APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Napier.

SUBRAHMANIAN CHETTIAR (FIRST DEFENDANT), APPELLANT,

v.

KADIRESAN CHETTIAR AND FIVE OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 2 TO 6), RESPONDENTS.*

1916. January 7, 11 and 19.

(Indian) Limitation Act (IX of 1908), arts. 59 and 60—Loan or deposit—Money left with a trader, not being a banker, if loan or deposit—Deposit, in article 60, meaning of.

Under article 60 of the (Indian) Limitation Act (IX of 1908), money left in the hands of a trader who is not a banker will be a deposit in circumstances such as would make it money of a customer where the depositee is a banker.

Article 60 and not article 59 of the (Indian) Limitation Act (IX of 1908) applies to a suit to recover money so deposited, even though it is payable on demand.

The word "deposit" in article 60 is used in a non-legal sense.

Official Assignee of Madras v. *Smith* (1909) I.L.R., 32 Mad., 68, *Perundevi tayar Ammal* v. *Nammalvar Chetti* (1895) I.L.R., 18 Mad., 390 and *Ishur Chunder Bhaduri* v. *Jibun Kumari Bibi* (1889) I.L.R., 16 Calc., 25, followed.

Dharam Das v. *Gangā Devi* (1907) I.L.R., 29 All., 773 and *Ichha Dhanji* v. *Natha* (1889) I.L.R., 13 Bom., 338, dissented from.

Sinclair v. *Brougham* (*Birkbeck Bank Case*) (1914) A.C., 398, referred to.

SECOND APPEAL against the decree of S. MAHADEVA SASTRIYAR, the Temporary Subordinate Judge of Rāmnād at Madura, in Appeal No. 234 of 1912 preferred against the decree of V. R. KUPPUSWAMI AYYAR, the District Munsif of Paramagudi, in Original Suit No. 826 of 1910.

These are two connected suits against the same defendants instituted by different plaintiffs to recover certain sums of money said to be deposited by them with the defendants who were traders carrying on money dealings. The plaintiff in one of the suits alleged that he had deposited a sum of money in the firm of the defendants in 1905 and subsequently entered the service of the firm as an agent or *aduthal* for their firm at Uvakuma on a salary of 301 pagodas for three years. He further alleged that he had likewise deposited in 1906 half his salary due from the firm also in the same firm, and had drawn certain sums therefrom, and that a balance was still due to him from the defendants out of the two deposits aforesaid. The plaintiff brought the suit in 1910 to recover the balance due to him and contended that the suit amounts were in the nature of deposits with the defendants' firm which were payable on demand, and as he made the demand in 1909

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within three years of the institution of the suit, the suit was within time. The defendants contended *inter alia* that the transaction was a loan and not a deposit and that the suit was barred by limitation. The District Munsif held that the transaction was a loan but that the suit was not barred on account of the calculation and crediting of interest in the defendants' accounts in 1908. The lower Appellate Court held that the transaction was a deposit and that the suit was therefore not barred. The defendant preferred a Second Appeal.

V. K. Srinivasa Ayyangar for *C. S. Venkatachariar* for the appellant.

K. V. Krishnaswami Ayyar for the respondents.

NAPIER, J.

NAPIER, J.—The question raised in this Second Appeal and in the connected Second Appeal No. 738 of 1913, is whether certain sums claimed by the plaintiff in each case from the defendant firm are "money deposited" within the meaning of article 60 of the present Limitation Act. The lower Appellate Court has held that they are, but we are asked to hold that there is no evidence to support that finding. The Second Appeal No. 737 of 1913 is to recover Rs. 817-1-9 alleged to be due to the plaintiff as balance of principal and interest due in respect of two sums deposited by him. The first amount was Rs. 550 given to the defendants on October 17, 1905, prior to his entering their service as an assistant, which he did on March 3, 1906. The second sum was Rs. 562-12-0, which represents half the salary of the defendant for the whole three years of his service and credited by him to himself on joining the service. No cash was taken out or returned by the plaintiff but it is proved that according to the custom of those traders the plaintiff was entitled to take that amount and deal with it as he wished. What he did was to leave it with the firm and draw against it as he required money. The lower Appellate Court has found further that the agreement between the parties was that the account of both sums should be credited with interest at the current rate and should be payable on demand. It is contended for the appellants that the money is "money lent" within article 59 and that the suit is barred by limitation. Reliance is placed on *Ichha Dhanji* v. *Natha*(1), *Dharam Das* v. *Ganga Devi*(2) and *Official Assignee of Madras* v. *Smith*(3). The

(1) (1889) I.L.R., 13 Bom., 338. (2) (1907) I.L.R., 29 All., 773.
(3) (1909) I.L.R., 32 Mad., 68.

Madras case is one of those arising out of the Arbuthnot insolvency in which a large number of claims were made for preferential payment in respect of money in the hands of the firm. The Court had to decide the real legal character of the transaction between the banker and his customer, and for that purpose laid down the law with which I respectfully agree the basis of which is to be found in the two leading cases—*Foley* v. *Hill*(1) and *In re Hallet's Estate*(2)—lately re-affirmed by the House of Lords in the *Birkbeck Bank Case* [*Sinclair* v. *Brougham*](3). The law is as follows:—The true relation between a banker and his customer is that of debtor and creditor [*Foley* v. *Hill*(1)], but a customer who pays money to his banker under terms that they are not to use it or who authorizes his banker to collect money due to him on the like terms constitutes a fiduciary relationship between himself and the banker and is entitled to recover the amount from the general assets of the banker, if the banker has committed a breach of trust, on the principle that all other payments must be assumed to have been made out of money in the banker's hands to which no fiduciary character attached [*In re Hallett's Estate*(2)]. It is contended for the appellants that on the admitted facts the present case is not within *In re Hallett's Estate*(2) and further that these principles must not be applied in the construction of the articles of the Limitation Act and that what is in law and fact a loan could not be money deposited under article 60. This is undoubtedly the view taken in *Dharam Das* v. *Ganga Devi*(4), where the Court holds on facts very similar to those here that article 60 is not intended to apply to a transaction which is in law a loan, and in *Ichha Dhanji* v. *Natha*(5) where the same language is used with the same result.

With great deference to the learned Judges the reasoning ignores the fact that if the term deposit is legally inapplicable to a loan it is also inapt for describing a trust of money and also that the word deposit is familiar in banking parlance as describing money held by a banker for his customer on special terms as distinguished from current account. In both of which cases however the banker is intended to have the use of the money and no

(1) (1848) 2 H.L.C., 28.
(2) (1879) 13 Ch. D., 696.
(3) (1914) A.C., 398.
(4) (1907) I.L.R., 29 All., 73.
(5) (1889) I.L.R., 13 Bom., 338.

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trust arises. The contrary view is expressed in *Ishur Chunder Bhaduri* v. *Jibun Kumari Bibi*(1) where the Court held that article 60 must be construed with reference to the ordinary idea of the public as to the dealing with banks and by the language used by the bankers themselves in describing their balances held on account of customers in a judgment which will repay careful examination and the learned Judges give good reasons for taking the view. The same view was taken by this Court in *Perundevitayar Ammal* v. *Nammalvar Chetti*(2) a case somewhat stronger than the Calcutta case in one respect in that the depositee was not a banker but an ordinary shopkeeper and thus the position was much more like the present case, the only difference being that in *Perundevitayar Ammal* v. *Nammalwar Chetti*(2) the depositor is not shown to have been entitled to draw against the deposit, whereas in *Ishur Chunder Bhaduri* v. *Jibun Kumari Bibi*(1) he did draw; all these cases however are decided on the words of the article in the Limitation Act of 1877 but the present Act has added the words "including money of a customer in the hands of a banker so payable." It must be admitted that the legislature has not yet made the matter perfectly clear but it has definitely, and I think intentionally, used language in a non-legal sense. The money of a customer can only mean money paid in the ordinary customary way of business. Now clearly when it passes into the banker's hands it is not the customer's money any longer. It becomes a debt due from the bank. I cannot but regard this language as throwing light on the meaning to be given to the word "deposit" for it seems to me illogical to treat the word "deposit" as inapplicable to what is in law a loan and yet be compelled to give a non-legal meaning to a phrase which is stated to be "included" in the word "deposit". We can, I think, only give full meaning to the language used in the present article by holding that money in the hands of a trader who is not a banker will be a deposit in circumstances such as would make it money of a customer where the depositee was a banker. For these reasons I am of opinion that the judgment of the lower Appellate Court is right and the Appeal must be dismissed with costs.

AYLING, J.

AYLING, J.—I agree.

K.R.

(1) (1889) I.L.R., 16 Calc., 25. (2) (1895) I.L.R., 18 Mad., 390.