

APPELLATE JURISDICTION (a)

*Referred Case No. 62 of 1870.*S. MOONEAPPAN *against* V. VENCATARAYADOO.

An unappropriated payment is to be applied to the earliest debt, although the debt is barred by the Act of Limitation, where the facts do not raise any question which might affect such priority.

870.
 iber 7.
 No. 62
 1870.

THIS was a case referred for the opinion of the High Court by A. R. Virasawmy Iyer, the District Munsif of Triputtly, in Suit No. 446 of 1870.

The case stated was as follows:—

In this case a question arises of appropriation of an amount paid in liquidation of the debts which the plaintiff owed to defendant, generally, neither party having appropriated the sum to any particular demand.

The present defendant sued the plaintiff in Suit No. 405 of 1870 for the recovery of a sum due under a bond; and he was met by the plea that by a general payment, not only the bond then sued on but all demands which the defendant had were satisfied. In the trial of that case the payment was found as a fact, but the plea of satisfaction by that payment of all demands was negatived. I accordingly gave judgment in favor of the present defendant on the bond he then sued upon, leaving the question of appropriation of the payment admitted undetermined.

In the present action the plaintiff claims to recover back the sum originally paid by him, alleging that at the time of payment no item was *legally* due, except that for which the defendant has obtained a judgment in Suit No. 405 of 1870. The defendant pleaded that at the time of payment there were three items of debt, viz. one for 100 Rupees due from 10th January 1867, another for a small sum due from 11th January 1867, and a third of a later date for which the Suit No. 405 was brought. That the money admitted to have been paid was expressly appropriated to the first item by the plaintiff. The payment in question was made on 19th June 1870, that is to say, more than three years after the first item became due.

(c) Present: Holloway, Acting C. J. and Innes, J.

The express appropriation by the plaintiff of the payment having been negatived in the former suit, the defendant was not at liberty to re-open that question; and the item in question stands to this day unappropriated in the defendant's accounts. For the purpose of determining this action, the payment must be taken to be unappropriated by either party.

1870.
December 7.
R. C. No. 6.
of 1870.

It was found also that the defendant's first claim is genuine.

Upon these facts I decided that the payment in question ought, in the absence of appropriation by either party, to be appropriated towards the liquidation of the earliest of the items, viz. the defendant's first claim for 100 Rupees, which arose on the 10th January 1867, subject to the opinion of the High Court.

The question submitted for the consideration of the High Court, is, whether according to law, the Court has power to appropriate the payment made generally to an item, which, at the time of payment, is not enforceable in a Court of law, it being barred by the Law of Limitation.

Such an appropriation as that under consideration in this case, when actually made by the creditor, has been upheld. The debt, though its recovery by a suit is barred, is still owing, and the Court in appropriating the item, as has been done, is doing what the parties are in conscience bound to do, and, in my humble opinion, does not contravene the provisions of the written law.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—The simple question is to what debt an unappropriated payment is to be applied?

The answer is to the earliest debt.

There is no question here of facts which might affect such priority.