

APPELLATE CIVIL.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice and Mr. Justice Brown.

S. R. A. S. SIDAMBARAM NADAR AND OTHERS

vs.

D. R. MAGANLALL BROTHERS.*

1929

Mar. 19.

Transfer of Property Act (IV of 1882), s. 130—"Actionable claim"—Mode of assignment—Writing, not deposit, essential—Debt due here assignable—Authority to collect and deposit of bills, not an assignment of debt.

Transfers of an actionable claim, whether outright transfers, or by way of security, are governed by the provisions of s. 130 of the Transfer of Property Act.

Where a debtor by his letter to his creditor merely authorizes the creditor to draw the moneys that may be due to the debtor and declares that he has deposited with his creditor the bills due as security, but does not assign the debt due then neither such letter nor the deposit with it of the bills creates any charge or lien on the debt.

Mulraj Khatau v. Vishwanath, 37 Bom. 198 (P.C.)—followed.

Hay for the appellants.

Doctor for the respondents.

RUTLEDGE, C.J., and BROWN, J.—The respondents, D. R. Maganlall Brothers, carrying on business in partnership, by their partner, Maganlall Popetbhai, filed a suit on the Original Side of this Court against one Maung Po Nyan, Abdul Gunny and four others. They claimed that Po Nyan had executed in their favour four promissory notes on which at the time of suit the sum of Rs. 11,285-13-0 was due. They further claimed that on the 23rd of June, 1927, Po Nyan had by a deed created in their favour a lien or first charge on all sums due by the Public Works Department to Po Nyan.

In the suit as originally framed, Po Nyan and Abdul Gunny alone were the defendants, and Abdul Gunny

* Civil First Appeal No. 257 of 1928 from the judgment of the Original Side in Civil Regular No. 377 of 1927.

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was joined on the ground that he had obtained an order of attachment before judgment on the moneys lying to the credit of Po Nyan in the Public Works Department. The other four defendants were added subsequently on the ground that they also had attached the same moneys.

The plaintiffs asked for a decree for the amount due against the 1st defendant, and for a declaration as against the other defendants that the plaintiffs had a first lien or charge on all sums due by the Public Works Department to the 1st defendant.

The plaintiffs were given a decree in accordance with the prayer in the plaint by the trial Court. The present appeal against this decree has been filed only by the 4th, 5th and 6th defendants, A. E. Nagoor Meera, N. N. Chettyar Firm and S. R. A. S. Sidambaram Nadar.

The first ground in the memorandum of appeal is to the effect that the debts alleged to be due by Maung Po Nyan to the plaintiffs have not been established ; but this ground has not been pressed before us. The promissory notes were produced and were sworn to by Maganlall Popetbhai and Po Nyan has not denied executing them.

We see no reason, therefore, for interfering with the decree for the payment of money by Po Nyan. It has, however, strongly been urged before us that the declaration in favour of the respondents of the lien on the moneys in question was not justified.

On this point it has been urged that the plaintiffs did not obtain the execution of the document on which they rely ; that in any case they have not proved that it was executed before the attachment by Abdul Gunny ; and, finally, that, even if the document was executed, as alleged, no lien or charge has been established.

Each one of these contentions has been disputed on behalf of the respondents, but we are of opinion that this appeal can be decided by a consideration of the third contention only.

On the 17th of June, 1927, Po Nyan executed a power of attorney in favour of Maganlall Popetbhai, and on the 23rd of June he is alleged to have written the document on which the respondents chiefly rely. This document reads as follows:—

Rangoon, 23rd June, 1927.

“Maganlall Popetbhai, Esq.,
No. 81 in 28th Street,
Rangoon.

Dear Sirs,

With reference to the loans received by me the undersigned on pronotes hereunder mentioned and marked 'A' I have deposited with you the Security Deposit receipts hereunder mentioned marked 'B'—as collateral security and authorize you to draw the same when the work is completed and for which I have executed a Power of Attorney in the name of Maganlall Popetbhai dated 17th June 1927 and recorded as No. 1381 of 1927 of the office of the Sub-Registrar of Rangoon and I hereby declare that I have given as security all Bills that I have to draw from the Executive Engineer Public Works Department Rangoon in connection with my contract for construction of clerks quarters at Pauktaw now and in the future and also authorized Mr. Manganlall Popetbhai to draw the same Bills and credit the same to my account with Popetbhai Dayabhai and Sons and D. R. Maganlall Brothers of No. 81 in 28th Street Rangoon.

Yours faithfully,

(Sd.) PO NYAN

23-6-1927.

No. 18, Obo Street, Kemmendine.”

The Schedule “A”, attached to the letter contains a list of five promissory notes and the Schedule “B”, contains a list of three items, namely one chellan, one receipt and a deposit with the Executive Engineer, Rangoon Division.

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It was held by their Lordships of the Privy Council in the case of *Mulraj Khatau v. Vishwanath Prabhuram Vaidya* (1), that transfers of an actionable claim, whether outright transfers, or by way of security, were governed by the provisions of section 130 of the Transfer of Property Act. In that case a debtor held certain insurances on his life. He deposited the policy with regard to one of these insurances with the plaintiff in the case to secure moneys due by him to the plaintiff, and subsequently he executed a formal deed of assignment of this policy to the defendant.

It was held that, in view of the provisions of section 130 of the Transfer of Property Act, the assignment to the plaintiff was of no effect in creating a charge. At page 210 of their judgment, their Lordships remark :—

In the present case the respondent bases his claim on a deposit of the policy and not under a written transfer, and claims that this creates a charge on the policy. The section specifically enacts that such a proceeding shall not have any such effect; such a charge can only be created by a written document. It follows that the respondent acquired no right whatever to the policy or its proceeds by reason of the deposit.

Under the definition given in section 3 of the Transfer of Property Act, "actionable claim" includes a claim to any debt other than a debt secured by mortgage of immoveable property, or by hypothecation or pledge of moveable property.

In the present case the respondents claim a charge or lien on the money due by the Public Works Department, that is to say, they claim a lien on an actionable claim, and the decision in *Mulraj Khatau's* case is clearly to the effect that such a

charge or lien can only be effected by a written assignment under the provisions of section 130 of the Transfer of Property Act.

We are unable to read the document on which the respondents rely in this case as being a document of such a nature. It is merely a letter by Po Nyan in which he authorizes not the respondents but Maganlall Popetbhai, one of the respondents, to draw the moneys that may be due to him from the Public Works Department, and declares that he has deposited with him certain securities. Mr. Maganlall Popetbhai is authorized to credit the sums he draws with Popetbhai Dayabhai and Sons and with the defendants. But the document clearly does not assign the debt due to Po Nyan to the respondents, Maganlall Brothers, and the Privy Council case already cited is clear authority for holding that the deposit of the document creates no charge or lien at all on the debts. The letter in question makes Maganlall Popetbhai solely responsible for the recovery of these debts, but it does not assign the debts to him or to anyone.

We have been referred on behalf of the respondents to a number of English cases, but it was remarked by their Lordships of the Privy Council in *Mulraj Khatau's* case that in India Courts are bound by the provisions of section 130 of the Transfer of Property Act. Towards the conclusion of their judgment, their Lordships observe:—

“The decision of the Court below was therefore erroneous. The error arose from the learned Judges not having appreciated that the positive language of the section precluded the application in India of the principles of English law on which they based their decision.”

For these reasons we are of opinion that the respondents did not establish that they had any charge or lien on the debts in question.

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We, therefore, modify the decree of the trial Court by deleting therefrom the declaration of a lien or charge in favour of the respondents.

The appellants are entitled to their costs in this appeal. In the trial Court, the 1st defendant, Po Nyan, will pay the plaintiffs' costs, and for the rest the parties will bear their own costs.

APPELLATE CRIMINAL.

Before Mr. Justice Maung Ba.

MOHAMED HAYET MULLA

v.

KING-EMPEROR.*

1929

Mar. 25¹

Criminal Procedure Code (Act V of 1898), ss. 367, 531, 537—Magistrate's omission to sign judgment, mere irregularity curable under s. 537—Place of trial, error as to—No failure of justice, error immaterial.

An omission to sign and date a judgment by a Magistrate in open Court at the time of pronouncing it as required by s. 367 of the Criminal Procedure Code, amounts to a mere irregularity curable by s. 537.

Emperor v. Ram Sukh, 47 All. 284—*followed*.

Tilak v. Baisagomoff, 23 Cal. 502—*referred to*.

Bandaru v. Emperor, 27 Mad. 257; *Queen-Empress v. Hargobind*, 14 All. 242—*dissented from*.

Where there is no failure of justice owing to an error as to place of trial the irregularity does not vitiate the trial.

Rauf for the appellant.

MAUNG BA, J.—Appellant aged 64 appeals from a sentence of four years' rigorous imprisonment on three charges of cheating in the last case tried by the late U Po Nu as Additional District Magistrate, Rangoon.

The first legal objection taken is that the sentence is illegal as there is no judgment signed by the learned Magistrate. On the record there is a judgment prepared by the late U Po Nu. From the affidavits of

* Criminal Appeal No. 117 of 1929 from the order of the District Magistrate of Rangoon in Criminal Regular Trial No. 133 of 1927.