REVISIONAL CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Bhide.

GHANIYA LAL (PLAINTIFF) Petitioner

versus

KARAM CHAND (DEFENDANT) Respondent.

1928

Dec. 22.

Civil Revision No. 573 of 1927.

Negotiable Instruments Act, XXVI of 1881, section 64: Promissory note—Non-presentment for payment—effect of it on the liability of the maker.

Held, that although the parties to a promissory note other than the maker are discharged from their liability by reason of default in making presentment for payment, the maker is nevertheless liable except when the note, which has not been presented, is payable at a specified place.

And, that the exception to section 64 of the Negotiable Instruments Act was not intended by inference to override the general rule embodied in the operative portion of that section, namely that in default of presentment of a negotiable instrument at maturity only the parties *other than* the maker, acceptor or drawee are discharged from liability to the holder.

Ramakistnayya v. *Kassim* (1), *Phul Chand* v. *Ganga Ghulam* (2), and *Ardeshir Sorabsha Moos* v. *Khushaldas Gokuldas* (3), followed.

Gaya Din v. *Sri Ram* (4), and *The Oudh Commercial Bank Limited, Lucknow* v. *Gur Din* (5), referred to and discussed.

Application for revision of the decree of E. Mukarji, Esquire, Judge, Small Cause Court, Lahore, dated the 29th April 1927, dismissing the suit.

(1) (1889) I. L. R. 13 Mad. 172.
(2) (1899) I. L. R. 21 All. 450.
(3) (1908) I. L. R. 32 Bom. 247.
(4) (1917) I. L. R. 39 All. 364.
(5) (1921) 59 I. C. 604.

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DIWAN MEHR CHAND, and BADRI NATH, for Petitioner.

DUNI CHAND KAPUR, for Respondent.

JUDGMENT.

SHADI LAL C.J.

SIR SHADI LAL C. J.—On the 12th August, 1923, the defendant Karam Chand executed a promissory note in favour of the plaintiff Ghaniya Lal for Rs. 400, payable "three months after date." On maturity of the note, the debtor did not make the payment, with the result that the creditor has brought the present action for the recovery of the money due to him. The claim has, however, been disallowed on the ground that it was the duty of the holder of the note to present it for payment, and his failure to do so relieves the maker from liability.

It is enacted by the 64th section of the Negotiable Instruments Act, XXVI of 1881, that "promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively by or on behalf of the holder as hereinafter provided." This enactment embodies the general rule that a negotiable instrument must be presented for payment at maturity. But what are the consequences of non-presentment? The answer to the question is furnished by the second sentence of the section which is in these terms:— "In default of such presentment the other parties thereto are not liable thereon to such holder."

It will be observed that default in making the presentment discharges only "the other parties" to the instrument. The natural construction of the expression 'other parties' is that it means parties other than those mentioned in the earlier portion of

the section, namely, parties other than the maker, acceptor or the drawee. In other words, failure to make presentment for payment does not discharge the maker of a note ; that is to say, presentment is not necessary in order to render the maker liable.

If the matter rested there, no two opinions could be entertained as to the interpretation to be placed upon the section. The difficulty has, however, been created by the Exception to that section, which runs as follows :—" Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof." The language of the Exception certainly means that in the case of a demand promissory-note, not payable at a specified place, presentment for payment is not necessary in order to render the maker liable. The Exception indicates that in that particular case non-presentment does not absolve the maker from liability, and the inference is that in all other cases presentment is necessary in order to charge him with liability. It can therefore be argued with considerable force that, if under the operative portion of section 64 the maker of a promisssory note is always liable whether there is presentment or not, there was no necessity for enacting an Exception which only specifies a case in which non-presentment does not absolve him from liability. The Exception does not take away anything from the general rule embodied in the earlier portion of the section, but furnishes only an illustration of that rule. In other words, the Exception would be a mere surplusage.

It must be conceded that the section is not happily worded and is apt to cause uncertainty as to

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the intention of the Legislature. I do not, however, think that the Exception was intended to override the operative portion of the section, and that it can wipe out the general rule enacted in the opening paragraph of the section. It may be that by enacting the Exception the Legislature intended to lay down the rule that if a promissory-note is payable at a specified place, it must be presented for payment at that place in order to render the maker liable. This would be an exception to the general rule that presentment for payment is not necessary to charge the maker. Be that as it may. I consider that the natural interpretation of the section is that a maker of a promissory note is not relieved from liability simply because the holder has not made a demand for payment. The action itself is a sufficient demand even though the instrument be payable on demand. The maker cannot put forward the absence of demand as a defence, though he may ask the Court to relieve him from costs if an action is brought against him without any previous demand. This interpretation is in consonance with the rule of the English Law that presentment for payment is not necessary in order to render the maker of a note liable except where the note is made payable at a particular place. The rule is now embodied in section 87 of the Bills of Exchange Act of 1882. The same view has been taken in *Ramakistnayya* v. *Kassim* (1), *Phul Chand and another* v. *Ganga Ghulam* (2), and *Ardeshir Sorabsha Moos* v. *Khushaldas Gokuldas* (3). It is, however, contended that the Allahabad High Court has in *Gaya Din* v. *Sri Ram and others* (4), dissented from the rule laid down in *Phul Chand* v. *Ganga*

(1) (1889) I. L. R. 13 Mad. 172.
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Ghulam (1). The judgment in Gaya Din's case deals with the case of the drawer of a *hundi* who is admittedly discharged from liability on account of the non-presentment of the instrument, but it does not discuss the meaning of the expresion 'other parties' used in section 64. It is true that with reference to the case of Phul Chand the learned Judges made the following observation :—" In that case the learned Judges seem to have thought that, section 64 not having specified what the result of non-presentation was, presentation was not necessary." But section 64 does expressly specify the result of non-presentment, and the judgment in Phul Chand's case (1) does not show that the learned Judges who decided that case were under any such misapprehension. I do not therefore think that either the decision in Gaya Din's case or the observations therein about the decision in Phul Chand's case can throw any doubt on the correctness of the law enunciated in the latter. I am aware of the judgment delivered by the Additional Judicial Commisioner of Oudh in *The Oudh Commercial Bank, Limited, Lucknow* v. *Gur Din and others* (2), in which it was sought to get over the difficulty created by the wording of the Exception to section 64 by holding that the phrase 'other parties' means parties other than the holder. But it is obvious that the holder could never be liable to himself, and consequently the word 'other,' which would exclude practically no party to the instrument, would become wholly redundant.

The learned counsel for the defendant-respondent has also invited our attention to section 66 which directs that a promissory note or bill of exchange

(1) (1899) I. L. R. 21 All. 450. (2) (1921) 59 I. C. 604.

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made payable at a specified period after date or sight thereof must be presented for payment at maturity. That section does not prescribe the penalty for non-presentment but merely mentions the time when a promissory-note or a bill not payable on demand should be presented. It will be observed that not only section 66 but also sections 67 and 74 contain rules regarding the time when presentment should be made, just as sections 68, 69, 70 and 71 define the place for making the presentment. But the effect of non-presentment for payment is mentioned in section 64, just as the consequence of non-presentment for acceptance and of non-presentment of a promissory note for sight are specified in sections 61 and 62, respectively. In order to ascertain the result of non-presentment for payment we can have recourse only to section 64, and the answer to the question arising in the case before us must depend upon the construction to be placed upon that section.

As stated above, the language of the section is no doubt ambiguous, and it is for the Legislature to remove the ambiguity. I have, however, bestowed my careful consideration upon the question and reached the conclusion that, though the parties to a promissory-note other than the maker are discharged from their liability by reason of default in making presentment for payment, the maker is nevertheless liable except when the note is payable at a specified place. This distinction between the liability of a maker and that of the other parties to the instrument such as an endorser is not only sound in principle but is recognised by the English law.

For the aforesaid reasons I accept the application for revision, and, setting aside the judgment of

the Lower Court, I remand the case for redecision. The respondent may pay the costs incurred in this Court by the applicant. The other costs shall abide the result.

BHIDE J.—I concur.

N. F. E.

Revision accepted.

APPELLATE CIVIL.

Before Mr. Justice Addison and Mr. Justice Tek Chand.

1928

Dec. 22.

FAYYAZ-UD-DIN (PLAINTIFF) Appellant

versus

KUTAB-UD-DIN (DEFENDANT) Respondent.

Civil Appeal No. 1123 of 1923.

Indian Contract Act, IX of 1872, section 16—Undue influence—Gift in favour of agent—burden of proof—Pardanashin—meaning of—Muhammadan Law—Hanifi School—Alienation by gift—'Musha'—share in a business—validity of.

Held, that a woman belonging to a family of barbers, keeping a *hamam* (Turkish bath) in the town of Delhi, and not living in a state of seclusion, was not a *pardanashin*, whose transactions were to be set aside, simply because she did not have independent advice at the time.

For the purposes of this rule a '*pardanashin*' means a woman of rank who lives in seclusion, shut in the *zenana*, having no communication except from behind the *parda* with any male persons save a few privileged relations or dependents.

Buzloor Ruheem v. *Shumsoonnissa Begum* (1), *Kamawati* v. *Digbijai Singh* (2), *Sajjad Hussain* v. *Wazir Ali Khan* (3), *Mariam Bibi* v. *Sheikh Mohammad Ibrahim* (4) per Mukarjee J. and *Satis Chandra Ghosh* v. *Kali Dasi* (5), referred to.

Held further, that where such a woman was intelligent, and, while in fairly good health and capable of comprehend-

(1) (1867) 11 Moo. I. A. 551 (P. C.). (3) (1912) I.L.R. 34 All. 453 (P.C.).
(2) (1921) I. L. R. 43 All. 525 (P. C.). (4) (1918) 28 Cal. L. J. 306, 367.
(5) (1921) 34 Cal. L. J. 529.