

APPELLATE CIVIL.

Before Tek Chand and Monroe JJ.

THAKAR DAS (DEFENDANT) Appellant

*versus*MALIK CHAND (PLAINTIFF), AND OFFICIAL
RECEIVER, DELHI (DEFENDANT) Respondents.

1932

Nov. 14.

Civil Appeal No. 2871 of 1926.

Debtor and Creditor—Order by debtor upon person holding funds of his to pay them to the creditor—whether enforceable—Equitable Assignment.

Held, that an agreement between a debtor and a creditor that the debt owing shall be paid out of a specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order, directing such person to pay such funds to the creditor, operates as an equitable assignment of that part of the debt or funds to which the agreement or order refers.

Chitty on Contracts, 18th Edition, p. 970, *William Brandt's Sons and Co. v. Dunlop Rubber Co. Ltd.* (1), *Jat Mal v. Hakam Mal* (2), and *Jhaman Lal v. Sant Lal* (3), relied upon.

First Appeal from the decree of Malik Ahmad Yar Khan, Senior Subordinate Judge, Rawalpindi, dated the 25th August, 1926, decreeing the plaintiff's suit with costs.

GOBIND RAM KHANNA and AJIT RAM, for Appellant.

GOVIND DAS and NAROTAM SINGH, for Plaintiff-Respondent.

TEK CHAND J.—Thakar Das, defendant No. 1, obtained a money decree for Rs. 4,900 against Uttam Chand, defendant No. 2. In execution of this decree

(1) L. R. (1905) A. C. 454. (2) 1930 A. I. R. (Lah.) 820.

(3) 43 P. R. 1897.

1932

THAKAR DAS
v.
MALIK CHAND.
TEK CHAND J.

he attached a sum of Rs. 5,588 which was in deposit with the Assistant Controller of Dairy Farms, Circle I, Lahore Cantonment, on behalf of Uttam Chand, defendant No. 2, on account of butter and cream supplied by him to the Rawalpindi and Peshawar Government Dairies. The plaintiff Malik Chand preferred an objection, alleging that the aforesaid money had been assigned by the judgment-debtor Uttam Chand to him. The objection was disallowed and Malik Chand has instituted a suit for a declaration that the amount is not liable to attachment in execution of the decree obtained by Thakar Das against Uttam Chand. The suit has been decreed by the Senior Subordinate Judge. Thakar Das, defendant No. 1, appeals.

The relevant facts are that Uttam Chand entered into a contract with the Assistant Controller of Dairy Farms for the supply of butter to the Rawalpindi and Peshawar Cantonments for one year, commencing the 1st of April 1923 and ending the 31st of March, 1924. After some time he found himself unable to provide the necessary money for carrying out the contract and approached Malik Chand plaintiff for financial assistance. The plaintiff agreed, and on the 6th of September 1923 two agreements, Exhibits, P. 1 and D. 1, were executed by the parties whereby the plaintiff undertook to advance the necessary funds to Uttam Chand and the latter agreed to send the plaintiff weekly receipts for the butter supplied by him to the Dairies and authorised the plaintiff to deduct six pies per lb. of butter "as commission in the shape of interest" out of the price and hand over the "balance" to Uttam Chand. It was also agreed that Uttam Chand would get a letter from the officer-in-charge of the Dairies to the effect that the plaintiff should send bills for the

butter supplied and obtain cheques for the price thereof and that he should himself cash these cheques. It was further stipulated that as the entire amount of money will be invested by the plaintiff and cheques for bills will also be issued in his name no other creditor or representative of Uttam Chand shall have any concern with that money.

1932

 THAKAR DAS
v.
 MALIK CHAND,

 TEK CHAND J.

In accordance with this agreement, Uttam Chand wrote to the Dairy authorities on the 6th and 13th of September, respectively, asking them to receive the bills for butter from the plaintiff and to issue cheques in his name. In the second of these letters, dated the 13th of September, 1923 (Exhibit, P. 11), Uttam Chand specifically stated that "the cheques payable to me on account of the cost of butter supplied were to be issued in future in favour of Malik Chand who was paying all the cost of butter and cream purchased by me" and that this "may continue until *Lala* Malik Chand Kohli himself writes to you to the contrary. Moreover my other creditors shall have no claim over any money due to me on account of cost of butter supplied by me." It is thus clear that an irrevocable authority was given by Uttam Chand to Malik Chand to receive the amount of the bills and appropriate it towards repayment of the amount advanced by him to Uttam Chand and interest thereon at the rate stipulated in the agreement.

It is contended by Mr. Gobind Ram Khanna on behalf of the appellant that the relationship created between the parties by this agreement was merely one of banker and customer, and that no assignment of the money lying at the credit of Uttam Chand with the Dairy authorities was created in favour of the plaintiff. In my opinion, this contention is without

1932

THAKAR DAS
v.
MALIK CHAND.
—
UTTAM CHAND J.

force, and I have no hesitation in overruling it. It is settled law that "an agreement between a debtor and a creditor that the debt owing shall be paid out of a specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order directing such person to pay such funds to the creditor, operates as an equitable assignment of that part of the debt or funds to which the agreement or order refers." (Chitty on Contracts, 18th edition, p. 970). Reference in this connection may also be made to the leading decision of the House of Lords in *William Brandt's Sons and Co. v. Dunlop Rubber Company Limited* (1) where it was laid down that an agreement by merchants with a bank that the price of goods sold by the merchants should be remitted direct by the purchasers to the bank constitutes an equitable assignment of the price to the bank. There are numerous cases in this province in which these principles have been applied to agreements similar to those of the case before us. See *Jat Mal v. Hakam Mal* (2) and *Jhaman Lal v. Sant Lal* (3). I hold, therefore, that the plaintiff was the assignee of the price of butter supplied under the contract to the Dairies at Rawalpindi and Peshawar, and that Uttam Chand or his creditors had no right to realize the money.

Mr. Gobind Ram Khanna, however, contended that the plaintiff himself had broken the contract in as much as he ceased supplying funds for the performance of the contract after November, 1923, and that he being guilty of breach of the contract, has lost his right to recover the amount under the agreement. In my opinion, the evidence on the record does not support

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this contention. On the other hand, I find it fully established that, contrary to the terms of the agreement, Uttam Chand began to appropriate to other purposes the moneys taken by him from the plaintiff for the purchase of butter. The plaintiff's case is that he had advanced Rs. 14,000 odd under the contract. Uttam Chand, however, pleaded that Rs. 11,000 only was advanced. For the purposes of this appeal, it is not necessary to adjudicate on these rival contentions; for, assuming that the figure as given by the defendant is correct, it is clear that out of this sum he did not apply about Rs. 5,000 to the purchase of butter or cream. It is further admitted by counsel that out of the sum received from the plaintiff Uttam Chand paid Rs. 1,000 for a fine which had been imposed upon him by a criminal Court, and he also paid another sum of Rs. 1,000 to one Prithmi Chand in satisfaction of a promissory note, which had no connection whatever with the butter contract. The breach was, therefore, on the part of Uttam Chand, and in these circumstances the plaintiff was justified in refusing to make further payments to him, after he had discovered that the defendant was misapplying the funds supplied by him.

I hold, therefore, that the plaintiff's suit has been rightly decreed and this appeal must be dismissed with costs.

The decree-sheet prepared by the Lower Court is defective and should be corrected so as to grant the plaintiff a declaration to the effect that the money lying with the Assistant Controller of Dairy Farms, Circle I, Lahore Cantonment, to the credit of Uttam Chand, defendant No. 2, on account of butter supplied to the Rawalpindi and Peshawar Government

1932

THAKAR DAS

v.

MALIK CHAND.

TEK CHAND J.

Dairies, is not liable to attachment in execution of the decree obtained by Thakar Das, defendant No. 1, against Uttam Chand, defendant No. 2.

MONROE J. MONROE J.—I agree.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison J.

1932
Nov. 14.

NORTH-WESTERN RAILWAY ADMINISTRATION AND ANOTHER (DEFENDANTS) Appellants
versus
NORTH-WESTERN RAILWAY UNION
(PLAINTIFFS) Respondents.

Civil Appeal No. 1536 of 1932.

Civil Procedure Code, Act V of 1908, Order XXXIX, rules 1 and 2: Temporary injunction—grant of—conditions precedent to—mere fact that suit would otherwise be infructuous not sufficient—Order XLIII, rule 1 (r): Appeal—against order refusing to discharge the temporary injunction. Section 80: Suit for permanent injunction against a public officer—incompetency of—Notice—Order XXIX, and Indian Trade Unions Act, XVI of 1926, Section 13: Registered Trade Union—must sue in its corporate name—Specific Relief Act, I of 1877, Sections 55, 56 (f) and (k), 57: Contract to render personal service—whether specifically enforceable—Applicant must have a personal interest in the suit.

In a suit for permanent injunction to restrain (1) "The North-Western Railway Administration through the Agent", and (2) "The Agent" of that Railway, from committing breach of an alleged agreement not to discharge certain employees, the plaintiffs were stated to be the Vice-Presidents of the North-Western Railway Union. An application under Order XXXIX, rule 2 of the Civil Procedure Code, for a temporary injunction to issue pending the disposal of the suit,