APPELLATE CIVIL.

Before Tek Chand and Agha Haidar JJ.

1933

Oct. 24.

GULAB RAI-GUJAR MAL (DEFENDANTS) Appellants

versus

SANDHI (PLAINTIFF)
RATTAN CHAND AND OTHERS (DEFENDANTS) } Respondents.

Civil Appeal No. 1951 of 1929.

Indian Limitation Act, IX of 1908, Articles 57, 60—Banker and Customer—Deposits made under agreement that the money is repayable on demand.

The plaintiff deposited a certain sum of money with the defendants, a firm of Bankers, carrying interest at 4 annas *per cent. per mensem.* From time to time the plaintiff withdrew large sums of money and made further deposits. Accounts were gone into occasionally and balances struck, after which there were further deposits and withdrawals. The last transaction took place on 19th November, 1928, and on the 8th February, 1929, plaintiff made a demand by registered letter.

Held, that the transactions in question commenced and continued to the end as between "customer" and "banker," and that Article 60 of the Indian Limitation Act was applicable to the case, and not Article 57.

Article 60, as amended by Act IX of 1908, applies in terms to money of the customer in the hands of his banker advanced under an agreement that it should be payable on demand, and its operation is not restricted to those cases only in which the agreement to pay the amount due on demand is "expressed," but it governs those cases also, where the agreement may be "implied" from the course of dealings between the parties or the other circumstances of the case.

And the *terminus a quo* is the date "when a demand is made" and not the date of the last balance.

First appeal from the decree of Sheikh *Muhammad Akbar, Subordinate Judge, 1st Class, Hoshiar-*

1933

GULAB RAI-GUJAR MAL v. SANDHI.

pur, dated the 6th August, 1929, granting the plaintiff a decree.

D. C. RALLI and H. J. RUSTOMJI, for Appellants.

SHAH NAWAZ and GHULAM MOHY-UD-DIN, for Plaintiff-Respondents.

TEK CHAND J.—This is a defendants' appeal in a suit instituted by the plaintiff-respondent against the defendants-appellants for recovery of Rs. 5,960, principal and interest. The suit has been decreed, and the defendants have preferred a first appeal to this Court. TEK CHAND J.

The sole question which has been argued before us by the learned counsel for the appellants is whether the suit is within time. The defendants are a firm of bankers, which carried on an extensive business of money-lending at Hoshiarpur. The plaintiff alleged that the dealings began in 1910 when he "deposited" a sum of Rs. 1,000 with the defendants, carrying interest at four annas per cent. per mensem, that from time to time he withdrew large sums of money and made further deposits, that accounts were gone into occasionally and on the 26th January 1924 the defendants struck a balance showing the sum of Rs. 6,300 at the plaintiff's credit, that after that date there were further deposits and withdrawals, the last transaction being on the 19th November 1928, and that on the 8th February 1929 he made a demand by registered letter, which the defendants refused to take delivery of. Ten days later, on the 18th February, 1929, the plaintiff brought the present suit.

The defendants did not put forward any defence on the merits but pleaded that the suit was barred by time under Article 57 of the Indian Limitation Act,

1933

GULAB RAI-GUJAR MAL
v.
SANDHI.

TEK CHAND J.

as the money in question was not a 'deposit' with the defendants but had been advanced as a 'loan.' The learned Subordinate Judge held that the case was governed by Article 60 of the Indian Limitation Act and was within time. He accordingly decreed the suit. In his judgment the learned Judge after giving cogent reasons for holding that the dealings between the parties were as between banker and customer, observed that the suit had been "brought within six years from the date of the last balance dated the 7th October, 1923, and was within time under Article 60." This observation was obviously made under some misapprehension and, as frankly admitted by the learned counsel for the respondent, is incorrect. The period of limitation prescribed in Article 60 is *three* years and not six years as stated by the learned Subordinate Judge, and the *terminus a quo* is not the date of the last balance but the date "when the demand is made." This mistake, however, does not affect the ultimate decision of the case.

The real question for determination is the nature of the dealings between the parties. The dealings began with an entry made by the defendants in the plaintiff's *bahi* (Exh. P. 1), which is printed at p. 22 of the paper book. In this entry the transaction was described as a "deposit" by the plaintiff with the defendants. This is made further clear by the evidence of P. W. 5, Muni Lal, who is a partner in the defendant-firm. In the course of his examination he admitted that the dealings started with a "deposit" by the plaintiff. The defendants' *munim* Daulat Ram (P. W. 1), in whose handwriting most of the entries in Exh. P. 1 are, has also admitted that the "plaintiff made various deposits

1933

GULAB RAI-GUJAR MAL
v.
SANDHI.

TEK CHAND J.

with the firm " and that there were " several items of deposits and withdrawals " in his handwriting. We have carefully examined the whole course of dealings between the parties as disclosed in the oral and documentary evidence on the record. and have no doubt that the defendants were acting as the bankers of the plaintiff. and that the transactions in question commenced and continued to the end as between customer and banker. It is obvious, that Article 57 does not apply to such a case.

There was considerable discussion at the bar as to the exact distinction between a " deposit " and a " loan." It is, however, not necessary to go into this question for the purposes of this case, for Article 60, as amended by the Indian Limitation Act, IX of 1908, applies in terms to money of the customer in the hands of his banker advanced under an agreement that it shall be payable on demand. This amendment has put an end to the conflict of judicial opinion which existed before 1908 as to whether dealings between a customer and a banker were to be classed as a 'deposit' or a 'loan.' Mr. Ralli has argued that in order to make Article 60 applicable it is necessary that the agreement to pay the amount due on demand must be " express," and that its provisions are not attracted if the agreement is to be " implied " from the course of dealings between the parties or the other circumstances of the case. For this proposition I can find no warrant whatever in the wording of the statute, and Mr. Ralli has not been able to put forward any cogent argument, or cite any authority in support of his contention. As stated already, Article 60 governs cases for recovery of " money deposited under an agreement that it shall be payable

1933

GULAB RAI-GUJAR MAL v. SANDHI.

TEK CHAND J.

on demand, including money of a customer in the hands of his banker so payable," and I can find no reason to restrict its operation in the manner suggested by counsel. I hold, therefore, that the case is governed by Article 60.

The only demand proved to have been made by the plaintiff, and not complied with by the defendants, was on the 8th February, 1929. The cause of action, accordingly, arose on that date and the plaintiff had three years to sue. The suit brought on the 18th February, 1929, is, therefore, well within time.

The suit has been rightly decreed, and I would dismiss this appeal with costs.

AGHA HAIDAR J.

AGHA HAIDAR J.—I agree.

P. S.

Appeal dismissed.