Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

BHAGWAN BAKHSH SINGH (DEFENDANT) *v.* JOSHI DAMODARJI AND OTHERS (PLAINTIFFS).*

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December, 20.

Accounts—Circumstances in which accounts settled between parties may be re-opened—Fraud—Substantial error.

Accounts settled between parties may be re-opened on the ground of substantial error or fraud. If the errors are sufficient in number and importance, whether they are caused by mistake or by fraud, the court has a right to open the accounts. But when the account is between persons in a fiduciary relation and the person who occupies the position of accounting party—that is, the trustee or agent, is the defendant, it is easier to open the account than it is in cases where persons do not occupy that position, that is to say, that a less amount of error will justify the court in opening the account. *Williamson* v. *Barbour* (1) and *Mc Kellar* v. *Wallace* (2) followed.

THE facts of this case are fully stated in the judgment of the Court.

The Hon'ble Pandit *Moti Lal Nehru*, The Hon'ble Dr. *Tej Bahadur Sapru* and Mr. *J. Nehru*, for the appellant.

Mr. *B. E. O'Conor*, for the respondents.

MEARS, C. J., and BANERJI, J.:—This appeal arises out of a suit for recovery of Rs. 3,50,000, principal and Rs. 58,746-1-6, interest, in all Rs. 4,08,746-1-6, on the basis of a promissory note executed by the appellant on the 9th of November, 1910.

The plaintiffs are a firm of jewellers and money-lenders of Benares, who carry on considerable business. The defendant appellant is the Raja of Amethi and a taluqdar of Oudh. In 1904 a suit was pending against him in regard to his estate and for the expenses of that suit he was in need of money. He was approached by the plaintiffs' firm and dealings began with him. Large sums of money were advanced to him from time to time and he also purchased jewelry of considerable value from the plaintiffs. It is alleged and not denied that he received from the plaintiffs nearly three lakhs of rupees in cash and it is stated that jewelry of the value of nearly 90,000 rupees was supplied to him. Accounts were submitted to him from time to time and he signed them and on two previous occasions executed promissory notes for the amounts shown by the accounts to be

* First Appeal No. 320 of 1916, from a decree of Udit Narain Singh, Subordinate Judge of Benares, dated the 23rd of March, 1916.

(1) (1877) L. R., 9 Ch. D., 529. (2) (1853) 5 Moo. I. A., 372.

due. The final promissory note is that of the 9th of November, 1910, for the principal sum of Rs. 3,50,000. The rate of interest mentioned in the note is 8 annas per cent. per mensem, that is, 6 per cent. per annum simple interest. The plaintiffs, however, state that the rate orally agreed upon was compound interest at the same rate with six monthly rests and interest has been claimed at that rate. Credit has of course been given for payments made by the defendant.

The defendant appellant, whilst admitting execution of the promissory note, asserted that the first plaintiff, Damodarji Joshi, had ingratiated himself into the favour of the defendant and acquired great influence over him, that in collusion with the defendant's servants, he fraudulently caused the defendant to sign accounts and execute promissory notes, that it was understood between the parties that accounts would be explained and adjusted when final payment would be made, that this had not been done and that the full amount of the last promissory note was not due to the plaintiffs. He urged that the accounts should be re-opened and fresh account taken of the dealings between the parties. He objected to the charging of compound interest, to the claiming of interest on the price of the jewelry sold to him, to the price of the jewelry and in particular that of a blue diamond, and in substance he contended that he had been overcharged to the extent of about Rs. 50,000.

The court below has decreed the claim in part. The learned Subordinate Judge refused to re-open the accounts on the grounds that a settled account could only be re-opened where a fiduciary relation existed between the parties and no such relation existed in the present case. As to the blue diamond, he held that the first plaintiff was the agent of the defendant for the purchase of it and that he could only charge the price actually paid for it to the seller. The learned Judge, therefore, disallowed Rs. 10,100, the amount of difference between the price charged and the amount paid. As to other articles of jewelry, he held that it had not been established that any excessive charge was made. He further held that the plaintiffs had wrongfully detained certain bars of gold which they had taken from the defendant and pawned with the Allahabad Bank and

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that the defendant was entitled to interest on the value of the gold bars. He accordingly deducted from the claim the amount of such interest. He also was of opinion that the plaintiffs were entitled to obtain simple interest on the amount of the promissory note for Rs. 3,50,000, and not compound interest as claimed, and he did not allow further interest for the period subsequent to the institution of the suit. The total amount for which a decree was passed was Rs. 3,51,255-9-3.

The defendant has preferred this appeal, and the plaintiffs have filed cross-objections in regard to the order of the court below as to the gold bars and the interest for the period of the pendency of the suit and future interest.

It is contended on behalf of the appellant that it has been proved that he provisionally signed the promissory note on the understanding that full and true accounts would be rendered at the time of the final closing of the account and it was strenuously urged that in any case the appellant was entitled to have the accounts re-opened.

The view of the learned Subordinate Judge that settled accounts can be re-opened only where a fiduciary relation exists is in our opinion incorrect. Settled accounts may be re-opened on the ground of substantial error or fraud. This was held in *Williamson* v. *Barbour* (1), where the law on the subject was thus laid down by JESSEL, M. R.—"If they (the errors) are sufficient in number and importance, whether the errors are caused by mistake or errors caused by fraud, the court has a right to open the accounts. But when the account is between persons in a fiduciary relation and the person who occupies the position of accounting party—that is, the trustee or agent, is the defendant, it is easier to open accounts than it is in cases where persons do not occupy that position, that is to say, that a less amount of error will justify the court in opening the account." His Lordship added that "every case must depend on its own circumstances." The same view was held by the Privy Council in *McKellar* v. *Wallace* (2). In the present case it is clear that there was no fiduciary relation and it has not been established that fraud was perpetrated. We have, therefore, to consider

(1) (1877) L. R., 9 Ch. D., 529. (2) (1853) 5 Moo. I. A., 372.

whether "the accounts have been shown to be erroneous to a considerable extent both in amount and the number of items."

[*Note.*—The rest of the judgment deals with the facts of the case and is not therefore reported. The judgment concluded as follows.]

We accordingly dismiss the appeal and overrule the respondents' objections and direct the parties to bear their own costs in this Court.

Appeal dismissed.

FULL BENCH.

Before Sir Grimwood Mears, Knight, Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.

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IN THE MATTER OF THE PETITION OF SUNDAR LAL.*

Act No. I of 1910 (*Indian Press Act*), *section* 4(1) (*c*)—*Interpretation of statute*—"*Government established by law in British India*"—*Section* 4 *of Act No.* I *of* 1910 *not* ultra vires *of the Indian Legislature.*

Held that section 4 of the Indian Press Act, 1910, is not *ultra vires* of the Indian Legislature. *Besant* v. *Advocate General of Madras* (1) referred to.

In clause (1) (*c*) of that section, the expression 'Government established by law in British India' means the established authority which governs the country and administers its public affairs and includes the representatives to whom the task of government is entrusted. The word Government in sections 2 and 4 of the Act is equivalent to Government established by law in British India. *Besant* v. *Emperor* (2) referred to.

In an application under section 17 of the Indian Press Act, 1910, against an order under section 4 forfeiting the applicant's security, the Court, on a consideration of the articles upon which the order complained of was based, found that they were such as would convey to an ordinary person that the rulers of this country "in addition to incompetence, cowardice and heartlessness, were guilty of slaughter of innocent people in order to terrorize them into subjection, and to crush out all kinds of political movements and national aspirations, and further that they were perfidious enough to pervert and misapply the Defence of India Act with the like object and to invent the 'Rowlatt Act' for a similar purpose."

The Court accordingly *held* that the order for forfeiture of the applicant's security was completely justified.

THE applicant, Sundar Lal, was the proprietor and keeper of a printing press at Allahabad, at which a weekly newspaper

*Civil Miscellaneous No. 362 of 1919.

(1) (1919) I. L. R., 43 Mad., 146. (2) (1916) I. L. R., 39 Mad., 1085.