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placing their respective cases before the Court, and also they have obtained a full record of the evidence and a considered judgment. Consequently, I should be unable to hold that it was a proper exercise of the discretion which is vested in me to interfere in this case on the sole ground that the Township Court tried the suit without jurisdiction, when it has to be admitted that neither party has been prejudiced by that action.

[On the facts His Lordship held that the applicant could not sue the respondent as he was not engaged by him, nor was he in the position of a trustee in a contract made for the benefit of the applicant. His Lordship upheld the decision of the Township Court in dismissing the suit, but on these grounds.]

APPELLATE CIVIL.

Before Mr. Justice Dunkley.

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July 27.

P.L.O.P.R.M. RAMASWAMY CHETTYAR
v.
M.S.M. CHETTYAR FIRM.*

Mutual open current account—Independent obligations on both sides—One sided obligation—Moneys lent—Payments by debtor from time to time reducing debt—Limitation Act (IX of 1908), Sch. I, art. 85.

To be mutual, within art. 85 of the Limitation Act, there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. Each party must be able to say to the other "I have an account against you."

Hirada Basappa v. *Gadigi Muddappa*, 6 Mad. H.C.R. 142, followed.

Chittar Mal v. *Bihari Lal*, I.L.R. 32 All. 11; *Ebrahim Mehter* v. *Abdul Huq*, 8 L.B.R. 149; *Ganesh* v. *Gyanu*, I.L.R. 22 Bom. 606; *Narandas* v. *Nissandas*, I.L.R. 6 Bom. 134; *Satappa* v. *Annapa*, I.L.R. 47 Bom. 134; *Velu Pillai* v. *Ghose Mahomed*, I.L.R. 17 Mad. 293, referred to.

R.M.A.R.R.M. Arunachallam Chetty v. *V.E.R.M.N. Chetty*, 11 L.B.R. 369, distinguished.

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* Civil Second Appeal No. 177 of 1936 from the judgment of the District Court of Pegu in Civil Appeal No. 9 of 1936.

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A money-lending account between the respondent and the appellant was closed in July 1930 and a new account was started with a debit against the appellant, this debit being treated as a debt. No further advances were made by the respondent to the appellant, and the latter made payments to the respondent from time to time in reduction of the debt.

Held, that the transactions were one sided and there was no "mutuality" between the parties and consequently art. 85 of the Limitation Act did not apply.

P. K. Basu for the appellant.

Aiyengar for the respondent.

DUNKLEY, J.—The plaintiff-respondent sued the defendant-appellant for the recovery of the balance due to him on a current account. The suit was brought in the Township Court of Waw. The averment was that the account was a "mutual open and current account", within the meaning of that expression as used in Article 85 of the First Schedule of the Limitation Act. The Township Court of Waw held that this Article was applicable and decreed the suit, and this decree has been upheld on appeal to the District Court of Pegu.

It is common ground that the last advance made by the respondent to the appellant was on the 2nd May, 1930, and that if Article 85 is not applicable the suit of the respondent is barred by limitation.

In the able arguments of learned counsel before me I have been taken with the greatest care through the numerous authorities of the Indian High Courts regarding the applicability of Article 85 of the Limitation Act; but although I am prepared to concede that the account between the parties was an open and current account, it is to me so plain that there was a lack of mutuality in the dealings between the parties that I consider it necessary to refer only to a few of the cases cited.

The first particulars of the account between the parties, which were filed on the 9th March, 1935, by the

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respondent, began with a debit of Rs. 1,000 against the appellant under the date 24th July, 1930, and the account subsequent to that debit consists merely of certain additions of interest and various payments on account by the appellant in reduction of this indebtedness, until at the date of suit the indebtedness of the appellant to the respondent was reduced to Rs. 557-5-9. At the demand of the appellant, further particulars of the account were filed on the 25th May, 1935. These further particulars show that the account began with two payments amounting to Rs. 500 made by the respondent to the appellant in October and December, 1929. The next item is a payment by the appellant to the respondent of Rs. 300 on the 2nd February, 1930. Then follows a payment by the respondent to the appellant on 20th February, 1930, of Rs. 500, and a further payment by the respondent to the appellant on 5th March, 1930, of Rs. 200. The next item is dated the 26th April, 1930, and consists of a payment of Rs. 600 by the appellant to the respondent. It is followed by a payment of Rs. 600 by the respondent to the appellant on the 2nd May, 1930. The result of all these payments was to leave a balance of Rs. 900 as principal due by the appellant to the respondent. Interest was added, and the account was closed on the 25th July, 1930. The oral evidence of plaintiff-respondent shows that the interest amounted to Rs. 47-2-9 and that in order to make up a round sum Rs. 52-13-3 was paid to the appellant in cash, and the account was closed with a debit of Rs. 1,000 due by the appellant to the respondent. This debit was carried over to the new account of which particulars were given on 9th March, 1935.

The lower Courts have overlooked the significance of the expression, occurring in Article 85 of the First Schedule of the Limitation Act, " where there have

been reciprocal demands between the parties." This does not mean that there must have been an actual demand by each party from the other, but it has been interpreted to mean that the Article applies only to cases where the course of business between the parties has been of such a nature as to give rise to reciprocal demands between them, that is, the dealings between the parties must have been of such a nature that the balance might sometimes be in favour of one party and sometimes in favour of the other—*Narrandas Hemraj and others* v. *Vissandas Hemraj* (1); *Satappa Jakappa Kochcheri and others* v. *Annapa Basappa Patil and others* (2). The proposition is admitted on behalf of the respondent to be correct that there must be transactions on both sides giving rise to independent obligations in favour of each party against the other : each party must be able to say to the other "I have an account against you" —*Chittar Mal and another* v. *Bihari Lal and others* (3); *Ebrahim Ahmed Mehter* v. *S. Abdul Huq* (4); *R.M.A.R.R.M. Arunachallam Chetty* v. *V.E.R.M.N. Somasundaram Chetty* (5). The rule was correctly stated by Holloway C.J. as long ago as 1871 in *Hirada Basappa* v. *Gadigi Mudappa* (6) an authority which has been almost invariably quoted in subsequent decisions regarding the meaning of Article 85. The learned Chief Justice said :

"To be mutual there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations."

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(1) (1881) I.L.R. 6 Bom. 134.
(2) (1922) I.L.R. 47 Bom. 128, 136.
(3) (1909) I.L.R. 32 All. 11.
(4) 8 L.B.R. 149.
(5) 11 L.B.R. 369.
(6) 6 Mad. H.C. Rep. 142, 144.

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Velu Pillai and others v. *Ghose Mahomed and others* (1) and *Ganesh* v. *Gyanu* (2) are to the same effect.

Even in the first account, from October 1929 to July 1930, at no time could the appellant have said to the respondent "I have an account against you." The account has the appearance of an account of loans made by the respondent and of payments by the appellant from time to time in partial repayment of these loans. It is urged on behalf of the respondent that because in this account interest was not added in the usual way every six months, an inference is raised that the parties at that time looked upon their respective payments to one another as creating independent obligations. But even if it be conceded that in this first account there was mutuality, the evidence of the plaintiff-respondent shows that this account was completely closed on the 25th July, 1930, and to make the amount due by the respondent to the appellant up to a round sum a small payment in cash was made to the appellant and then an entirely new account was started with debit against him of Rs. 1,000. The second account, which was given in the original particulars, plainly shows that this debit was treated as a debt. No further advances were made by the respondent to the appellant, and the payments which the appellant made after July, 1930, to the respondent were made in reduction of this indebtedness, and clearly did not create any obligation in favour of the appellant. The transactions were in fact one-sided and there was no "mutuality."

Reliance has been placed on behalf of the respondent on the case of *R.M.A.R.R.M. Arunachallam Chetty* v. *V.E.R.M.N. Somasondaram Chetty* (3) because of the alleged similarity of the facts of that case. In that

(1) (1893) I.L.R. 17 Mad. 293. (2) (1897) I.L.R. 22 Bom. 606.
(3) 11 L.B.R. 369.

case two firms advanced money to one another, and for some years the credit balance was sometimes in favour of one and sometimes in favour of the other, but after a certain date the accounts always showed an increasing credit in favour of one side. The Court held that in spite of the fact that after that date one firm was always in debit the account nevertheless continued to be a mutual open and current account because the accounts were continued in exactly the same form, and there was nothing to show that payments made by the firm in debit subsequent to that date were made merely in partial discharge of the debit balance against it. This case can be clearly distinguished from the present case. In the present case, apart from the fact that it would be difficult to hold that the accounts prior to July, 1930, were mutual, there is clear evidence to show that these accounts were definitely closed in July, 1930, and a fresh account opened. The later account is plainly an account of a loan which was partly discharged by periodical payments by the respondent. Hence Article 85 of the First Schedule of the Limitation Act was at any rate not applicable to the account subsequent to July, 1930, and, therefore, the suit of the plaintiff-respondent was out of time.

This appeal is, therefore, allowed, the judgments and decrees of the Township Court of Waw and of the District Court of Pegu on appeal therefrom are set aside, and the suit of the plaintiff-respondent is dismissed with costs throughout, advocate's fee in this Court five gold mohurs.