

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

DHANPATSING DOGAR (PLAINTIFF) v. RAHMAN MANDAL
(DEFENDANT.*)

1869
Feb'y. 24.

Limitation—Accounts—Act X. of 1859, s. 33.*

Section 33, Act X. of 1859 gives the benefit of the extended period of limitation to a man who shows reasonable diligence, and not to one who having the means of knowledge carelessly neglects to investigate the accounts.

THIS was a suit brought by the plaintiff, against the defendant, on the 6th September 1866, for the recovery of the amount due upon an adjustment of account, on the allegation that the defendant had been employed from Chaitra 1270 (April 1863) to the end of 1271 (April 1864); that he had not remitted the whole amount collected by him, nor had he delivered the papers in his possession. The defendant set up in his defence that he had been employed as a gomasta, under Mangaleswari, in 1270 (1863) and under the plaintiff in 1271 (1864); that he had delivered the papers of 1270 (1863) to the plaintiff, and those of 1271 (1864), to Chandra Kant Roy, plaintiff's gomasta.

The Deputy Collector found that the suit was not brought within one year after receipt of the papers and accounts, nor within one year after the determination of the agency; that the agency, he further found, had determined from the day the defendant was suspended, *viz.* Chaitra, 1271 (April 1864); that the defendant had delivered his account of 1271 before Sraban 1272 (August 1865), and the case not having been commenced within one year from the date when the account was rendered, was barred by limitation, *A. B. Mackintosh v. Woomesh Chunder Bose* (1).

On appeal, the Judge held, that no special limitation, on the ground of fraud, can be allowed, since the fact of suspension was the evidence of the discovery or suspicion of fraud, and as the suit had not been instituted within a year from the date of suspension, the suit was barred.

* Special Appeal, No. 2087 of 1868, from the decree of the Officiating Judge of Moorshedabad, dated the 27th of April 1868, affirming a decree of the Deputy Collector of that district, dated the 22nd of January 1867.

(1) 3 W. R., Act X. Rul., 121.

1869

**DHANPAT SING
DOGAR
RAHMAN
MANDAL.**

In special appeal, the High Court (MARKBY and MITTER, JJ.) remanded the case to the Judge, to try the question whether fraudulent accounts had been delivered by the defendant to the plaintiff; and if so, when the fraud had been first known to the plaintiff; and to dispose of the question of limitation according to his finding (1).

(1) *Before Mr. Justice Markby and Mr. Justice Mitter.*

DHANPAT SING DOGAR (PLAINTIFF)

v. RAHMAN MANDAL (DEFENDANT).*

The plaintiff in this case sued his agent, in the Collector's Court, for money received on his account. The defendant set up a plea of limitation. Both the lower Courts held, that the suit was not brought within one year of the termination of the agency, and on that ground dismissed the suit.

Upon appeal by the plaintiff, two objections have been taken: *first*, it is said that the date of the determination of the agency was wrongly fixed in Chaitra, 1271; for, on that occasion, the defendant was only suspended. Now it is true that suspension may be a very different thing from dismissal; but we think that in this case the Judge uses the word "suspension" in the sense of dismissal, for the plaintiff himself in his plaint makes use of a vernacular expression which implies a complete removal.

The other objection is this. The plaintiff sought to extend the period of limitation, on the ground that fraudulent accounts were delivered, and that the suit was brought within one year from the time when the fraud was first known to him; and the appellant now complains of the way in which this part of the case has been disposed of. The Judge says: "No special limitation on the ground of fraud can be allowed, since the fact of suspension is the evidence of the discovery or the suspicion of fraud." We are of opinion that this is not a satisfactory finding. A specific date was stated by the plain-

tiff as the time when he discovered the fraud, and the Judge should have found specifically when the fraud was first known to the plaintiff. The Judge says that at the suspension there was a suspicion of fraud; but this is a very different thing from knowledge: and it is knowledge, not suspicion, which is spoken of by the statute (section 33 of Act X. of 1859) which applies to this case.

It has, however, been further contended, that, as it is found as a fact that the accounts were delivered before Sraban, 1272, the suit, which was not commenced till Bhadra, 1273, is manifestly too late. It is argued that when the accounts were delivered, the plaintiff had the means of knowing that a fraud had been committed; and that when he had the means of knowledge, he must be taken to have known of the fraud. But we cannot give our assent to either of these propositions. An inspection of the accounts would, in many cases, give no information as to the fraud, which might be only discoverable by comparing the accounts with other sources of information. Nor are means of knowledge, and knowledge in a general sense, identical. Suppose a large mass of papers and accounts to be handed over by an agent to his employer; it may be that by a long, careful, and patient examination of these, a fraud would be discovered, and the employer has, therefore, in his hands the means of knowledge. But how can it be said that means of knowledge is, in such a case, equivalent to knowledge? On the other hand, we do not at all mean to hold, that a man is at liberty carelessly to shut his eyes to information within his reach; and in this or other ways

* Special Appeal, No. 1971 of 1867, from Moorsshedabad.

On remand, the Judge taking into consideration the dismissal of the defendant and the appointment of his successor, notified to the ryots, on the 27th Baisakh 1272 (8th May 1865), and the fact that subsequent collections were made and receipts granted by the latter, found that the date specified by the defendant, 3rd Jaishta 1272, or 15th May 1865, was the date on which the accounts were filed. He further found that the plaintiff had means of knowledge in Jaishta 1272 (May 1865) as his suspicions were aroused, and the accounts rendered were not of great bulk; that the plaintiff, fully alive to his own interest, had put in another gomasta without delay, and that gomasta made all subsequent collections, and that under these circumstances the plaintiff's allegation that it took him 10 or 11 months to discover the fraud of the defendant, could not be upheld. He further found, that the plaintiff did carelessly shut his eyes to the information within his reach; that he had neglected his interests, and that, from this, as well as the fact of the dismissal of the defendant, he had knowledge of the fraud much previously, of which he had not availed himself. He, accordingly, dismissed the appeal.

1869
DHANPAT SING
DOGAR
v.
RAHMAN
MANDAL.

The plaintiff appealed to the High Court.

Mr. R. T. *Allan* and Baboo *Krishna Dayal Roy* for appellant.

Baboo *Mohini Mohan Roy* for respondent.

MARKBY, J.—It seems to me that the decision of the lower Appellate Court ought to be affirmed. I must say that I have

means of knowledge may sometimes be very properly said to be equivalent to knowledge.

We have no doubt that this is the true explanation of the expressions used by Mr. Justice Morgan in the case of *Mackintosh v. Woomesh Chunder Bose*(1). It could not have been intended to lay down as an abstract proposition, that, when fraudulent accounts are delivered, the suit must be brought within one year from the date of delivery, for the Act makes a most clear distinction between the

delivery of the accounts and the discovery of the fraud, which distinction, a decision in the sense contended for would wholly annihilate.

The case will, therefore, be remanded to the Judge to try the question whether fraudulent accounts were delivered by the defendant to the plaintiff, and if so, when the fraud was first known to the plaintiff, and he will dispose of the question of limitation in accordance with this finding.

[1] 3 W. R., Act X. Rul., 121.

1869
 DHANPAT SING
 DOGAR
 v.
 RAHMAN
 MANDAL.

very considerable doubt whether the point taken by Mr. Allan, on behalf of the plaintiff who appeals, is now open to him. Upon the former occasion we thought the the Judge of the Zilla Court had not come to a clear finding upon the point when the plaintiff got actual knowledge of the fraud, and thereupon we were about to remand the case, when the defendant objected that, as he had proved upon the evidence that the plaintiff had means of knowledge more than a year before the suit was brought, and as that was the same thing as if he had had actual knowledge in the sense in which that word is used in section 33, Act X. of 1859 (1), it was unnecessary to remand the case ; and in support of that contention he relied upon the decision, by MORGAN and STEER, JJ., in *A. B. Mackintosh v. Woomesh Chunder Bose* (2). In discussing that case on the former occasion, we pointed out that, under many circumstances means of knowledge and actual knowledge may be very different things, but we are very careful to say at the same time that a man is not at liberty to shut his eyes to information within his reach, and so lengthen indefinitely the period of time within which he is to make his claim, and the means of knowledge may, in some cases be said to be equivalent to knowledge. Now that, I think, points out to the Judge exactly how we thought he ought to approach the consideration of this case, and it appears to me that he has done so in his judgment, and has most carefully followed those directions. As I have said, I have very great doubt whether it is open to Mr. Allan to contend that those decisions were wrong. I must say, however, and in this matter I speak for myself alone, that it appears to me that those directions were perfectly right. I cannot conceive that the Legislature could have intended by this section that a man who did not take the trouble to look after his own interests, and carelessly chose to let accounts lie for a long period of time uninvestigated, could at any time, after many years.

(1) Sec. 33 * * * agent, or if any fraudulent account shall

“Provided that, if the person having been rendered by the agent, the suit the right to sue shall, by means of fraud, have been brought within one year from the have been kept from the knowledge of time when the fraud shall have been first the receipt of any such money by the known to such person.” * * *

(2) 3 W; R., Act X. RUL., 121.

suddenly take up the accounts, examine them, and say in answer to any question of limitation that he had not discovered the fraud until he chose to make the investigation. It appears to me quite clear that the Legislature only intended to give the benefit of the extended period to a man who shewed reasonable diligence in the investigation of his accounts.

JACKSON, J.—I am of the same opinion. It appears to me that the Judge has acted in full conformity to the directions upon remand ; and as to the propriety or otherwise of those directions, I do not consider it is open to other Judges to entertain any question. But as the question has been raised, I have no hesitation in saying, for my own part, that I think those directions were quite correct. I think it would be quite unreasonable to contend, and the Court would not be justified in conceding that a party, who brings a suit under section 33, Act X. of 1859, should be allowed to say in literal conformity with the words of the section “ although I had full means of knowledge, and might have known, if I had chosen, that a fraud had been perpetrated on me, I chose not to avail myself of those means of knowledge, and to keep myself unformed until a certain date specified, and I claim to bring my suit, having become informed upon that date, within one year from the period of knowledge. If that were so, a man who desired to persecute an agent whom he had dismissed, or even a man who had a reasonable cause of complaint against an agent, might say to himself, my agent has now furnished me with accounts. It will suit my convenience to sue him five years hence when all evidence on his side may have disappeared, or when he may have died, and his representatives will have to defend the suit. And therefore I will put those accounts aside, and at the end of that time I will open them, and allege that a fraud has come to my knowledge, and then bring a suit at my convenience.” This was not, I think, the intention of the Legislature. I think it must have been meant that the suit should have been brought within one year from the time at which a person using reasonable diligence and acting in good faith first became acquainted with the fraud perpetrated against him. The decision of the lower Appellate Court will be affirmed with costs.

1860

DHANPAT SING
 DOGAR
 v.
 RAHMAN
 MANDAL.