PRIVY COUNCIL

J. C.*
1937
December, 20

MANMOHAN DAS (DEFENDANT) *v.* BALDEO NARAIN TANDON AND OTHERS (PLAINTIFFS)

[On appeal from the High Court at Allahabad.]

Limitation Act (IX of 1908), articles 57 and 58—Limitation—Loan given by cheque endorsed by lender—Date of loan.

Article 58 of the Limitation Act applies to a case in which the lender draws his own cheque and gives it to the borrower. It does not govern a suit in which he transfers to the borrower a cheque which has been drawn by another person and endorsed in his favour by the payee. In such a case the suit is governed by article 57.

The *terminus â quo* is the date on which the loan is made. The loan is made when the cheque is paid, that is when the money is received by the borrower. The mere handing over of a cheque by the lender to the borrower does not amount to payment. Nor does the period begin to run against the lender when the cheque received by the borrower is paid into his own bank and the amount is credited to him by his bank.

Garden v. *Bruce* (1), referred to.

APPEAL (No. 93 of 1934) from a decree of the High Court (November 22, 1932) which reversed a decree of the Subordinate Judge at Allahabad (September 18, 1928).

The material facts are stated in the judgment of the Judicial Committee.

1937. *July*, 15 *and* 16. *Dunne, K. C., and Rashid, for the appellant*: There was no evidence that the money was lent to the Aniline Dyes Company and that the High Court was not justified in reversing the judgment of the Subordinate Judge on that point. If there was a loan, the suit was barred by limitation. The date of the loan would be the date of the payment of the cheque, namely, here, the 20th August 1923. It was so found by the Subordinate Judge and the onus is on the plaintiff to show that that finding is wrong. The only document

Present: Lord THANKERTON, Sir SHADI LAL and Sir GEORGE RANKIN.
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antecedent to the bringing of the suit is the notice given by Tandon to the Aniline Dyes Company on the 31st October, 1924.

Majid, for the 1st respondent: referred to the evidence and submitted there was a loan to the Aniline Dyes Company. The suit was not barred by limitation. The cheque was not cashed till the 30th August, 1923. The plaint was presented on the 27th August, 1926. That would be the date of the institution of the suit. Reference was made to article 58 of the Limitation Act.

[Lord THANKERTON: Does article 58 apply where the lender has not given his own cheque but has endorsed a cheque given to him and given it to the borrower?]

Majid referred to *Komal Prasad* v. *Savitri Bibi* (1).

Chinna Durai, following: An endorsed cheque stands on the same footing as any other cheque under article 58.

Dunne, K. C., in reply: *Komal Prasad* v. *Savitri Bibi* (*supra*) was a case of a hundi and the point was whether the date was the date of handing over of the hundi, and *Garden* v. *Bruce* (2) was applied. Handing over a cheque would not be a loan till the cheque was cashed. A negotiable instrument would come under article 57. Here what was handed over was a negotiable instrument. A cheque is not negotiable till it is made so by endorsement.

The judgment of the Judicial Committee was delivered by Sir SHADI LAL:

This appeal arises out of a suit brought by the plaintiff Baldeo Narain Tandon (hereinafter referred to as Tandon) against a firm called the United Provinces Aniline Dyes Company (described as "the firm" for convenience) for the recovery of Rs.14,950 with interest. The High Court of Judicature at Allahabad, dissenting from the trial Judge, has granted a decree in favour of the plaintiff; and from that decree Manmohan Das, one

(1) (1905) I.L.R. 28 All. 54. (2) (1868) L.R. 3 C.P. 300.

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of the partners of the firm, has appealed to His Majesty in Council.

The plaintiff stated that the sum of Rs.14,950 was advanced by him as a loan to the firm by a cheque for that amount. The cheque in question was drawn by the Secretary of the Finance Board of the Congress Reception Committee, Amritsar, on the 12th August, 1923, in favour of another firm called Bond Brothers for the price of the work done by them for the Reception Committee. It was endorsed by two of the partners of Bond Brothers, namely, Tandon and Banerji, in favour of one Sri Kishan Das Wahal.

Now, it is common ground that Sri Kishan Das Wahal was the manager of the defendant firm, and it appears that the money payable on the cheque was received by him on behalf of the firm. The plaintiff claims that he received the cheque from his partners in Bond Brothers in part payment of the money due to him by the latter, and that he made it over to the firm as a loan.

The first question for consideration is whether the firm received the money which was payable on the cheque. It is conceded that if the money was received by the firm it must be deemed to be a loan made by the plaintiff. Now, a satisfactory proof of the receipt of the money is furnished by the account books of the firm; and it cannot, therefore, be disputed that the plaintiff is entitled to recover it.

The money due on the cheque was paid on the 30th August, 1923, by the Central Bank of India at Amritsar, on which the cheque was drawn, and the suit for its recovery was instituted on the 27th August, 1926. It is suggested that the suit is governed by article 58 of the first schedule to the Indian Limitation Act, 1908, which prescribes a period of three years for a suit for the recovery of money lent when the lender has given a cheque for the money lent by him. That article, however, applies to a case in which the lender draws his

own cheque and gives it to the borrower. It does not govern a suit in which he transfers to the borrower a cheque which had been drawn by another person and endorsed in his favour by the payee. The period of three years prescribed by the article begins to run from the date on which the cheque is paid, and a cheque is paid when it is cashed by the lender's bankers; *Garden* v. *Bruce* (1). It is only then that the lender's money passes into the hands of the borrower, and the loan is made by the former to the latter; the mere handing over of a cheque by the lender to the borrower does not amount to a payment of the cheque. Nor does the period begin to run against the lender when the cheque received by the borrower is given by him to his own bank, and the amount is credited to him by the bank.

The suit does not, therefore, come within the ambit of article 58, but is governed by article 57, which is a general article applicable to a suit for the recovery of money payable for the money lent; and the *terminus à quo* is the date on which the loan is made. The loan in the present case was made on the 30th August, 1923, when the money was received by the borrower; and the suit which was brought within three years from that date must be held to be within the time.

The only other point argued on behalf of the appellant, Manmohan Das, is that he was not a partner in the firm in question when the loan was contracted; and he cannot, therefore, be liable for the payment of the debt. The learned Judges of the High Court at Allahabad, upon an examination of the evidence, have decided that the appellant was a partner at the time of the transaction, and this conclusion is supported, not only by the testimony of the plaintiff, but also by the balance sheets of the firm. The evidence, which stands unrebutted, shows that the appellant was a partner in the firm when the money was lent, and it is immaterial that he severed his connection with the firm afterwards.

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The judgment given by the High Court cannot be challenged on any of the grounds urged on behalf of the appellant, and must be affirmed. Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed.

Solicitors for the appellant: *Nehra & Co.*

Solicitors for the 1st respondent: *Douglas Grant & Dold.*

APPELLATE CIVIL

Before Mr. Justice Thom and Mr. Justice Bajpai

1936
April, 16

RAGHUNANDAN SAHU AND OTHERS (PLAINTIFFS) *v.* BADRI TELI AND OTHERS (DEFENDANTS)*

*Hindu law—Antecedent debt—Immoral or illegal debt—*Avyavaharika *debt—Decree against father for damages for malicious prosecution—Sons and grandsons not liable—Interest, rate of—Compound interest.*

An antecedent debt of the father or grandfather is not binding on the sons and grandsons if the debt is an immoral or illegal debt or an *avyavaharika* debt. No hard and fast rule can be laid down for determining what debts are included in the term "*avyavaharika*" debt, which may, however, be fairly rendered as an obligation arising from an act repugnant to good morals or opposed to fair dealings. In the case of a decree against the father or grandfather, like a decree for damages, the act which is the foundation of the suit for damages has got to be scrutinised and it has to be seen whether the act was a *vyavaharika* act or an *avyavaharika* act. Bringing a false and malicious complaint without reasonable and probable cause is a tortuous act opposed to public policy or decent *vyavahara,* and therefore an *avyavaharika* act. A decree against the father or grandfather for damages for malicious prosecution is, *prima facie,* founded on an *avyavaharika* act which comes within the category of immoral or illegal or improper debt, and such a decree can not constitute an antecedent debt binding upon the sons and grandsons.

Interest at 9 per cent. per annum, compoundable every year, was *held* to be not *prima facie* unreasonable, excessive or hard.

*Second Appeal No. 946 of 1931, from a decree of Makhan Lal, Second Additional Civil Judge of Jaunpur, dated the 17th of March, 1931, modifying a decree of Suraj Prasad Dubey, Munsif of Shahganj, dated the 3rd of September, 1929.