APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Jackson.

K. M. P. R. N. M. FIRM (PLAINTIFFS), PETITIONERS,

v.

M. SOMASUNDARAM CHETTY & Co. (DEFENDANTS), RESPONDENTS.*

1924, September 11.

Evidence Act (I of 1872), sec. 92, proviso (5)—Proof of mercantile usage—Admissibility of evidence aliunde—"Thavanai," meaning of.

Held, that according to the usage proved to be prevailing amongst the piece-goods merchants in Godown Street, Madras Town, sales of piece-goods with a stipulation to charge interest at ¾ per cent per mensem after sixty days' "*thavanai*," are sales on credit for the period stipulated, and not cash sales and that accordingly limitation for a suit for the price begins to run from the expiry of the period.

Held further, that evidence *aliunde* can be given under section 92, proviso (5) of the Evidence Act as to the meaning of technical terms in a contract and as to incidents of the usage, of the trade not expressly mentioned.

CASE stated under section 69 of the Presidency Small Cause Courts Act XV of 1882 by the Registrar, Court of Small Causes, in New Trial Application No. 115 of 1923 preferred against the decree of C. R. TIRUVENKATA ACHARIYAR, Chief Judge of Small Cause Court, in Suit No. 10565 of 1921.

The facts are given in the judgment.

S. Subrahmanya Ayyar for *S. Rangaswami Ayyangar* for petitioners.

K. Bhashyam Ayyangar and *T. K. Srinivasathatha-chariyar* for respondents.

* Referred Case No. 10 of 1924.

JUDGMENT.

K.M.P.R.N. M. FIRM v. SOMASUNDARAM CHETTY & CO.

VENKATASUBBA RAO, J.

VENKATASUBBA RAO, J.—This is a reference under the Presidency Small Cause Courts Act made on a difference of opinion between the learned Chief Judge on the one hand and the Second and the Third Judges on the other.

The suit is for the balance due for the price of piece-goods sold. The plaintiffs are a firm of traders carrying on business at Coral Merchant Street, Georgetown, Madras, and the defendants are also traders carrying on business in another portion of the City, Godown Street. The defendants have raised the plea that the suit is barred by limitation. The decision of this issue turns upon the question whether the sale was a credit sale as contended for by the plaintiffs or it was a cash transaction as alleged by the defendants.

The contract is not in writing and the parties have agreed that according to the usage of the trade certain terms are implied in contracts of this description and that those terms are—

(1) That the price charged is that payable on the expiry of 70 days from the date of sale;

(2) that after that period the seller is entitled to charge interest on the price at 9 per cent per annum;

(3) that if the purchaser pays the price or any part of it within the said 70 days, he is entitled to a discount at 12 per cent per annum on the amount actually paid for the unexpired portion of the 70 days from the date of payment.

So far there is no dispute. But the plaintiffs contend that the price is payable only on the expiry of the period mentioned, in other words that the sale is for credit. The defendants urge that the price becomes payable on the date of the sale, in other words, that it is a cash transaction.

The learned Chief Judge (Trial Judge) on the evidence adduced as well as on his interpretation of Exhibit A which is the bill sent by the plaintiffs to the defendants, came to the conclusion that the sale was for credit and applied article 53 of the Limitation Act. The witness examined for the plaintiff deposes:

"The agreement was that the defendants should have a credit period. Within that period of 'thavanai' no demand could be made."

Likewise, a defence witness also says:

"It is intended that no suit can be instituted until the period of *thavanai* expires. I am not aware of any such suit being brought within the *thavanai* period."

This witness, however, prevaricates and tries to go back upon the statement he has made. Whatever this may be, the trial Judge is entitled to find the terms of the contract on the evidence and his finding on a question of fact is final.

But the Judge bases his decision to some extent also on the terms of the bill to which I have made reference. After the sale, the sellers sent Exhibit A to the purchasers and at the top of it the following words appear:—

"Debit to M. Somasundaram Chetty and Company Godown, (Defendants), interest at ¾ per cent per mensem after 60 days' *thavanai*."

By common consent, 60 days means 70 days, and incidentally I may take this opportunity to observe that it reflects little credit on those engaged in piece-goods trade at Madras who glibly say that when they note down 60 days they always mean 70 days. This habit has grown through several decades into a vice and the sooner it is given up the better.

Now, returning to the bill, the learned Judges of the Small Cause Court have put to themselves the question: What is the meaning of this word "thavanai"?

K.M.P.R.N. M. FIRM v. SOMASUNDARAM CHETTY & Co.

VENKATASUBBA RAO, J.

The trial Judge has held that it means "credit period." If he is correct, the sale is clearly a credit sale and the suit is within time. But the other two Judges are of the opinion that the word "thavanai" means "a fixed period or a stipulated space of time." According to them, the period is mentioned in the bill merely for the purpose of the calculation of interest. In their view, the object of fixing a period is to provide that interest shall be calculated only on the expiry of this stipulated space of time. Their explanation for the term relating to discount is, that it has the effect of inducing the purchaser to promptly pay up the amount. I think it is necessary to extract the following passage from the judgment of the learned Chief Judge :—

> "I need hardly say that the particular meaning to be attached to a term of a contract is one which has to be decided with reference to the facts of each case and upon the evidence in this case which I have considered carefully. . . . I incline to the view that the *thavanai* period in this case was the period of credit given to the purchaser."

The learned Judge was certainly entitled to find on the evidence that the word "thavanai" was used by the parties to the suit in the sense of a "credit period." If it has obtained a technical meaning and is used in that sense in a particular context, the document must be interpreted in the light of that meaning. That the word "thavanai" has acquired various meanings in various lines of business, admits of no doubt. It is sufficient to refer for this purpose to *Ponnuswami Chetty* v. *The Vellore Commercial Bank, Ltd.*(1), *Narayanan Chetty* v. *Suppiah Chetty*(2), *Muthiah Chettiar* v. *Ramanathan Chettiar*(3) and *Ramanathan Chetty* v. *Subramaniyan Chetty*(4). Oral evidence may be given under section 98 of the Indian Evidence Act to show the meaning of

(1) (1920) 38 M.L.J., 70.
(2) (1920) 38 M.L.J., 437.
(3) (1918) 7 L.W., 330.
(4) (1915) 28 M.L.J., 372.

technical, local and provincial expressions. Under this section, evidence of the meaning which words bear in mercantile transactions can be given. The dictionary meaning of the word "thavanai" is said to be "a term or a fixed term," but if the word has obtained a technical meaning in a particular trade or when used in a particular context, the Courts when construing that word are bound to take into account that meaning. The learned Chief Judge says that on the evidence he finds that the word "thavanai" is equivalent to a credit period, and speaking for myself with experience of such transactions extending over two decades, I am glad to find that the effect of the evidence as stated by the Chief Judge confirms what I have always believed to be the meaning of this word occurring in this context.

The Second and Third Judges were influenced by the observations of Mr. Justice COUTTS TROTTER, as he then was, in a suit decided on the Original Side of the High Court. He said in that judgment:

> "All that 'thavanai' means, so far as I can gather from the expert witnesses and from the dictionary that was produced, is 'a fixed period or a stipulated space of time' so that the word 'credit' which appeared to me to be almost fatal to the defendants' case is not there at all."

The learned Judge was not in that case called on to find what the technical meaning of the word "thavanai" was and for that purpose no witnesses were examined. He relied upon the dictionary meaning of the word and the testimony of an interpreter of the Court who of course gave a meaning to the word which he took from the dictionary. The case is not an authority in regard to the sense in which that word is used in the piece-goods trade as carried on in Godown Street. It is clear from the observations of all the three Judges that by usage certain terms are implied in transactions in piece-goods among Godown Street dealers and the

K.M.P.R.N. M. FIRM v. SOMASUNDARAM CHETTY & CO.

VENKATASUBBA RAO, J.

learned Second Judge also adds that in Coral Merchant Street business is now done in conformity with the Godown Street usage.

In *Rayner, In re Rayner* v. *Rayner*(1) VAUGHAN WILLIAMS, L.J., says that the meaning of a word is relative to the circumstances and occasion and date on which the word is used and that it is the duty of the Judge to inform his mind not only by reference to dictionaries of good reputation but also by evidence of the meaning ordinarily given to it amongst those who use it. In *Holt & Co.* v. *Collyer*(2) FRY, J., observes :

> "that before evidence can be given of the secondary meaning of a word the Court must be satisfied from the instrument itself or from the circumstances of the case that the word ought to be construed not in its popular or primary signification but according to its secondary intention."

In that case a person who had entered into a covenant not to use a house as a beer-house, opened a grocer's shop there at which he carried on the sale of beer to be drunk off the premises, as ancillary to his grocer's business. Evidence to show that the word "beer-house" was understood in the trade in a technical sense was rejected. The reason is stated by FRY, J., the lease was an ordinary lease by a landlord, who was not shown to be a brewer or connected with the brewing trade, to a person who was not, in any way, engaged in the business of selling beer. In these circumstances, if there be a technical signification to that word in the brewing trade there was no reason to suppose the parties who were not connected with that trade so used it and on that ground the evidence offered was rejected. The present case is very different. The word "*thavanai*" has been used by traders in piece-goods in a document relating to that trade and there can be no doubt that evidence can be

(1) [1904] 1 Ch. D., 176 (C.A.). (2) (1881) 16 Ch. D., 718.

given to show that the word is used in a particular sense. This again is a question of fact and the learned Trial Judge is entitled to find the meaning of the word as used in the document.

Supposing the word as used in the document really means a fixed period or a stipulated space of time, the defendants can found no argument on that. If that is the meaning of the word, the sale may be either a cash or a credit sale, and even assuming for a moment that Exhibit A is the contract, which it is not, oral evidence can be given under proviso 5 of section 92 to show that by the usage of the trade an incident not expressly mentioned in the contract (here that the sale is on credit) is a term of that contract. The learned Trial Judge is even then justified in finding that the sale is a credit sale. I answer the question submitted to us by the Small Cause Court by saying that the view taken by the learned Trial Judge is right.

JACKSON, J.—This reference has been made by three Judges of the Presidency Small Cause Court under section 69 of the Act.

They state that the question of law on which they differ is whether the cause of action in a certain suit dates from a sale (in which case the suit would admittedly be time-barred) or whether it dates from the expiry of 70 days allowed for credit after the date of the sale (in which case the suit would not be time-barred). This is a question of fact rather than of law; and the reference has really been made because the learned Judges have differed in construing a document which in their opinion affects the merits of the case. This document, Exhibit A, is correctly described by them as being a bill, which contains a bill head to this effect: "Interest at $\frac{3}{4}$ per cent per mensem after 60 days' period (*thavanai*)." The mere construction of this bill presents no difficulty. Its

K.M.P.R.N. M. FIRM v. SOMASUNDARAM CHETTY & Co.

JACKSON, J.

heading is an announcement to the effect that after 60 days interest will be charged. But at the end of their reference the learned Judges speak of this bill heading as if it were the suit contract. The bill is not a contract and its wording does not import a period of credit for the payment of the price. "Thavanai" is a colourless expression meaning only "period." In itself it has no more significance than the Latin word "per." It does not in itself convey the idea of credit. I agree with my learned brother that any particular sense in which the word may have been used must be proved *aliunde*. I would answer the reference of the Small Cause Court in the above terms.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Jackson.

1924, August 27.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), APPELLANT,

v.

V. K. RAMANUJACHARIAR AND FIVE OTHERS (PLAINTIFFS), RESPONDENTS.*

Madras Revenue Recovery Act (II of 1864), sec. 58—Ryotwari land settled and assessed as dry for thirty years—Resettlement during that period as wet and demand of increased assessment—Suit for declaration of illegality of demand, maintainability of.

When once ryotwari lands are classed as dry under a settlement for a period, say, thirty years, they cannot during that period be reclassified as wet and a demand by the Government of increased assessment on that footing is illegal and *ultra vires*; and a suit to declare such assessment illegal and *ultra vires* and for the recovery of the increased amount levied is not barred

* Second Appeals Nos. 1352 to 1357 of 1921.