that case that the cheque upon presentation was not paid and in fact it was. Upon these facts it was held that the cheque operates as a payment subject to a condition subsequent that, if upon due presentation the cheque is not paid, the original debt revives. Then he said:—

> If I am right in the view that the cheque actually was a payment the very payment was in the handwriting of the person making the same.

No doubt this was with reference to the old Act; while now by the amendment of 1927 it is not "the "fact of the payment" appearing in the handwriting of the person making the payment but "an acknow-"legment of the payment" appearing in the same handwriting that has got to be proved. So far as this question is concerned, it seems to me that, although the fact of payment may be different from

(1) (1915) I. L. R. 42 Cal. 1043.

the acknowledgment, if the cheque itself is evidence of the fact of payment, it is also evidence of acknowledgment. It has been contended that acknowledgment must necessarily follow the payment, I do not see why the two may not be simultaneous. If we take the acknowledgment to mean admission (the ordinary dictionary meaning) of the payment, it may be admission that payment is being made and not necessarily that payment has already been made. Mr. Bagchi has further contended that cheque itself is not the payment and he seems to argue as if payment must be in cash, although, when a direct question was put to him, he conceded that he could not take up that stand point. In support of his argument Mr. Bagchi has relied on the case of *Mackenzie* v. *Tiruvengadathan* (1). This was distinguished and practically dissented from by Sir Lawrence Jenkins C. J. in *Kedar Nath Mitra's* case (*supra*). *Mackenzie's* case was followed in the case of *Ram Chandar* v. *Chandi Prasad* (2), but was subsequently dissented from in the same High Court in the case of *M. B. Singh and Co.* v. *Sircar and Co.* (3) which took the same view as in the case of *Kedar Nath Mitra*. In our own Court, the high authority of Jenkins C. J. with regard to this question has never been dissented from. On the other hand it was followed in the case of *Mayahas* v. *Morley* (4). The Madras case was also dissented from in the case of *Mandardhar Aitch* v. *Secretary of State for India in Council* (5). That the mode of payment need not be in cash has been pointed out in several cases. For instance, payment may be by adjustment of debts, as in the case of *Guljar Mandal* v. *Sariman Mandalini* (6). In *Currie* v. *Misa* (7) the following passage is relevant :—

> This is precisely the effect which both parties intended the security to have, and the doctrine is as applicable to one species of negotiable security as to another ; to a cheque payable on demand, as to a running bill or a

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(2) (1897) I. L. R. 19 All 307.
(3) (1929) I. L. R. 52 All 459.
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promissory note payable to order or bearer, whether it be the note of a country bank which circulates as money, or the note of the debtor, or of any other person. The security is offered to the creditor, and taken by him as money's worth, and justice requires that it should be as truly his property as the money which it represents would have been his had the payment been made in gold or a Bank of England note.

In the case of *Marreco* v. *Richardson* (1) it was held that the date of part payment of a debt was the date when the cheque was handed by the defendant to his creditor and not the date when the cheque was in fact paid by virtue of an arrangement. Sir Gorell Barnes, President, says at p. 589 :—

> In the present case the part payment relied upon was by a cheque, a negotiable instrument, and payment by cheque has always been considered to be a conditional payment ; while the cheque is running, the right of action for the original debt is suspended and the payment is therefore conditional. This cheque was the acknowledgment to which the plaintiff pointed as implying a promise to pay the whole debt which would prevent the operation of the statute.

To the same effect is the following passage in Banning on the Law of the Limitation of Actions, 3rd Ed., p. 51 :—

> When a debtor gave a bill on account of the debt and the bill proved ultimately worthless, the bill (being a conditional payment) operated as an acknowledgment of the debt ; and if a bill be given in part payment of a debt, and the bill is duly paid when due, the bill operates as a part-payment from the time of the delivery of the bill (and not merely from the time of the actual payment).

See also the following passage in Lightwood's Time Limit of Actions, 1909 Ed., p. 374 :—

> The Limitation Act, 1623, may be excluded by part payment of the debt or payment of interest, when the payment is made under such circumstances that there can be implied from it a promise to pay the balance of the debt, or the debt, as the case may be. It must be a payment of a portion of the debt, accompanied by an acknowledgment from which a promise may be inferred to pay the remainder. . . . . The bar of the statute is precluded by payment of interest ; because the payment of interest is an acknowledgment of the debt, and the law implies from the acknowledgment of the debt a promise to pay it.

These passages not only confirm the view taken by Jenkins C. J. but they go further and show that a

(1) [1908] 2 K. B. 584.

cheque may not only be payment but also acknowledgment. The Indian statute only requires that the acknowledgment must be of the payment. It is not necessary that it must also be stated that the payment is towards a particular debt. Mr. Bagchi has referred to the case of *Beti Maharani* v. *Collector of Etawâh* (1). But that was a case under s. 19 of the Limitation Act, which relates to an acknowledgment of liability towards a particular debt, which is a different matter from acknowledgment of payment as required by the proviso to s. 20. Mr. Bagchi has also referred to the case of *Muthiah Chettiar* v. *Kuttayan Chetty* (2), a Madras case which followed the decision in *Mackenzie's* case (*supra*). This view was dissented from in *Mandardhar Aitch's* case (*supra*) where it was held, distinguishing s. 19 from s. 20 of the Limitation Act, that it is not necessary that the writing of payment (or acknowledgment, as the case may be) must, on the face of it, show expressly that the payment was made as such. To the same effect is the decision in the case of *M. B. Singh and Co.* mentioned above. Our attention has also been drawn to a decision of a single Judge in the case of *Jagtu Mal-Sada Sukh Rai* v. *Charanji Lal-Fakir Chand* (3), as also the case of *Municipal Committee, Amritsar* v. *Ralia Ram* (4), which support the view taken by Henderson J. Mr. Bagchi has laid great stress on the decision of their Lordships of the Judicial Committee in the case of *Manmohan Das* v. *Baldeo Narain Tandon* (5) and he has contended that the effect of this decision is to negative the view taken by Jenkins C.J. But this decision refers to Arts. 57 and 58 of the Limitation Act, where the question turns on the payment of a cheque which is a different matter from the cheque being taken as payment of the debt. As mentioned already Jenkins C.J. pointed out that the parties accepted the cheque as payment and that is the case

(1) (1894) I. L. R. 17 All. 198; L. R. 22 I A. 31.
(2) [1919] A. I. R. (Mad.) 952.
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here. It was never the case that the parties did not accept the cheque as payment, nor was it brought out that the cheque was actually paid into the bank a considerable time later. That being so, on the facts of the present case, it cannot be said that the view taken by Jenkins C.J. should not be accepted as correct and relevant. As I have pointed out, the acknowledgment was simultaneous with the payment; the appellant himself wrote out the cheque by which he paid, and it follows necessarily that by such writing he acknowledged the debt. Therefore there was compliance with the proviso to s. 20 of the Limitation Act and the view taken by Henderson J. was correct.

The only other matter that has been raised is with regard to a sum of Rs. 60 which was not included in the original estimate. It is contended that limitation is not saved with regard to this sum. Henderson J. says that acknowledgment is not of the debt but of the payment and if once limitation is saved the debtor is liable for any sum which the Court, after investigation, finds to be due. I am in agreement with this view. The decision in the case of *Panna Lal* v. *Ram Singh* (1) is not relevant because there the question was with regard to two debts, whereas in the present case there is one debt, only the amount being in dispute.

The appeal must therefore fail and it is dismissed with costs.

NASIM ALI J. I agree. Where the payment is proved by oral evidence or by some writing not in the handwriting or in the writing signed by the debtor, an acknowledgment of payment in the handwriting or in the writing signed by the debtor may be necessary to save limitation under proviso to s. 20 of the

(1) (1928) I. L. R. 10 Lah. 750.

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Limitation Act. But where, as in the present case, the fact of payment appears in the handwriting of the debtor, there is no reason why the said writing should not be taken as an acknowledgment of payment also. There is nothing in the proviso to s. 20, which precludes the same document as being treated as evidence of the fact of payment as well as an acknowledgment of the payment.

Appeal dismissed.

A. A.