1915
March, 6.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Rafiq.

JUGGI LAL AND OTHERS (DEFENDANTS) *v.* KISHAN LAL (PLAINTIFF) AND MOOL CHAND AND OTHERS (DEFENDANTS).*

Act No. IX of 1908 (Indian Limitation Act), schedule I, article 60—Limitation—Suit to recover money deposited with a banking firm.

There is no doubt, since the passing of the Indian Limitation Act, 1908, that a suit for the recovery of money deposited with a banker and repayable on demand is governed by article 60, and not by article 59, of the first schedule to the Act. *Dharam Das* v. *Ganga Devi* (1) referred to.

THIS was a suit to recover money deposited by the plaintiff's father with a banking firm. The facts of the case are fully stated in the judgement of the Court.

The Hon'ble Dr. *Sundar Lal*, The Hon'ble Dr. *Tej Bahadur Sapru* and Munshi *Gulzari Lal*, for the appellants.

Mr. *B. E. O'Conor*, Mr. *W. Wallach*, and Pandit *Shiam Krishna Dar*, for the respondents.

TUDBALL and RAFIQ, JJ.—This is an appeal by one set of defendants as against the plaintiff and the second set of defendants and arises out of a suit for the recovery of money brought in the following circumstances.

The plaintiff's father used to deposit sums of money on interest with the firm of Baij Nath Ram Nath until his death in August, 1897. He left him surviving his widow and the plaintiff his son, who was then a minor, and who at the date of the present suit in 1912 was about 19½ years old. Payments of various sums on account were made by the firm to the plaintiff's mother from time to time up to the year 1905.

In this year the firm of Baij Nath Ram Nath, which was a joint family concern, split up into two firms, owing to a separation of the family. These two new firms were Baij Nath Juggi Lal, represented by the present appellants, and Baldeo Das Kedar Nath, represented by the second set of defendants respondents.

The two branches divided up not only their properties but also their liabilities. Each of the new firms took over those liabilities which were due to relations more closely connected to it than to

* First Appeal No. 241 of 1913 from a decree of Murari Lal, Subordinate Judge of Cawnpore, dated the 21st of April, 1913.

(1) (1907) I. L. R., 29 All., 773.

the other firm. For this reason the second set of defendants took over the liability for the debt due to the plaintiff, inasmuch as the plaintiff's father's sister was the wife of Kedar Nath. The defendant Murli Dhar *alias* Mul Chand (of the second set) is the son of Kedar Nath, and he has in clear terms admitted that his branch took over this liability.

It is also a fact that after the partition a number of payments were made to the plaintiff's mother, and they were all made by the branch firm of Baldeo Das Kedar Nath. When the plaintiff came of age (eighteen years) he asked for payment of the amount standing to his credit. Both branches refused payment, the present appellants stating that they were no longer liable and that the plaintiff must seek his remedy against the second set of defendants.

The plaintiff has accordingly sued both sets of defendants.

The pleas raised in defence by the present appellants with which we are now concerned in this appeal were three in number, no others having been pressed before us. The first was that at the time of the separation the liability in question was taken over by the second set of defendants and the plaintiff's mother expressly consented to this and agreed to look to Baldeo Das Kedar Nath for payment. The plaintiff is bound by this consent and the appellants are no longer liable for the money. The next is that the suit is barred by limitation. The third is that the appellants are entitled to set off a sum of money about Rs. 5,100.

The Subordinate Judge held as follows :—

(1) that the evidence was insufficient to prove the alleged consent of the mother,

(2) that the suit was not barred by limitation,

(3) that the defendants had failed to prove that any sum as mentioned was due from the firm of Jodh Ram Chunni Lal, for which the plaintiff's father was liable and which the appellants were entitled to debit to the account of the plaintiff. He repelled the other defences and gave the plaintiff a decree for the sum of Rs. 13,231-10-3 with future interest and costs.

The above three pleas are again pressed before us.

Taking first the question of the mother's alleged consent and assuming that it would be binding, if proved, on the plaintiff, we

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find ourselves unable to hold that the evidence establishes beyond reasonable doubt that the mother actually came to such an agreement as is contemplated in section 62 of the Contract Act.

The only evidence is the statement of Lala Juggi Lal alone and the fact that after the separation whatever payments were made to the mother were made by Murli Dhar. Murli Dhar states openly that as between his branch and the appellants the former alone is liable if the suit be not barred by limitation, but he denied that the plaintiff's mother was a party to the agreement between the two branches. Lala Juggi Lal's evidence is too vague and wanting in detail to carry conviction to our minds that the widow gave any intelligent consent to the agreement. We doubt very much that she could have understood the legal effect thereof, and she at the most probably merely did as she was told to do in going to Murli Dhar for money. The alleged novation is not proved.

The next question is that of limitation. It is urged that under article 59 of the Act of 1877, the present claim had become time-barred before the present Act had come into force and that under the ruling of this Court in *Dharam Das* v. *Ganga Devi* (1), article 59 of the Act of 1877 applied to the circumstances of this case.

The firm of Baijnath Ramnath did banking business and the plaintiff's father deposited his money with them on the condition that interest would be payable and that the banker would repay the money on demand. Article 59 of the Act of 1877 applied to the case of money "lent" under an agreement that it shall be payable on demand. Article 60 referred to the case of money "deposited" "under an agreement that it shall be payable on demand."

The basis of the decision in *Dharam Das* v. *Ganga Devi* (1), was that the ordinary dealings between a native banker and his customers are in the nature of loans made by the latter to the former.

In the course of their judgement the learned Judges said:—"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."

(1907) I. L. R., 29 All., 773.

They pointed to the conflict of authority on the question and referred to an unreported decision in F. A. No. 96 of 1882, decided on the 4th of April, 1885, as a guide, and held that article 59 applied. Personally we have doubts as to the correctness of the decision.

Article 60 was a new article and appeared for the first time in the Act of 1877 and drew a distinction between money "*lent*" and money "*deposited*" under an agreement that it shall be payable on demand. In the one case the time began to run from the date of the loan and in the other case from the date of the demand. It seems to us that it was necessary to see in each case whether in fact the transaction was a loan or what in ordinary banking language is known as a "deposit." It does not suffice to say that a deposit is in the nature of a loan. Every deposit, fixed or otherwise, is in the nature of a loan in a banking concern, but the Legislature, it seems to us, clearly wished to draw a distinction between the ordinary loan and that class of loan usually known as a deposit when it introduced article 60 for the first time. None of the parties to this suit have called the present transaction a loan. They all speak of it as a deposit in the usual banking sense, and it can easily be distinguished from an ordinary loan. However, it is apparent that there was considerable conflict of opinion. The various cases are noted in the judgement in *Dharam Das* v. *Ganga Devi* (1). The Limitation Act of 1877 has now been replaced by the Act IX of 1908, and it is evident from the addition made therein to the language of article 60, that the Legislature had before it this conflict of opinion, and, to make its intention clear and remove the doubt, added the words "including money of a customer in the hands of his banker so payable" to article (60). In our opinion this was no alteration of the law, but only language used to make clear the real intention of the Legislature when in 1877 it for the first time enacted article 60. The Legislature having thus stepped in and made its meaning clear, there is no necessity for us to refer the point for decision of a larger Bench.

We therefore hold that article 60 does apply. Time began to run from the date of the demand, and, as the suit was brought

(1) (1907) I. L. R., 23 All., 773.

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within three years thereof, there is no bar of limitation in favour of either set of defendants.

The third plea is that the defendants are entitled to deduct the sum of about Rs. 5,100, which was due from the firm of Jodhraj Chunni Lal. The story is that the plaintiff's father Ram Chandra, when he deposited money with Ramnath Baijnath, was in the employment of the firm of Jodhraj Chunni Lal, that the two firms began to deal with each other and Ram Chandra agreed that his money should be security for any sum which might fall due to Ramnath Baijnath from Jodhraj Chunni Lal and that any such sum should be deducted when the money of Ram Chandra was repaid. We agree with the court below that the evidence on the point is most unconvincing. As a matter of fact the sum which Jodhraj Chunni Lal owed to Ramnath Baijnath was actually written off by the latter firm as a "bad debt." Ram Chandra died in 1897. At no time has the sum ever been debited to his account, as it most certainly would have been debited if he had stood surety for Jodhraj Chunni Lal. We do not believe the story and the evidence does not convince us and we hold against the appellants. The result of our findings is that the appeal fails and we dismiss it. We award costs to the plaintiff. The second set of defendants who are the persons really at fault in the matter will bear their own costs of this appeal.

Appeal dismissed.

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March, 10.

Before Mr. Justice Tudball and Mr. Justice Rafiq.

CHHABILE RAM AND ANOTHER (PLAINTIFFS) *v.* DURGA PRASAD AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), *section* 92—*Public trust—Suit instituted by two plaintiffs—Death of one plaintiff pending suit—Abatement of suit.*

Where a suit concerning a public trust of a charitable or religious nature has been instituted by two persons having an interest in the trust with the consent of the Advocate-General, and one of the plaintiffs dies, the suit will abate. But it is open to any other member of the public similarly interested to obtain the consent of the Advocate-General and to apply to be brought on to the record as a co-plaintiff, and it would be the duty of the court to give a person wishing so to be made a party a reasonable opportunity of obtaining the consent of the Advocate-General.

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* First Appeal No. 290 of 1913, from a decree of E. C. Allen, District Judge of Mainpuri, dated the 18th of February, 1913.