APPELLATE CIVIL.

1907
August 14.

Before Mr. Justice Knox, Acting Chief Justice, and Mr. Justice Dillon.

DHARAM DAS (DEFENDANT) *v.* GANGA DEVI (PLAINTIFF) AND OTHERS (DEFENDANTS).*

Act No. XV of 1877 (*Indian Limitation Act*), *sections* 19 *and* 20, *schedule II, articles* 59 *and* 60—*Limitation—Suit to recover money deposited on current account—Loan—Deposit—Acknowledgment.*

Held that a suit to recover money deposited with a banker on a current account is governed as to limitation by article 59, and not by article 60, of the second schedule to the Indian Limitation Act, 1877. *Piaray Lal* v. *Elizabeth Berkeley* (1) followed.

In order that an acknowledgment of a debt should be effectual to save limitation under section 19 of the Indian Limitation Act it must be signed by the person to be bound thereby.

Similarly a part payment of the principal of a debt must appear in the hand-writing of the person making the part payment and not in that of any other person, however authorized.

Held also that the mere crediting of interest in a banker's books cannot be regarded, for the purpose of saving limitation, as equivalent to a payment of interest.

THIS was a suit brought by the widow of one Niadar Singh against the sons of one Paras Das, a banker carrying on business at Saharanpur, Simla and elsewhere to recover a sum of Rs. 5,520-15-9 under the following circumstances. The plaintiff alleged that her husband at various times between the 24th of December 1896 and the 24th of May 1902 had deposited money in Paras Das' bank at Simla, and that it was agreed that he was to receive interest at the rate of 6 annas per cent. per mensem on such deposits. It was also agreed that the principal and interest should be payable on demand. This course of dealing continued until the 2nd December 1901, the plaintiff's husband operating on the account thus opened, and the last withdrawal of money was on the 24th May 1902. The plaintiff further alleged that the account used to be balanced once a year, and that a balance of Rs. 5,520-15-9 was due to her up to the 8th January 1905. Practically the suit was contested only by Dharam Das, defendant No. 1, whose defence was that the money was paid as a loan and not as a deposit, and that the claim was therefore

* First Appeal No. 240 of 1905 from a decree of Babu Nihala Chandra, Subordinate Judge of Saharanpur, dated the 7th of August 1905.

(1) F. A. No. 96 of 1882, decided on the 4th April 1885.

1907

DHARAM DAS v. GANGA DEVI.

barred under article 59 of the second schedule to the Indian Limitation Act 1877. The court of first instance (Subordinate Judge of Saharanpur) decreed the plaintiff's claim in full, holding that the moneys paid by Niadar Singh to Paras Das were deposited within the meaning of article 60 of the second schedule to the Indian Limitation Act, and that as the plaintiff had demanded payment on the 7th of September 1904 and instituted the suit on the 10th of January 1905, the suit was well within time. The defendant Dharam Das appealed to the High Court.

The Hon'ble Pandit *Sundar Lal*, Babu *Satya Chandra Mukerji* and Dr. *Satish Chandra Banerji*, for the appellant.

Mr. *B. E. O'Conor* and Babu *Durga Charan Banerji*, for the respondents.

KNOX, ACTING C.J. and DILLON, J.—This appeal arises out of a suit brought by the plaintiff respondent to recover Rs. 5,520-15-9 under the following circumstances:—

The plaintiff is the widow of one Niadar Singh and the defendants are the sons of one Lala Paras Das. The plaintiff's case is that Paras Das was a banker carrying on business at Saharanpur, Simla and various other places, and that as a banker he used to receive moneys by way of deposit, on which interest was paid or not paid, according to the agreement in each particular case; that her husband at various times between the 24th December 1896 and the 24th of May 1902 deposited money in the defendant's Bank at Simla, and that it was agreed that he was to receive interest at the rate of annas 6 per cent. per mensem on such deposits. It was also agreed that the principal and interest was payable on demand. That this course of dealing continued until the 2nd December 1901, the plaintiff's husband operating on the account thus opened, and that the last withdrawal of money was on the 24th May 1902. The plaintiff further alleged that the account used to be balanced once a year, and that a balance of Rs. 5,520-15-9 was due to her up to the 8th of January 1905. The suit was practically only contested by Dharam Das, defendant No. 1, whose defence was, *inter alia*, that the money was paid as a loan and not as a deposit, and that the claim is, therefore, barred by article 59 of the Limitation Act of 1877. Badri Das, defendant No. 2, merely stated that the debt, if recoverable

at all, was recoverable from the defendant No. 1, as under a partition made between the sons of Paras Das, the money due to the plaintiff was payable by Dharam Das. Janeshri Das, defendant No. 3, made no defence. The lower Court decreed the claim in full, holding that the moneys paid by Niadar Singh to Paras Das were deposited within the meaning of article 60 of the Limitation Act, and that the plaintiff having demanded payment on the 7th of September 1904, and her suit having been instituted on the 10th of January 1905, her claim was amply within time. The arguments which were addressed to us by both sides at the hearing of this appeal turned entirely on the question of limitation.

For the appellant it was contended that in enacting the two articles in question, the Legislature intended to make a wide distinction between loans and deposits; that the transactions in this case amounted to loans made by Niadar Singh to Paras Das, and that, therefore, article 59, and not article 60, was applicable. For the respondents it was contended that, though the moneys advanced were undoubtedly loans in one sense of the word, they were none the less deposits within the meaning of article 60, inasmuch as Paras Das received them in the capacity of a banker; that article 59 was meant to apply to ordinary borrowers, but had nothing to do with bankers and their customers, that a banker is on a totally different footing to a private person, inasmuch as he creates a special confidence in himself by holding out that he is a person of substance and solvent. Mr. *O'Conor*, for the respondent, further urged that in any case the suit was not barred by reason of the entries in the appellants' books to be found at p. 33 R. These are:—

1. *Certain entries relating to* be debt due *to Niadar Singh in* the lists prepared and filed in suit No. 96 of 1903, in the Court of the Subordinate Judge, which was a suit between the defendants, the sons of Paras Das, for partition after their father's death.

2. An entry in the defendants' books on the 11th of October 1902 showing a balance in favour of Niadar Singh.

3. A credit of interest in Niadar Singh's account on the same date, and

1907

DHARAM DAS v. GANGA DEVI.

4. A payment of rent on Niadar Singh's account to Durga Gir Gosbain on the 24th of May 1902.

These entries, the learned counsel claimed, had the effect, the two former under section 19, and the two latter under section 20 of Act XV of 1877, of extending the period of limitation.

Upon these arguments it will be seen that the following points arise for consideration and determination in this appeal :— (1) Does article 59 or article 60 apply to this case? (2) If article 59 applies, what effect have the entries abovementioned upon the question of limitation ?

We accordingly proceed to consider point No. 1 as above set forth. In this connection it is necessary, in order to clear the way, to consider in what modes money is usually advanced to bankers by their customers, and what these transactions are called in banking parlance.

So far as we know, money is usually received by bankers in one of two ways. They are :—

(1) Advances which are repayable on demand and which are credited to the floating or current account of the depositor, and (2) advances which are not repayable till the expiration of a fixed period, and which are usually "fixed deposits." The former do not usually carry interest, the latter always do.

Under which of the above categories would Niadar Singh's dealings with Paras Das fall ?

There can be no doubt, we think, on the evidence, that the repayments he made were credited to his current account with Paras Das' firm. What then are the relations between a banker and his customer in regard to the latter's current account ?

Are they the same as between an ordinary borrower and lender : or do they stand on a totally different footing, partaking of a somewhat fiduciary character, as contended for the respondents ?

So far as the English Courts are concerned the point is concluded by the decision in the case of *Foley* v. *Hill* (1). In that case it was held that the relation between a banker and a customer who pays money into his bank is the ordinary relation of debtor and creditor, with a super-added obligation arising out of

(1) (1848) 2 H. L. C., 28.

the custom of bankers to honour the customer's drafts, and that the relation of banker and customer does not partake of a fiduciary character. That case has been referred to as being the law on the subject by the English Courts in the following cases :—*Pott* v. *Clegg* (1), *In re Agra Bank* (2), *In re Tidd* (3); and see also *Bridgman* v. *Gill* (4).

But in the case before us we have to consider whether the Indian Legislature, having, as we must presume they had, the above rulings present to their minds, in enacting article 60 of the second schedule of the Limitation Act, intended to place transactions between a banker and his customers on a different footing from that on which they had been placed by the English Courts. If that was their intention, then it is manifest that the plaintiff's suit must succeed; otherwise it must fail. As to the construction to be placed on the articles in question we were referred by the counsel on both sides to a number of authorities in support of their respective contentions. The learned counsel for the appellants relied upon the following cases:—*Hingun Lall* v. *Debee Pershad* (5), *Ram Sukh Bhunjo* v. *Brohmoyi Dasi* (6), *In the matter of T. Agabeg* (7), *Ichha Dhanji* v. *Natha* (8), *Chandu* v. *Chanda Mal* (9), and on an unreported case in this Court, *Piyare Lal* v. *Elizabeth Berkeley* (10). On the other side we were referred to *Ishur Chunder Bhaduri* v. *Jibun Kumari Bibi* (11), *Perundevitayar Ammal* v. *Nammalvar Chetti* (12), *Administrator-General of Bengal* v. *Kristo Kamini Dassee* (13) and *Dorabji Jehangir Randiva* v. *Muncherji Bomanji Panthaki* (14).

We have carefully considered the two articles in question by the light of these rulings. It is far from easy to say to what class of cases the Legislature meant article 60 to apply. It may apply to the transactions between a banker and his customers known as "fixed deposits" or it may apply only to deposits of money made with a private person. It is, however, unnecessary to come to a

(1) (1847) 16 M. and W., 321.
(2) (1866) 36 L. J. Ch., 151.
(3) (1893) 3 Ch., 154.
(4) (1857) 24 Beav., 302.
(5) (1875) 24 W. R., C. R., 42.
(6) (1880) 6 C. L. R., 470, 472.
(7) (1882) 12 C. L. R., 165, 168.
(8) (1888) I. L. R., 13 Bom. 338.
(9) Panj. Rec., 1885, No. 95, pp. 208, 210, 211, 213.
(10) F. A. No. 96, 1882, decided 4th April, 1885.
(11) (1888) I. L. R., 16 Calc., 25.
(12) (1895) I. L. R., 18 Mad., 390.
(13) (1904) I. L. R., 31 Calc., 519, 528.
(14) (1894) I. L. R., 19 Bom., 352, 357.

1907

DHARAM DAS v. GANGA DEVI.

decision on the point, holding, as we do, that it is not intended to apply to a transaction which is regarded by the law as a loan. Now the authorities cited by the appellants clearly lay down that the ordinary dealings between a native banker and his customers are in the nature of loans made by the latter to the former. The case above referred to as having been decided by this Court was the decision of a Division Bench, and the facts were precisely as they are in this case. This being so, we have no alternative but to follow that ruling, unless we can distinguish it or differ from it so strongly as to think that the question should be considered by a Full Bench. This we are not prepared to do. It was decided by two eminent Judges of experience, one of whom was the Chief Justice. Of the rulings cited for the respondents only two are really in point, namely, the case in I. L. R. 16 Calc., and that in I. L. R., 18 Mad. The others may be differentiated. But, as we have said above, we are bound to follow the decision of this Court, more especially as it is supported by the numerous authorities cited by the appellant. We find, therefore, that article 59 of the second schedule of the Limitation Act applies to this case, and that the suit is barred by limitation, unless the respondents can satisfy us that the entries above referred to have the effect of extending the period of limitation.

We now proceed to consider the second point: and first as to the entries in the list prepared at the time when the defendants separated and made a division of their ancestral assets and liabilities. In the first place there is nothing to show that these lists were signed by any of the defendants, and in the next place they are not dated, and no oral evidence has been given as to when they were made. These are, we think, particularly the former, fatal objections to these entries being treated as acknowledgments within the meaning of section 19, and we, therefore, find that they cannot be so treated.

We now pass on to the next entry. Was the balance struck on the 11th of October 1902 such an ackowledgment? We think not, as it is open to the objection that it does not purport to be signed by any of the defendants, or their father Paras Das. This is sufficient in our opinion to render it useless as an acknowledgment. As to the contention that there was a payment of interest

on the 11th of October 1902 and a part payment of the principal on the 24th of May 1902 within the meaning of section 20, it is based entirely on the entries in the defendants' own books.

According to the Full Bench ruling in the case in *Mukhi Haji Rahmuttulla* v. *Coverji Bhuja* (1), a part payment of the principal of a debt must appear in the handwriting of the person making the part payment and not in that of any other person, however authorized. There is nothing in the entry at page 33 R. of the payment of 80 rupees as house-rent, which is claimed as a part payment of the principal, to indicate that it was made by the person who made the payment. Following that ruling and the perfectly plain meaning of the proviso to the section, we hold that no part payment has been established.

Next as to the alleged payment of interest on the 11th of October 1902. It was held in *Ichha Dhanji* v. *Natha* (2) and also by a Division Bench of this Court in the case in *Prag Das* v. *Baldeo Prasad* (3) that a mere credit of interest in the defendants' books could not be regarded as equivalent to a payment of interest.

We agree with the views expressed in those cases and hold that the entry above referred to has not the effect contended for and does not operate so as to extend the period of limitation. The appeal is accordingly allowed. We set aside the decree of the Court below and dismiss the plaintiff's suit, but under the circumstances of the case we allow no costs.

Appeal decreed.

(1) (1896) I. L. R., 23 Calc., 546. (2) (1888) I. L. R., 13 Bom., 338 at page 343.
(3) Weekly Notes, 1906, p. 212.