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parent's benefit, none of it being in the nature of a settlement on the wife, must undoubtedly tend to induce the exercise of parental influence from corrupt motives, and encourage the buying and selling of women.

As I am not aware that the point has been as yet decided, and as the principle involved is one of considerable importance, I have referred it for the decision of the High Court, with an expression of my own opinion that the suit cannot be maintained.

The opinion of the High Court was delivered by

JACKSON, J.—It appears to us that, in the circumstances of this case, an action to recover back the money paid to the defendant will lie.

[ORIGINAL CIVIL.]

Before Mr. Justice Macpherson.

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March. 11.

PARBATI CHARAN MOOKERJEE v. RAMNARAYAN MATILAL AND OTHERS..

Deposit—Act XIV of 1859, *s.* 1. *cl.* 15—*Cause of Action.*

The plaintiff, on leaving Calcutta, in 1850, deposited a sum of money with A. B. and C., on which they were to pay him Rs. 9 monthly, and return the principal on his demanding it. Rs. 9 were paid to him monthly until within twelve months of this suit. A. and B. had died since the date of the deposit. This suit was brought against C. and the representatives of A. and B. to recover the amount deposited, and a decree was passed against C. on his own admission. But the representatives of A. and B. set up that the suit was barred. *Held*, that it was not a deposit under section 1, clause 15 of Act XIV of 1859. But *held* also, in accordance with the English cases (from which, however, the learned Judge dissented) that the cause of action arose from the date of the agreement to repay the money on demand, and not from the date of the demand, and therefore the suit was barred.

THE plaintiff in this suit sought to recover from Ramnarayan Matilal, and Nanda Gopal Matilal and Braja Gopal Matilal, the sons of Nilmani Matilal, deceased, and executors of his will, and Rajendra Matilal and Srimati Sibosunderi

Debi, the administrators of the goods and effects of Gabind Chandra Matilal, deceased, the sum of rupees 1,100, with interest, being the balance of a sum of rupees 1,200, alleged to have been deposited by him with the said Ramnarayan Matilal, Nilmani Matilal, and Gabind Chandra Matilal, who formed a joint Hindu family. The defendants, the representatives of Nilmani and Gabind Chandra, denied all knowledge of the deposit, and pleaded the Statute of Limitations. The defendant Ramnarayan Matilal admitted the deposit, and in a letter addressed by him to the plaintiff's attorneys offered to pay his one-third share of the sum claimed, with interest and proportionate costs.

It appeared that Nilmani, Gabind Chandra, and Ramnarayan were the sons of one Biswanate Matilal, and formed a joint Hindu family. After the respective deaths of Gabind Chandra and Nilmani, their representatives continued to be members of the joint family, both as between themselves and Ramnarayan, until the year 1868. In the year 1850, the plaintiff, who was a distant relation, and a dependant of the family, lost his wife and only son; and having determined to retire from Calcutta and live in Benares, he sold his wife's ornaments and jewels, and deposited the proceeds, a sum of about rupees 1,194-8, with Nilmani, Gabind Chandra, and Ramnarayan, in the month of April or May 1850. At the time of the deposit, it was agreed between the family and the plaintiff that the plaintiff should receive interest on the whole sum, at the rate of rupees 9 *per mensem*, and be at liberty to draw out the whole, or any part of the money, whenever he liked; but that so long as the major part of the sum remained in the hands of the family, he was to receive interest at the above rate. The sum was entered in the books of the family to the credit of the plaintiff, under the head of *Amanat*, translated by the Court interpreter to be "deposit." Towards the end of April or May 1850, there being a few rupees due to the plaintiff on account of interest, the sum of rupees 1,200 was credited to the plaintiff on the books of the family, and a separate account was opened in the plaintiff's name. The plaintiff continued to receive his interest during the lifetimes of Nilmani and Gabind Chandra, the money being sent to him

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through one Dinanath Ghosal, since deceased, another relation of the family. There was some controversy as to whether interest was paid to the plaintiff by the representatives of Gabind Chandra and Nilmani after the separation in 1868, but no evidence was offered by these defendants to contradict the plaintiff, who swore he had received such interest. Rajendra Matilal, one of the defendants, being present in Court, was examined by the learned Judge, under section 166 of the Civil Procedure Code, but no reliance was placed upon his denial.

Mr. *Woodroffe* (Mr. *Evans* with him) for the plaintiff.

Mr. *Marindin* (Mr. *Branson* with him) for the representatives of Gabind Chandra.

Mr. *Kennedy* (Mr. *Bonnerjee* with him) for the representatives of Nilmani.—This is not a deposit such as is meant by clause 15, section 1 of Act XIV of 1859. A deposit with interest is certainly a new thing; but it cannot be placed any higher than a deposit with a banker, and in that case the ordinary limitation will take effect—*Foley* v. *Hill* (1), *Carr* v. *Carr* (2), *Devaynes* v. *Noble* (3). [MACPHERSON, J.—I am clear this is not a deposit within the meaning of the Limitation Act. But here the plaintiff's agreement was that the money should not be payable until he demanded payment, and it appears upon the evidence that he only demanded payment last year]. If the Court held that that was the agreement it would be a contract and would survive to Ramnarayan, and my clients could not be liable. [MACPHERSON, J. —It is a debt of the joint family, and your clients are liable, if it is not barred. But the cause of action did not arise till last year]. If the Court were to hold that debts of this kind would evade the Limitation Law, people would be able to sue for a debt after fifty years. Indeed, it could be sued for after any length of time. The object of the Legislature would thus be upset. [MACPHERSON, J.—No Legislature on earth ever intended that a case such as this should be barred]. In *Norton* v. *Ellan* (4),

(1) 1 Phillips, 399.
(2) 1 Meri., 541.
(3) 1 Meri., 529.
(4) 2 M. & W., 461.

Sergeant Petersdroff argued precisely in the same way for the plaintiff. He said, "when a note is payable on demand, a de- "mand is necessary before the Statute begins to run;" and further on, "a strong argument arises from the circumstance of "its being made payable with interest, as it shows that the "parties intended sometime to elapse before a demand;" to "say that the Statute runs from the date of a note payable on "demand, would be to say that there is a breach of contract the "moment the 'note is written." But Parke, B., distinctly held that limitation ran from the date of the note. He further said, "that the case of a note payable on demand was the same as "the case of money lent payable upon request, with interest, "where no demand is necessary before bringing the action." Though the case is clearly barred, it will not be a hard case for the plaintiff, for Ramnarayan has admitted the debt and is doubtless liable for the whole amount.

Mr. *Branson* in the same interest.

MACPHERSON, J.—The plaintiff seeks to recover rupees 1,100, being the balance of an amount deposited by him with three brothers, Nilmani, Gabind Chandra, and Ramnarayan Matilal. The plaintiff states the deposit was made in 1255 (1848), and that the three brothers agreed to pay him rupees 9 per month for interest, which was, in fact, for years paid to him by them or their representatives. The case which the plaintiff has proved is that he was a distant relation and dependant of the family of Biswanath Matilal, the father of Nilmani, Gabind Chandra, and Ramnarayan Matilal; and that he had lived in their family dwelling-house for many years; that, in 1255 (1848), being about to leave Calcutta to, and to take up his abode permanently at Benares, he placed in the hands of the three sons of Biswanath (who was then dead), the sum of rupees 1,200, when it was agreed that the money should remain with them, and they should remit him rupees 9 monthly, but that when he wanted back the principal, he should have it. It is proved that the plaintiff went to Benares, and that the rupees 9 were remitted from 1255 (1848), until within the last twelve months, or thereabouts. It is proved, I think, beyond

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all doubt, that the rupees 9 per month were, from time to time, remitted till recently; but I do not decide (because in the view I take of the plaintiff's position, it is unnecessary for me to decide) whether any part of the rupees 9 was remitted by or with the knowledge of the sons of Nilmani or of the sons of Gabind Chandra: I leave the question whether they or any of them made those payments open.

It is contended, on behalf of the sons of Nilmani and Gabind Chandra, that the suit is barred, as the money was not a deposit within the meaning of clause 15 of section 1 of Act XIV of 1859. Ramnarayan Matilal admits the plaintiff's claim, but says that, as one of the three brothers (who were joint in all respects at the time they received the money), he is liable for only a one-third share of it. I think it impossible to treat the transaction as a deposit within the meaning of clause 15, for there never was any deposit of property or money which it was intended should be returned specifically. It seems to me, however, that the plaintiff might have not unreasonably contended that his cause of action did not arise till early in 1869, when he first demanded the repayment of his principal. In applying the provisions of Act XIV of 1859, the date on which the cause of action first arose must always be ascertained with accuracy; and as the plaintiff had agreed to leave the money in the hands of Nilmani, Gabind Chandra, and Ramnarayan, until he asked them to give it back to him, it appears to me that the natural and logical mode of ascertaining when the plaintiff's cause of action arose, would be to inquire when he first demanded back his money. There was, in fact, no contract by the defendants to return the money till it was demanded; and if the matter were open to me now, I should have no difficulty in deciding that the cause of action did not arise till 1869, when the plaintiff first demanded back his money. But I do not consider that the question is still open to me, after the reported decisions in English cases, in which it has been held that, when money is payable on demand, the period runs from the date of the agreement to repay on demand. I confess I do not appreciate the principle on which those cases are supposed to be decided. The English cases, however, being such as they

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are, though I dissent from them, I consider myself bound to follow them, and bound to hold that the cause of action arose when the money was put in the hands of the three brothers; and therefore that the suit is now barred. I do not, however, consider that these parties stand on exactly the same footing as the parties in the ordinary cases where money has been deposited with a banker. The position of the parties, and the contract entered into, seems to me to be of a different nature in some material respects; but the money being payale on demand, I am bound, as I have said, by the English cases.

Judgment will go against Ramnarayan for the full amount, as he admits the contract to be such as the plaintiff alleges, and that the principal remains still unpaid and justly due. But the suit will be dismissed against the other two defendants, with costs on scale No. 2. The plaintiff is entitled only to costs on scale No. 1.

Judgment for the plaintiff against one defendant. The suit dismissed against the other defendants.

Attorneys for plaintiff: Messrs. *Beeby* and *Rutter*.

Attorneys for defendant: Baboos *Dinanath Bose* and *M. N. Holdar*.

Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Norman, and Mr. Justice Markby.

KOEGLER (PLAINTIFF) *v.* YULE AND ANOTHER (DEFENDANTS).

1870
Aug. 15.

Landlord and Tenant—Storage of Goods—Warehouse—Godown—Floor of Upper Story—Negligence.

The plaintiff let to the defendants a godown, on an upper story over his own godown, for the purpose of storing goods, the only stipulation in writing being that no combustible or hazardous goods should be stored there. The plaint alleged that the premises were taken by the defendants, on the understanding that the defendants should use the same in a tenant-like manner, yet the defendants used them in an untenant-like manner, and loaded an unreasonable and improper weight on the floor, whereby it broke through and damaged the plaintiff's goods below. The evidence showed that the godown had been used by former tenants for storing light goods, but, in addition to light goods, the defendants had at the time the floor broke stored upon it several casks of white and red lead and some cases containing tin plates. The evidence of professional witnesses showed that a warehouse floor ought to be able to bear 1½ cwt. per superficial foot, and there was evidence to show that pressure on the portion of the floor which fell was at the time 1 cwt. 1 qr. 6 lbs.