KALIYANA-RAMAIYAR v. MUSTAK SHAH SAHEB.

authority in obtaining the muchalkas in question may be a ground for charging them with misfeasance under Act XX of 1863, but not for impeaching the documents executed for the rents justly due to the institution under their control.

In short, the obtaining of these documents is not a nullity, but is only an irregularity which could be waived by the defendant, and which he must be taken to have waived, if, as is alleged on behalf of the plaintiff, the defendant got his agent to execute them. The Sub-Judge's view that the suit failed on the ground that the muchalkas stand in the names of the members of the committee is therefore unsustainable.

It is next contended for the defendant that as he denied that the muchalkas were executed with his authority, and as the plaintiff failed to prove such authority, the Sub-Judge's decree should not be disturbed. The language of the judgment of the Subordinate Judge satisfies me that he decided the suit on the preliminary point discussed above, and did not call upon the parties to go into evidence. The decree must therefore be set aside. The suit should be replaced on the file and dealt with according to law. The costs here will abide and follow the result.

Against this judgment the present appeal (under section 15 of the Letters Patent) was preferred.

Sundara Ayyar for appellant.

Respondent did not appear.

JUDGMENT.—The case relied on (*Ramanadan* v. *Rangammal*(1) is not in point. The order of the learned Judge is right. We reject the appeal.

ORIGINAL CIVIL.

Before Mr. Justice Subramania Ayyar.

1896. August 10.

DAVIS

v.

OUNDASAMI MUDALI.*

Indian Contract Act—Act IX of 1872, *s.* 63—*Consideration.*

An agreement, extending the time for the performance of a contract falling under s. 63, Contract Act, does not require consideration to support it.

(1) I.L.R., 12 Mad., 266.

* Civil Suit No. 110 of 1895.

SUIT for damages for breach of contract and interest.

The plaint set forth that one R. S. Sheppard is the author of, and was the owner of, the copyright in four books and that his copyright was duly registered in accordance with law; that the said books were printed, published and sold at different periods by different publishers and lastly by Messrs. V. J. Manickavaloo Moodeliar and Company under agreement; that by the said agreement, dated the 21st day of April 1888, and registered on the same day the said R. S. Sheppard on certain terms and conditions transferred to Messrs. V. J. Manickavaloo Moodeliar and Company, the right to print certain editions of the aforesaid books, the said editions being limited as therein provided; that in and by a document duly executed at Madras on the 12th November 1892 and registered on the 19th November 1892, and also by a previous document executed on the 26th April 1890 the said R. S. Sheppard in consideration of the sum of Rs. 500 paid to him by the plaintiff, sold to the plaintiff the copyright in each of the aforesaid books, subject to the rights of the said Messrs. V. J. Manickavaloo Moodeliar and Company; that under a document executed on the 19th November 1892 and registered on the same day the plaintiff sold to the said O. Cundasami Mudali the copyright in the aforesaid books, subject to the rights of the said Messrs. V. J. Manickavaloo Moodeliar and Company, under the agreement of 21st April 1888, on the defendant agreeing to pay to the plaintiff the sum of Rs. 10,000 in four equal instalments on the 10th April 1893, 10th October 1893, 10th April 1894 and 10th October 1894; that the conditions contained in the said document of 19th November 1892 in so far as the plaintiff is concerned have been fully complied with by the plaintiff; that the defendant has not up to date paid any money towards and on account of the amount which was agreed to be paid to the plaintiff under the document of 19th November 1892, and the said amount is now overdue; that the plaintiff charges the defendant is liable to pay interest on the said instalments on the expiration of the respective dates fixed for payment thereof at the rate of 12 per cent. per annum. Plaintiff prayed for a decree for Rs. 11,050 being the amount due as aforesaid. Plaintiff prayed that he may be decreed to have a lien on the copyright of the said books for the amount that may be decreed; that the defendant be decreed to pay further interest on the principal sum of Rs. 10,000 at 12 per

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cent. per annum from date of filing plaint to date of decree; that the defendant, his servants and agents be restrained by injunction from dealing with the copyright of the books in any manner whatsoever; that the defendant be decreed to pay the costs and further relief.

The defendant admitted the agreement, but submitted that subsequent to the execution of the document referred to in the plaint, that is, on the 1st December 1892 the plaintiff and defendant had agreed in writing that the instalments in the said deed referred to were to commence and become payable on the accrual of the right in plaintiff to print and publish any one of the books in reference to the printing, publication and sale of which the said R. S. Sheppard had contracted with Messrs. V. J. Manickavaloo Moodeliar and Company in terms of the agreement, dated 27th April 1888; that the said writing was signed by the plaintiff and addressed to the defendant and a fresh starting point for the payment of the instalments was thereby substituted for the period originally fixed; that the right to print and publish any one of the said books has not accrued to defendant as the contract of the 27th April 1888 is still in force.

That consequently plaintiff is not entitled to bring this suit and defendent denied his liability to pay interest.

Mr. *K. Brown* for plaintiff.

Masilamani Pillai for defendant.

JUDGMENT.—Some years ago one Mr. R. S. Sheppard published four books, viz., 'Manual of English for Matriculation Candidates,' 'English Lessons for F.A. and B.A. Candidates,' 'Middle School Manual of English' and 'Lower Fourth Class Manual of Grammar.' On the 21st April 1888 Mr. Sheppard executed exhibit II to Manickavaloo and Company authorizing them to print and publish and sell at their own risk and expense and for their own advantage the seventh, eighth and ninth editions of the 'Manual of English for Matriculation Candidates' at 6,000 copies per edition, the fifth, sixth and seventh editions also at 6,000 copies each edition, and the third edition of 'English Lessons for F.A. and B.A. Candidates' to consist of 1,500 copies. Further by this contract he bound himself, whilst the contract remained in force, not to publish or arrange with any others for the publication of the above books, or of any other books that may prejudicially affect the sale of any of the three books. It also appears that at

the date of the said contract, the whole of the copies of the first edition of the 'Lower Fourth Class Manual of Grammar,' which was the only edition of the book published, had been assigned to Manickavaloo and Company on the understanding that until those copies were disposed of no further edition of the book should appear.

Between 1888 and 1892, the plaintiff, who is the mother-in-law of Mr. Sheppard, became the assignee of the right of publishing all further editions of the four books. And she executed on the 19th November 1892 exhibit A transferring her right to the defendant in consideration of Rs. 10,000 made payable in four half-yearly instalments commencing from the 10th April 1893. On the 1st December 1892, however, she addressed to the defendant a letter (exhibit I) whereby she agreed that the first instalment should not become due until the defendant, by the expiry of the contract with Manickavaloo and Company, was enabled to issue a fresh edition of any one of the four books.

The present suit was instituted for the recovery of Rs. 10,000 with interest, on the footing that the instalments had become payable as specified in exhibit A, apart from exhibit I. The defence was that under the contract, as modified by exhibit I, time for the commencement of payment had not arrived; since the contract with Manickavaloo and Company remained in operation, a large number of copies of the latest editions of all the four books being in their hands unsold.

The questions for determination are (1) Was there any consideration for the agreement (exhibit I) to extend the time for payment? (2) If not, is the agreement valid? (3) If the agreement is found valid, whether the condition laid down in exhibit I for the arrival of the time for payment has happened.

As regards the first question the defendant's contention was that though exhibit I bears a date posterior to that of exhibit A, in point of fact, the letter was written and handed to him in pursuance of an understanding come to between him and the plaintiff prior to exhibit A being actually signed and delivered. To support this allegation, there is nothing but the uncorroborated word of the defendant.

Moreover the opening lines of exhibit I itself, referring to a conversation of the 30th November 1892 which appears to have led up to the letter being sent, are scarcely consistent with the truth

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of the defendant's story. I find, therefore, that there was no consideration for the agreement.

As to the second question, its determination depends upon the construction to be put upon section 63 of the Indian Contract Act which provides, among other cases for one like the present, of an agreement to extend the time for the performance of a promise. Before considering the provisions of the section, it would tend to a clear comprehension of them if I briefly refer to the state of the English Law on the subject. Under that law the rule, rigorously followed out, that every agreement, relating to the discharge of a contract, save the exception recognised by *Foster* v. *Dawber*(1) must, unless made under seal, be supported by consideration has not, as pointed out by Sir F. Pollock in his work on contracts (sixth edition, page 177), been productive of very happy results. The learned author attributes such results to the carrying out of a general principle beyond the bounds within which it is reasonably applicable; or in other words to the doctrine of consideration, instead of governing the formation of contracts, being made to regulate and restrain their discharge also.

Now the question arises whether the Indian Legislature intended to perpetuate such an unsatisfactory state of things in this country. I think that it did not, that in the Contract Act the doctrine of consideration was not extended to the regulation and restraining of the discharge of contract by agreement and that the Legislature laid down by section 63 a rule different from that of the English Law.

In the first place, the language of the section does not insist upon the presence of consideration in regard to the cases mentioned therein. This view is fully confirmed by the illustration *b* to the section. The case, put in that illustration, is that of a person entitled to a sum of money accepting a less amount than is due to him. Now according to *Foakes* v. *Beer*(2), cited for the plaintiff and which finally settled the law as to this matter in England, acceptance in full satisfaction of a debt of a smaller sum than the amount due does not operate as a complete discharge of the debt, even though such a discharge would result from the creditor similarly accepting some article, other than money, of less pecuniary value. But the law laid down by the illustration referred to is

(1) 6 Ex., 839. (2) L.R., 9 App. Cases, 605.

the reverse of the English rule. Now it being thus clear that in the above typical instance, a person is capable of legally binding himself without consideration to forego his right to the difference between the debt and the smaller sum accepted by him in full discharge of his debt and there being absolutely nothing in the language of section 63 to indicate the recognition, with reference to the matter under discussion, of any distinction between the different cases, comprised in the section, it follows that the necessity for any consideration is dispensed with alike in all the cases to which the section relates, including that of agreements to extend the time for the performance of a promise.

This conclusion is further strengthened by the purely artificial character of the reasoning by which English Judges have sought to prevent the rule, requiring consideration in cases like the present, operating in practice unreasonably; as will be seen from the observations of Lord Denman, C. J., in *Stead* v. *Dauber*(1) where he dissented from *Cuff* v. *Penn*(2) and laid down that it cannot be maintained, that although there was an agreed substitution of other days than those originally specified, still the contract remained. In meeting an objection, based on the absence of consideration, to the view which was taken by him, the Chief Justice argued thus "Nor does any difficulty arise from the want of consideration for the plaintiff's agreement to consent to the change of days; for the same consideration which existed for the old agreement is imported into the new agreement which is substituted for it." The resort to such a fiction is obviated, in this country, by section 63.

Here it may be asked whether section 62, which also refers to cases of agreements relating to the discharge of contracts and the language of which at first sight may appear broad enough to include the cases falling under section 63, is consistent with the view taken by me. From the mere fact that two sections were enacted on the subject, it must be taken that the legislature intended to draw a distinction between the set of cases comprised in section 62 and that in section 63. These sections therefore must be construed so as not to overlap each other. This would be done by holding that agreements referred to in section 62 are agreements which more or less affect the rights of both parties under the

(1) 10 Ad. & E., 66. (2) 1 M. & S., 21.

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contract discharged by such agreements; whilst those referred to in section 63 are such as affect the right of only one of the parties. The former case *ex hypothesi* necessarily implies consideration which is either the mutual renunciation of right or coupled with it the mutual undertaking of fresh obligations or the renunciation of some right on the one side and the undertaking of some obligation on the other, that forms the consequence of an agreement to rescind, substitute or alter mentioned in section 62. It is only when the agreement to discharge affects the right of only one party, that consideration might be found wanting and there alone the Indian Law departs from the English Law, by making provision, for every such possible case, in section 63.

The result is that the agreement set up by the defendant which, as already stated, falls under section 63 is binding though without consideration.

As to the third and the last question: In dealing with this, it is hardly necessary to say that the express undertaking given by Mr. Sheppard to Manickavaloo and Company under exhibit II that nothing will be done to the prejudice of the rights granted to them is fully binding on the defendant. Though this refers to only three out of the four books spoken of in exhibit I, the defendant does not stand in a different position as regards the remaining book, inasmuch as, in consequence of the express understanding between Mr. Sheppard and Manickavaloo with reference to the first edition of this book, the defendant is debarred from issuing a fresh edition of the work until the previous one has been exhausted. Therefore the sole fact to be found is whether, as alleged by the defendant, Manickavaloo and Company are still in possession of copies of all the four books so as to preclude him from publishing a new edition of any one of them. That that is the case is established by the uncontradicted evidence of one of the witnesses called for the defendant. It follows that the condition specified in exhibit I for the arrival of the time for payment has not yet happened.

The suit is premature and is dismissed with costs.

Rencontre—Attorney for plaintiff.