

High Court, Bombay.

O. O. C. J.

Suit No. 159 of 1907.

Ardeshir Beyonjee Surtē... Plaintiff

Syed Sirdar Ali Khan } ... Defendants.
and others }

Judgment per Russell J. - The

Plaintiff herein is the Managing Clerk of Messrs. Wardia Ghandy & Co. attorneys of this Court, and has been such for several years. The 1st Defendant is the son and executor of the well known Abdul Haq the owner of Watson's An. near. The 2nd Defendant - Mr. Baig was

Oriental

4 witnesses
The 3rd witness said
4 witnesses the next
What is the judgment?
from what to which

(4.)
man fell back on the agreement to
lease prior to the lease which was dated
the 3rd day of April 1906 and argued
that clause 23 of that document did
not require registration. I took time
to consider this point and after-
wards held that it also re-
quired registration. This judgment
also was taken down in Shorthand.

This being so I apprehend that the
~~Lease~~ case must be treated as if
the Lease and agreement therefor
were out of the case. There is not the
same in the what about

* 4A

Unfortunately, however, there is
evidence upon which I am justified
in acting to show that Defendant 1

insisted upon a deposit of Rs. 33,333-10-8
in the agreement to
for the due performance of the Lease of
q in the lease itself.
Watson's Annexes. This appears from

~~3~~

It is unnecessary to speculate upon
what the position will be if the
was no evidence (dehors the lease &
agreement to lease for there is evidence
to show upon what terms the
deposit was made. For the first one
found that appears from the nature
of agreement to the P.M. business
(See L & F) while on the other
there are the Receipts which have
not been in & number 21 &c.

Looking at these documents in
my view I am justified in
holding that

Insert at

*

in last page

4A

(5)
The receipts marked collectively C¹ to
C⁶, which acknowledge receipt of the
deposit plus further rents and in-
terests and costs as they are passed
on different dates down to the 12th
of October 1906.

Defendant 3 was a friend of
the Plaintiff, and in April 1906 he
went into the occupation of the
Watson's Aunese under a document
dated the 3rd April 1906, and there
can be no doubt that from the com-
mencement of his occupation Defend-
ant 3 was greatly in need of monies
to pay the deposit, for on the 25th
April 1906 (See Ex. O) he passed three
promissory notes called hundies for
Rs. 5000 each due respectively on the
21st, 24th and 27th July 1906. The said

5. notes were endorsed by the Plaintiff
in

(6)
in favour of one Hajji Jakeria Hajji
Ahmed (hereinafter called Jakeria),
by whom they were endorsed one
to the Bank of Bombay and the
other two to the Alliance Bank of
Simla. The first receipt C¹ is dated
26th April 1906 the day after the
said three hundies were drawn by
Defendant 3.

Now, it is clear that at or
about the time when the hundies
were found due, Defendant 3 was
unable to pay them up and was
anxious to renew them. I see no
reason to doubt the evidence of
Alias Abdul Rahim otherwise called
Buddha, who was in the employment
of Jakeria and who knew Defendant
3, that he was willing to renew

6
the

The hundies on Defendant-3^s under
talking that if he failed to pay them
he would forfeit the deposit he had
with the Sudder. Budha says that
on the 23rd ^{July} April 1906 Defendant-3
passed Ex. No. 14 to Jakeria. The
terms of that document are very
material and I read it at length.
On that date as the receipts C¹,
C² and C³ show a sum of Rs.
18666 was the amount deposited
with Defendant-1. Now, having
got this document from Defendant-
3, I see no reason to disbelieve
Budha when he says that having
satisfied himself that there was
a deposit he renewed the hundies
or rather discounted fresh hundies,
for Rs. 1 are three hundies for Rs.
5000 each dated 21st, 24th and

July

(8)

and 27th July due respectively on the
 7th, 19th and 25th October 1906, endorsed
 by the Plaintiff and Jakeria and
 the bank paid the money. Buddha
 says that he was not willing to re-
 new the hundies which would be-
 come due as I have pointed out
 in October 1906 and told the De-
 fendant 3 that he must pay the
 amount, and he had several
 interviews with Defendant 3, who
 said that he was making arrange-
 ments to pay on the due date.
 He says Defendant 3 told him that
 he had borrowed from Baig, De-
 fendant 2, and would receive monies
 from him and pay off the hundies.
 He says he saw Baig about it and
 he said he was lending Rs. 15000 to
 Defendant 3 and there was an assign-
 ment

(7)
ment by Defendant-3 and that
he (Bardha) should make an en-
dorsement upon that assignment.
Bardha says he understood that
Baig would pay the money and he
should transfer the security to Baig.
By assignment he alludes, he says,
to Pa. No. 14.

It is clear from Exhibits A¹ and
A², the letters from Defendant-3 to Baig
in July 1906, that Defendant-3 was
extremely in need of money, and, though
not actually asking for a loan from
Baig, was suggesting it.

Baig says that he was in
Bombay at the end of September 1906
and that he had Rs. 16,000 Government
paper with Defendant-3 and also
some cash about Rs. 1,600 with Defendant-
3 which he wanted Defendant-3 to in-
vest.

(10.)

invest on mortgage for his (Baig's) children. Defendant 3 wanted him to help him with regard to his financial difficulties. He said he was hard pressed by the man opposite i.e. Budha Shet, and he wished Baig to let ^{him} ~~Budha~~ use ~~the~~ ^{his} money until the other investment came. He said that he had to pay to Budha Shet some 18000 and odd Rupees. The amount was secured by a lien on Defendant 3's deposit with Defendant 1 and that he ~~Budha Shet~~ would get that lien transferred to his Baig's name. He said the deposit was of Rs. 19000 or so. Baig says that after some hesitation he accepted the proposal about lending the money. This was after he

ascertained from Budha Shet that ⁽¹⁴⁾ he had a lien on the deposit mentioned above and that he would transfer the lien to him (Baig) if Baig advanced the money to be paid to Budha Shet. Eventually, he says, he agreed to advance the money to Defendant 3 on the terms that Defendant 3 should use the money to repay Budha Shet's loan that Budha ^{Shet} ~~should~~ transfer the lien mentioned above to Baig's name and that in the meantime Defendant 3 was to pass a demand promissory note to Baig and that Defendant 3 was to write a letter about the rate of interest on the loan Baig was to advance.

Now, it appears to me that Baig's evidence is strongly corroborated by Ex. 19, the letter of the 28th September 1906, which, Baig says, he sent to Defendant 1 when he agreed to advance the monies to Defendant 3, and also

(12)

by Ex. H³, the letter of the 14th October 1906 written by Defendant 3 to Baig, which I read.

Humane *
12A
sum in mss

Dr. Rajibali corroborates Baig's previous evidence for he says that at the end of September 1906 in Bombay Baig told him that he had left Rs. 20,000 nearly for his children's education and that he (Rajibali) should find a mortgage. In October 1906 Rajibali went to Junnagar to treat the stowab and Baig told him that he had invested his money in a sound security but did not tell him what

it was. Ex. H. No. 4 & 5. sum & contents of letters 3 to Baig, dated 6.10.06, 14.10.06, & 25.10.06 for Rs. 5000 each in favour of V. P. K. of Bombay for - his children in favour of H. Jadhav & following in sum & dates:

The next important document is Ex. 14A. This is typewritten on the back of Ex. H³ 14. (I read it.)

Budha says that this ~~is~~ ^{typewritten} ~~is~~ ^{is} endorsement -

The most important point in & here is my mind is that - that state in the document further? and I have a question of this provision must in view of the I propose to this it at length

Ex. No 19 is of much importance & I would it
be published together. But I was to get it at [unclear]
where he had them on a [unclear] when
Conference [unclear] of the letter has not been [unclear]
in any way. Now it appears to me that
Ex. 1 must be taken to have [unclear]
to the [unclear] [unclear] to be [unclear]
and in any way [unclear] to the [unclear]
from it. I think with a [unclear] effect
of Ex. 19 [unclear].

12A

sent at *
last page

I who sent Ex. 3 in letter of 14.10.06
at length. H 4 is a [unclear] [unclear]
1.10.06 [unclear] [unclear] to H 5 is
a letter of [unclear] dated 22.10.06
which [unclear] [unclear] in
H 3 [unclear] [unclear] [unclear]
in [unclear] [unclear] [unclear]

12A

~~that~~ endorsement - was made by ⁽¹²⁾
Defendant No 3, who took Ex. 14
away with him for the purpose,
and he says that he signed ^(Bardha)
14A in ~~the carrier's name~~ ^{Jakera's name} as he had
a power of attorney from him and
that too before he was paid off the
amount due to Jakera. He says
Defendant 3 took it away ^{after} and it was
signed ^{by Bardha} in his (Bardha's) shop. On the
other hand Baig says that Bardha
Shet sent him the assignment ^{after}
receiving the payment ^{on the 7th of July}. There is, there-
fore, on this point a serious discre-
pancy between Bardha Shet and
Baig. The most unfortunate circum-
stance is that Ex. 14A bears no date.

The Plaintiff's case is that
Ex. No. 14 was left in a pigeon-hole

(14.)
in Defendant 3's office in the absence
when he gave up possession of the sta-
ment and ~~handed to~~ ~~stated~~ on the
5th January 1907⁷ and that the en-
dorsement of 14A was made fraudulently
and collusively by Baig in January
1907 with a view of defeating Plaintiff's
claim. I see, however, no reason
to disbelieve the evidence of Dr. Raji-
bali when he ~~to~~ says that he re-
ceived Exhibits 14 and 14A before
the 6th January 1907 from Baig who
was at Junnagar.

1907?

Looking at Ex. No. 19 and
knowing how anxious Defendant 3
was to get assistance to pay off
Jakeria, it seems to me the most
natural thing that when Jakeria
was paid off Budha would execute

14

the

a (155)
The document such as Ex. 14A.
Baig undoubtedly knew that a lien
had been given to Jakeria and I
see no reason why Defendant 3 should
not have been willing to give a simi-
lar lien to Baig.

Again, it is unfortunate that
Rajibali has not got the letter
which, he says, was sent under a
separate ~~letter~~ cover at the time
when Exhibits 14 and 14A were sent
by a registered cover, but of course there
was no reason why he should keep
it.

Again, it would require very
strong evidence to compel me to
find a man in the position of Baig
colluding with a man in the position
of Budha to fabricate Ex. 14A.

Evidence has been given on
behalf

(16.)
behalf of the Defendants to show that
no documents were left in the pigeon-
holes in the Amusee at all, and
I ~~do~~ confess I cannot see why
I should disbelieve that evidence.

Further I cannot but feel
considerably impressed by the evidence
of the Plaintiff himself upon this point.
When he was cross-examined as to
this charge of fraud and collusion
which he had made in his attorneys'
letter of the 17th of January 1907 he
withdrew the charge against Defend-
ant-1 and was not willing to repeat
the charge against Baig out of
Court.

It is undoubtedly a most
unfortunate thing that that charge
was made for had it not been.

(17.)
for it, judging from what fell
from Counsel appearing before
me, it is possible that this case
might have been settled.

On the other hand I can-
not overlook the fact that ap-
parently the Plaintiff's feelings
of friendship towards Defendant 3
were so strong that he was induced
to make such charge instead of
coming to the conclusion that
Defendant 3 had, as so many men
do when ^{they} ~~we~~ are in difficulties, de-
ceived his friend the Plaintiff by
concealing Baig's charge from him.

Of course there are certain
circumstances which go to show sus-
picion upon Baig's case with regard

(18.)

to this endorsement Ex. A. 14 A. In the first place the letter Ex. H. makes no mention of the assignment, where one would have certainly expected it to have been mentioned. In the second

place we find on the 10th of January 1907 Baig taking from Defendant 3 assignments of all the available property in his possession as security for Baig's advance. No doubt, on the

other hand Ex. A. 24, which is the Pleadings in Baig's suit against Defendant 3 filed on the 11th of January 1907 the charge in favour of Baig is referred to, but here, again, unfortunately the date of the charge is not given.

I have been specially struck by

Exhibits I¹¹ and I¹² (which I read) as being inconsistent with the assignment - 14A having been executed when it is said to have been executed. Again, Charda's evidence, if believed, of the interview between Baig and Defendant 3 at Navsari is inconsistent with Baig's case. Mr. Strongman in continuing his address in reply for the Plaintiff said on the 13th of January 1908 he was not going to dispute that the assignment was made on the 26th of October, but on my pointing out the above circumstances he said he would not go so far as to say that he would not dispute the assignment on that day. Although, therefore, I feel

(20.)

feel that the question of the date of the assignment is by no means free from difficulty - and probably if it had not been for Dr. Rajibali's evidence I would have found against Baig on ~~that~~ ^{this} point - still I feel bound to find that the assignment was made on or about the 26th of October. What the legal effect of it is, I discuss later.

I sum up the position on the 26th of October, therefore, ^{by payment to him of money that had been ~~from~~ ~~received~~ ~~from~~ ~~Dr. Rajib~~} Jakeria was discharged and

Baig substituted for him. ^{As I have since learnt to him to have given to Baig that amount - V. Shree & Jakeria in C.V. deposit & Baig had set 2 amounts, Rs 14 & 14 in his own favour.}

~~On the 2nd of November 1906, Defendant 3 passed to the Plaintiff the letter of his~~

The position of things in regard to Dept 1 &
3 & Dept 2 being in I have shown at
the end of let: as the Puff was handled
by the S. R. L. he was that he
was a friend of Dept 3 and ^{had} shown
his ^{friend} business ^{also} was not in
business of business & was not in
he had in about 2 years of business
for D & P. in form of I have in -
He also in business (showing business & business
(D & P) business business business business
business in business. business business I think
is business business business business business business
The Puff was business in a business
to business business business at business
business business business business business business
he business business business business business
as he business business business business business
having business business business business business

...wife's report. The Puff
& his business in business business business business
was in business business business business business

in the charter must be in the list with regard to
L. N. in the 2nd line of Dept 3
known to him the letter of him
L. E. which I read at length.
The looking of this letter is closely
linked with the letter of him given
to Dept 3 to Johnson in the 13.2.06.
which he has now seen as Puff's own
business in hand has drafted & himself
that in my opinion there is no
strong ground for suspecting the
suggestion that L. E. has written
it must have been taken on file
have a copy or draft of the
letter of him given to Johnson.
The St. Louis one somewhat later in
the progress of the case was at the
point that Puff has not been
incumbent in the deposit for
which letter written of the Puff's claim

... I understand that you had a private long
... at some time but being at
Lara ¹⁸ 7 + P.M. I did not see any
... to shooting it out. Further
... during the time I have of the hour
... I got out hereafter it is not
... in doubt as to provide the point
I, but I know that it is
to my mind very difficult to believe
that the Puff has been on such
intimate terms with Dept 3 and
... has ^{a notice} of the charges ^{as against}
Dept 3 & Brig. If I know ^{as against}
this it is probable that Dept 3
... has been penetrating
to ^{Swindle} ^{the} Puff is intending to
... on Brig may have
... from the Puff
... Brig. Hence
... it is difficult to
... the Puff of your opinion
... to his out

Indivisible

111. 23

satifying satifying himself as to what
had been of the line in
form of Johnson as the Johnson
had been sent off a short time
before of Johnson's death. Whether
such a thing as is in this church in
his case can be held to amount
to nothing under the Transfer of
Property Act is a question which
by I have said it is not
necessary for me to decide.

~~Ex. E, (which I read) and thereby~~
 purported to give him a lien on
 the deposit in consideration of his
 having endorsed and paid sundries
 for Defendant 3. The list of those
 sundries and their due dates has
 been put in and marked as Parti-
 culars relating to Ex. N. The Plaintiff
 had prepared a draft of the letter
 of lien given by Defendant 3 to
 Jankia on the 23rd of July 1906 and
 the wording of this letter of lien of the
 2nd of November so almost exactly
 tallies with that, that it appears to
 me that Ex. E was copied from pro-
 bably a draft of the letter of the 23rd
 of July.

On the 20th of November 1906,

Defendant-

(22.)

Defendant-3 executed in favour of
Defendant-1 the document Ex. A-1
wherein inter alia it is stated that
a sum of Rs. 19835-2-7 was due by
Defendant-3 to Defendant-1 and
Defendant-1 covenanted to pay
the sum on demand with interest
at 2 per cent. per month and that
the same should be charged on all
the outstandings and book-debts of
Defendant-3 in his business as lessee
of the hotel known as Watson's Au-
nese. The said indenture also pro-
vided that a Mr. Randle should
collect the outstandings and pay De-
fendant-3 Rs. 100 per day for Bazaar,

stores 26

stores etc, and ~~pay~~ the balance to
Defendant 1. Outstandings apparent
ly were collected accordingly under
this agreement but for what period
and to what extent the evidence does
not show.

On the 5th of January 1907, De-
pendant 1 entered into possession
of the stores.

After that date apparently
Defendant 3 was in hiding, but on

the 8th of January 1907 by ^F ~~the~~
~~to the Plaintiff~~ he assigned to
the Plaintiff the sum of Rs. 25554

or so much thereof as was then pay-
able to Defendant 3 by Defendant

1 and all interest due and to
become due for the same. } Due
notice

(24.)

notice of this assignment was given to
Defendant 1 on the same day (see Ex. J¹).

In the letter in reply thereto, Ex. J²,
of the 10th of January 1907, Messrs.

Payne & Co. for Defendant 1 write as

follows:- "Your client moreover in
obtaining the assignment has overlooked

one circumstance viz. that there is

already a charge on the deposit in

favour of Mr. Mirza Abbas Ali Beig.

There was a charge in favour of Mr.

Haji Jakeria Haji Ahmed which was

transferred to Mr. Beig when the

latter paid off Mr. Jakeria. Your

client knows this as well as our

client." To this Messrs. Wadia Ghandy

for the Plaintiff replied on the 17th of

January, in the 4th para. of which the

charge

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The charge, which I have above re-
 ferred to, of fraud was made against
 Defendants 1 and 2. In consequence
 of that letter of the 17th of January
 an interview took place between De-
 fendant 1 and the Plaintiff and
 Mr. Chandy, but was such as
 the charge has been withdrawn and
 not pressed, as I have above pointed
 out, it is not necessary for me to
 deal with the evidence on this point.

Correspondence, P. K, took
 place between Plaintiff's attorneys
 and Defendant 2 commencing
 on the 24th of January 1907, and
 no doubt Mr. Stangman was
 perfectly justified in animadverting
 upon the withholding from the Plaintiff

(26.)

of the date of the endorsement - 14A
which I can only characterise as
another suspicious circumstance
with regard to that document.

After the 8th of January 1907,
Defendant 3 became insolvent and
fled ~~to~~ Karsai, where he still is
and where he was examined on
commission. In all the material parts in v
case I let you know as to what he has done.

I have above set out the
material facts in the case.

It now becomes necessary
for me to consider the legal as-
pects of the case as put before
me by Counsel respectively for
Plaintiff and Defendants 1 and 2,
and it will be desirable to deal
first with the legal aspects of the
case as between the Plaintiff and

30
Defendant-

Defendant-1.

Mr. Lowndes's argument is that by reason of Defendant 3's failing to carry out certain conditions the nature of which, owing to the lease and agreement for lease not being registered, I cannot discover, the deposit was wholly forfeited to Defendant 1, and, therefore, the Plaintiff, who stands in the shoes of Mounshi, cannot recover it. In support of his argument he relied on the following cases:-

- Ray v. Bridge, 6 K. & M. 528;
- Watts v. Smith, 21 Q.B. 257; Copson v. L. B. & S. C. Ry, L.R. 4 Q.B. 85 &
- Howe v. Smith, 27 Q.B. 89.

But in Ray v. Bridge it was expressly held that if a sum is paid under a deposit in a contract he shall be liable to pay it back by the contract unless he has made a charge. So in Watts v. Smith it was held that if he has made a charge he shall not be liable to pay it back.

* The limit
 the 2 pages post
 * * *

31

But

(28.)

*
I have
written
this
up

But in my opinion the law is most clearly stated by Lord Macnaghten in the case of Soper v. Arnold, 14 App. C., 435, in the passage beginning "There was a contract" down to "pay for it or not."

No doubt, ^{under the T. of P.W. Act} as he says, a lease is a transfer of property as is a sale but I do not think it follows from that,

that the same principles apply to a deposit for the performance of the terms of a lease as to a deposit for the purchase of property. It is well known that a lease contains covenants of very various importance. ~~and~~ I do not think

you

In Casper v. D. B. & S. C. Dry the deposit on
 of sum to that being bought ^{was} to be deposited
 in the hands of one of the defendants. In
Howe v. Smith & deposit was a guarantee
 for performance of a contract. In this case
 was at 22 L.C. 1197. Brown & J. stated

Parker v. Temple 9 A.C. & E. 508 where
 at h. 520 it was said "in the absence of
 any specific provision, a deposit does not
 depend on the intention
 of the parties to be affected by the date
 of the instrument". Now in the case before me
 I am not entitled to look at the
 date of the instrument or to ascertain the
 intention of the parties from it.

In my opinion however the law applicable
 to the present case
 (construing the English law) is to be found
 in Alphinstone v. French Bank 11 A.C. & E.
 11 A.C. 1197 & Hilton v. Land
 (1896) 18 B. 626 [I must refer to
 in these 2 cases. I refer in Alphinstone
v. French Bank to have been applied in

Clyde Bond Co. v. Don Jose B. Brown
 1905 h. C. 6. 15. + Scott v. Little v.
 1906. 2 H. B. 345; in
Shannon 1906. 2 H. B. 345; in
Shannon 1906. 2 H. B. 345; in
 425. when it was held "to ascertain whether
 the instrument was a deposit or

*
 know this
 have above
 must pay
 at *

32A

monkland & Co. Ltd. v. ...

liquidated
 amount of £ all
 must be paid
 in the
 hands of the
 parties & intention
 of the parties.

Peppan Oct 3 here saying that I
for the return of the deposit I
shall feel quite sufficient in holding
(as I would have to hold if
the deposit agreement is correct)
that it would be a great expense
for Oct 1 to say he has
not performed all the business
of the loan and therefore
all the deposit is kept that
and I am entitled to return
the whole of it.

*

From this in
midnight after the
last page

*

32 B

The first one says "I mean business" (29)
~~you could say that in the case of de-~~
~~posit is to say I am going to buy - an~~
~~asset for the performance of the~~
~~single act. & I deposit so much to~~
~~terms of a lease it is a guarantee~~
~~for business that lease~~ "The lesson
that the purchaser means business
means business & says I deposit so much
in the words of Lord Mac-
aulay that I will perform a number
of acts of my life for my business
purpose." Of course I am not

at liberty in this case to look
at the terms of the lease, but one
has never heard of a deposit being
made to guarantee a lease as the purchaser
does when he contracts to purchase
a property. I can quite understand
a man saying: "I deposit so much
as a guarantee that I will buy
your property" but one cannot
understand him saying: "I deposit
so much as a guarantee that I
will

will carry out all ^{the} terms of the lease
 and if I don't paint a wall or a
 room my deposit is to be forfeited"
 In the present instance, for instance,
 it would, I think, be going too far
 to say that if Defendant-3 had
 failed to paint a part of the stu-
 nese costing say Rs. 500 that it
 could ^{have} been intended that he should
 forfeit the deposit amounting to
 Rs. 23,333. Upon this point, I
 confess I agree with Mr. Strangman's
 argument when he relied upon Section
 74 of the Contract Act, which, as
 Sir Frederick Pollock says, boldly
 cuts the most troublesome knot in
 the Common Law doctrine of damages,
 and looking at the terms of that
 section

respectively to the sums of
 and which are admitted
 by the Plaintiff, these amounts ought
 to be allowed to be deducted from the
 deposit, which of course would leave
 a balance in favour of the Plaintiff
 but for the circumstances I herein-
 after set forth.

This leads me, therefore, to
 Defendant 2's case. I have above
 fully set forth the reasons which
 have led me to the conclusions of
 fact upon it.

Mr. Strongman's main
 argument was upon the wording
 of the letter of lien Ex. A. No. 14 itself,
 namely, that the words at the end
 of Ex. A. No. 14: "In the event of my failing

(53)
to pay the said amount of such huries
on their respective due dates" governed
the whole document, and that inasmuch
as Jakeria had been paid off in Oc-
tober 1906 his agent Budha had
nothing to transfer by the endorse-
ment Sec. 14 A, but to my mind the
wording of Sec. 14 is perfectly clear
and the words at the end of it -
which I have above quoted must
be held to refer to the prior words.

"In consideration of your renewing
my huries to the extent of Rs. 15000,
and not to the words at the be-
ginning of it: "I hereby give you a
lien on the amount of Rs. 18666."

Again, it appears to me that
to hold that Jakeria through his
agent had nothing to transfer
when

(34)
when the endorsement - Sec. 14 A
was executed would be contrary
to the effect of the whole trans-
action, and upon this point the
wording of 14 A seems to me very
material particularly so if Pruthi's
evidence is correct that it was sent
to him typed by Defendant 3. It
does not say: "I having been paid
off the amount hereby transfer
the within charge or lien etc. in con-
sideration of such and such a
sum paid to me," but it says:
"I have transferred the within charge
or lien in consideration of Rs. so much
advanced by Baig to Defendant 3;
and, therefore, upon the wording at-

(22)
the date of the transfer of charge or lien it
must, I think, be taken to be the living
charge or lien and not a dead one.

And if my view of the transaction is
correct the effect of it was that

Jakeria having a valid and effectual
lien or charge upon the deposit in
consideration of Baig's having paid

to Defendant 3 the amount that

Defendant 3 owed to Jakeria Baig
stood in the shoes of Jakeria and

was entitled to the same rights as
to the deposit as Jakeria himself
was entitled to, and looking at

the terms of Ex. A. 19 Baig's letter
to Defendant 1 of the 28th of Sep-

tember 1906, it must in my opinion

be taken that Defendant 1 was

aware of and agreed to the pro-

posed transfer.

Therefore,

Therefore, ^{my} opinion the first para. of Section 130 of the Transfer of Property Act has been complied with (I read it.)

* I have not
not judge
number *

~~The Plaintiff can derive no~~ benefit from the notice of his transfer of the 8th of January by his attorneys' letter Ex. J¹ because that notice does not comply with the terms of Section 131 of the Transfer of Property Act which provides that every notice of transfer of actionable claim shall be in writing by ~~the transferor~~ or his agent.

I, therefore, hold that upon the execution of Ex. 14 A, there was a valid transfer of Jakeria's claim to the deposit which became com-
plete

(27)
plete and effectual upon the
execution of 14A and thereupon
all Jakeria's rights and re-
medies vested in Baig.

It is admitted by the
Plaintiff that if the transfer
to Baig is a valid one he can
get nothing by this suit.

I accordingly find upon
the issues as follows:-

(1.) In the negative.

(2.) In the negative.

(3.) In the affirmative.

(4.) In the affirmative.

(5.) In the negative.

(6.) The terms of the Lease

cannot be ascertained

(38) nor the Lease looked at.

(7.) In the negative.

(8.) In the negative.

(9.) In the negative.

(10.) ~~In the negative~~ But-

for Baig's lien or charge the
Defendant, might have some
monies in his hands on which
the Plaintiff has a lien or charge.

(11.) In the negative.

(12.) Defendant 3 entitled
to debit the amounts paid in
respect of Post-Trust rents and
municipal taxes.

(13.) In the negative. Charge
against-

against-Defendant-1 with-⁽³⁹⁾
drawn and against-Defend-
ant-2 practically so.

(14.) In the affirmative

(15.) In the negative.

(16.) In the affirmative.

(17.) In the affirmative.

(18.) No finding necessary.

On the general issue,
I dismiss the Plaintiff's

~~suit with costs.~~

As to Plaintiff being to pay all costs is
left to the jury in view of the
an extraordinary case of on the question
of marshalling in respect of Paris to other
creditors.

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Delivered on 30th Jan'y/08.

High Court
Bombay

O. O. C.

—

Suit No. 159 of 1907.

Ardeshir Beyonjee } ...
Surtie }

vs.

Eyed Sirdar Ali } ...
Khan & others. } ...

—

Judgment delivered
by Russell J. on the
30th January 1908