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being between Arains of the Phillaur *Tahsil* of the Jullundur District, that, despite the very entries in the *Riwaj-i-Am* which are relied on by the collaterals in the case now before us, the daughters succeeded to their father's landed property in preference to the latter's collaterals. I have, therefore, come to the conclusion that the plaintiffs in this case, the daughters of Jaimal, have been able to rebut the initial presumption raised against them by the *Riwaj-i-Am*, and to establish that they, as daughters, have the right, preferential to their father's collaterals, to succeed to their father's acquired land. This appeal, therefore, stands dismissed with costs.

TEK CHAND J.

TEK CHAND J.—I agree.

A. N. C.

*Appeal dismissed.***APPELLATE CIVIL.***Before Tek Chand and Gordon-Walker JJ.*

RAM DHAN (PLAINTIFF) Appellant

*versus*COURT OF WARDS OF MALIK DOST MUHAM-
MAD KHAN (DEFENDANT) Respondent.

Civil Appeal No. 1312 of 1925.

Indian Limitation Act, IX of 1908, Article 85—"mutual open and current account"—meaning of Article 57—Suit for money lent—applicability of.

The dealings between the parties were of the nature of simple money loans, the defendant D. M. K. borrowing money from the plaintiff from time to time, making payments to him occasionally, and striking balances in his favour. On two occasions he executed lease-deeds of his lands in favour of the creditor, and authorised him to credit the lease money towards the loan account.

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Held, that the transactions embodied in the account created obligations on one side only, those on the other being merely complete or partial discharges of such obligations, and that the account did not contain any of the essential attributes of a "mutual" account.

Held also, that for the purposes of the application of Article 85 of the Indian Limitation Act, a "mutual account" means not merely one in which one of the two parties has received money and paid it on account of the other, but where *each of the two parties has received and paid on the other's account*, and that it is of the essence of mutuality that each party to the account must extend credit to the other *on the faith of an admitted indebtedness*, and it is necessary to show that the indebtedness of *each party* was the result of a course of dealing in which credit was extended on the faith of the indebtedness to him.

Phillips v. Phillips, per Turner V.C. (1), followed.

Wood on *Limitation*, 4th Edition, page 1434, referred to.

Held further, that arrangements adopted by the debtor merely as a mode of paying off his debt, and not because of any "independent obligation" creating "reciprocal demands between the parties," did not cause Article 85 to become applicable to the suit, which was one for recovery of money payable for money advanced on loan and was governed by Article 57.

Rattan Chand-Jawala Das v. Asa Singh-Bogha Singh (2) and *Velu Pillai v. Ghose Mahomed* (3), referred to.

First appeal from the decree of Lala Dwarka Nath, Senior Subordinate Judge, Shahpur, at Sar-godha, dated the 24th February 1925, dismissing the plaintiff's suit.

M. L. BATRA, for Appellant.

BARKAT ALI, for Respondent.

TEK CHAND J.—This first appeal arises out of an *TEK CHAND J.* action brought by the plaintiff-appellant against the

(1) (1852) 9 Hare 471:68 E. R. 596.

(2) (1921) 59 I. C. 669.

(3) (1894) I. L. R. 17 Mad. 293.

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Court of Wards of Malik Dost Muhammad Khan, of Mitha Tiwana, for recovery of Rs. 6,655 made up of Rs. 3,511 as principal and Rs. 3,144 as interest, on a *bahi* account (Exhibit P/1), which the aforesaid Malik Dost Muhammad Khan had with the plaintiff from the 9th of October, 1918, to the 17th of June, 1919. The estate of the Malik was taken over by the Court of Wards on the 9th of September 1919, and on the 22nd of March 1920, the plaintiff notified his claim to the Deputy Commissioner in accordance with the provisions of section 27 of the Punjab Court of Wards Act; but the Deputy Commissioner disallowed it on the 7th February 1922. Thereupon, the plaintiff served a notice of suit, under section 19, on the Deputy Commissioner, and on the 30th of September, 1924, he brought the present action.

The defendant raised various pleas of which two only are material for the purposes of this appeal, (1) that the amount claimed was not due, and (2) that the suit was barred by limitation. The learned Subordinate Judge held that out of the principal sum of Rs. 3,511 claimed by the plaintiff, Rs. 2,569-1-0 only had been actually advanced by him to Dost Muhammad Khan and that there was no sufficient proof of the payment of the remaining Rs. 941-15-0. On the second question the learned Judge held that the account between the plaintiff and Dost Muhammad Khan was a mutual, open and current account within the meaning of Article 85 of the Indian Limitation Act, and that the suit, having been brought more than three years from the close of the year 1919, in which the last proved item had been entered in the account, was barred by time. On these findings he has dismissed the suit. The plaintiff appeals and contests the findings of the trial Court on both these points.

The learned Subordinate Judge has disallowed the items amounting to Rs. 941-15-0 on the ground that none of them is signed or thumb-marked by Dost Muhammad Khan or his Mukhtar. All these items are, however, entered in the account books of the plaintiff, which have been proved to have been regularly kept. The plaintiff appeared as a witness at the trial and swore to the correctness of the account (Exhibit P/1). He also stated that Dost Muhammad Khan had actually taken the amounts entered against his name, that the *rokar* was written daily and all the account books were properly and regularly kept. In cross-examination the plaintiff was not asked any question on these points and no suggestion whatever appeared to have been made that the account-books were not properly kept. The relevant books were all produced in Court and were examined by the defendant's counsel, but no mistake or irregularity appears to have been discovered or pointed out. Further, we have the significant fact that Dost Muhammad Khan himself appeared as a witness for the plaintiff and stated that "the plaintiff's accounts with him were always regularly kept," and that the plaintiff had "never acted falsely" with him. As against this the Court of Wards did not produce any evidence in rebuttal, and on the record as it stands I am unable to find any reason for disallowing the items of Rs. 941-15-0. I hold, therefore, that the sum of Rs. 3,511 was advanced by the plaintiff to Dost Muhammad Khan, as entered in the account. On issue No. 2 the Subordinate Judge has found that interest at the rate of 12 per cent. per annum had been agreed upon between the parties to the dealings, and his finding has not been challenged before us. The

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plaintiff has, therefore, established that Rs. 6,655 was the amount due by Dost Muhammad Khan to him on the date of the suit.

On the plea of limitation, the real question for determination is whether the account between the parties was a mutual, open and current account in which there have been reciprocal demands between them. Both counsel are agreed that if the answer to the question is in the affirmative, Article 85 would be applicable and the suit time-barred; but that if the answer is in the negative, the suit would be governed by Article 57 and is well within time.

In order to determine the real nature of the dealings between the parties, Mr. Barkat Ali for the respondent asked us not to confine ourselves to the account between the 9th of October, 1918, and the institution of the suit, but to examine it from the 4th of November 1911, when the first transaction between the parties took place. A portion of this earlier account (Exhibit D. 1) was not printed in the paper book, but in order to do complete justice between the parties, we have referred to the vernacular record and have heard both counsel on it. An examination of this account makes it clear, that the dealings between the plaintiff and Dost Muhammad Khan were of simple money loans as between creditor and debtor, and the account was not "mutual" in any sense of the term. It appears that the defendant borrowed money from the plaintiff from time to time, made payments to him occasionally, and struck balances in his favour. It is beyond dispute that these transactions created obligations on one side only, those on the other being merely complete or partial discharges of such obligations. On the account, as it stood, there were no 'independent obligations' in the

sense in which that expression is used in reference to a 'mutual' account, and there were or could be no 'reciprocal demands' between the parties. The learned counsel for both sides have cited a number of rulings before us, but it is not necessary to discuss them here, as each of them proceeded on its own peculiar facts and there is no divergence of opinion as to the true and correct meaning of 'mutual' account. As observed by Vice-Chancellor Turner in the leading case of *Phillips versus Phillips* (1) "a mutual account means not merely where one of two parties has received money and paid it on account of the other, but where *each of the two parties* has received and paid on the other's account," *i.e.* there is a "mutual account, where each of two parties has received and paid on account of the other, and what would be recoverable would be the balance of the two accounts." It is of the essence of mutuality "that each party to the account must extend credit to the other *on the faith of an admitted indebtedness* and it is necessary to show that the indebtedness of each party was the result of a course of dealing in which credit was extended on the faith of the indebtedness to him." (Wood on *Limitation*, 4th Edition, page 1434). Applying these tests to the account in question there cannot be the least doubt that it does not contain any of the essential attributes of a 'mutual' account.

Mr. Barkat Ali has drawn our attention to the fact that on the 25th of October 1916, and 17th of April, 1917, respectively, Dost Muhammad Khan executed and registered two lease deeds in respect of certain lands in favour of the plaintiff, whereby he agreed to take one-half of the lease money himself at the end of

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every half year and authorized the plaintiff to credit the other half towards the *bahi* account which he had with him. Contemporaneously with these lease deeds he executed separate agreements in favour of the plaintiff, admitting that he owed him large sums of money under the *bahi* account and stating that one-half of the lease money should be adjusted in liquidation of this indebtedness. The plaintiff accordingly gave credit for these amounts in his *bahi* account at the end of each harvest. It is clear that this arrangement was adopted by the debtor merely as a mode of paying off his debt and not because of any 'independent obligation' creating 'reciprocal demands between the parties.'

On the same footing are entries of Rs. 2,480 and Rs. 500, dated the 9th October, 1918, whereby a part of the consideration of a mortgage, which Dost Muhammad Khan had effected in favour of the plaintiff by a registered deed of that date, was given credit to him in the *bahi* account. None of these items can be said to be evidence of a 'reciprocal demand.' It is clear that so far as the *bahi* account is concerned, the transactions created obligations on one side only and those on the other were intended to be in partial discharge of such obligation. If this is the true nature of the account, it is conceded that it cannot be said to be 'mutual, open and current account.' See *Rattan Chand-Jawala Das versus Asa Singh-Bogha Singh* (1) and *Velu Pillai versus Ghose Mahomed* (2). Article 85 is, therefore, inapplicable and the suit is one for 'recovery of money payable for money lent,' and is governed by Article 57 (as amended by the Punjab Loans Limitation Act which was in force at the time).

(1) (1921) 59 I. C. 669.

(2) (1894) I. L. R. 17 Mad. 293.

All the items comprising the account were admittedly advanced within six years of the date of the suit and are within time.

In this view of the case I need not consider the arguments of counsel for the appellant that even if Article 85 applied, the suit was still within time by reason of certain exemptions which he claims under sections 19, 31 and 32 of the Court of Wards Act. Nor is it necessary to refer to certain objections to the legality of these transactions which had been urged by the Court of Wards in the trial Court, but which had been decided against it and which were not raised by the learned counsel for the respondent before us.

On the findings given above, judgment must be entered in favour of the plaintiff for the sum claimed. I would accordingly accept the appeal, and reversing the decree of the learned Subordinate Judge, would pass a decree for Rs. 6,655 in favour of the plaintiff-appellant against the defendant-respondent with costs in both Courts.

GORDON-WALKER J.—I agree.

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Appeal accepted.