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independently of any influence by the first defendant, and that the benefit did not pass, in the words of Lord C.J. Wilmot, through a polluted channel; the circumstance, however, of Khatizábái being the daughter of the first defendant and a girl of only ten years, the position of inferiority occupied by Fátmá, and the joint form of the gift, irresistibly lead to the conclusion that the entire gift was, in a considerable degree at least, due to the influence arising out of the fiduciary relation subsisting between the first defendant and Rassubái. I am of opinion, therefore, that the third objection is fatal to the entire gift.

Decree for the plaintiffs with costs.

Attorney for the plaintiffs: *Shámráv Pándurang.*

Attorney for the defendants: *Manisty and Hurrell.*

March 29.

Suit No. 596 of 1869.

JEA'UNISSA' LA'DLI BEGAM SA'HEB *et al.* ... *Plaintiffs.*
 MA'NIKJI KHARSETJI..... *Defendant.*

Limitation—Promissory Note payable, after six months, on demand—Act XIV. of 1859, Sec. I., cl. 16.

Where a promissory note was made payable "after six months, whenever the payee should demand the same," with interest, *it was held* that the law of limitation began to run upon the expiration of six months from the date of the note.

THIS suit was brought by the plaintiffs as administratrixes of the estate and effects of Mír Jáfar Alí Khán, to recover Rs. 3,982, balance due upon a Gujaráti promissory note. The translation of the note was as follows:—

"To, Sardár Mir Jáfar Alí Khán Bahádúr, written by Pársi Mánikji Kharsetji Shroff, to wit: Rs. 5,000 are credited to your account at my place as written below. The particulars thereof are as follows:—

Rs. 2,500, 25th May 1858.

„ 2,000, 18th September 1858.

„ 500, 3rd November 1858.

"According to these presents I have given receipts for these Rs. 5,000, bearing the above dates. Having cancelled them, I have given this receipt for the whole. Negotiations are going on with you as to my selling or

mortgaging to you my property at Byculla. If that matter be settled, this money is to be given credit for to you in that account. *Otherwise these Rs. 5,000 shall be truly repaid to you after six months, whenever you may demand the same, with interest at 8 annas per cent. per mensem.* (Dated) 23rd January 1859.

“Written by Mánikji Kharsetji Shroff, his own handwriting, his signature.”

(An indorsement here followed in English) “Received from Mr. Kharsetji Rs. 2,500. The 20th November 1859.

(Signed) “JA'FAR ALI'”

No further payment than that indorsed on the note was made, nor was there any evidence given of a demand.

The plaint in the suit was filed on the 16th of October 1869, and the case came on for hearing before WESTROPP, J., on the 18th of January 1870.

Starling and Badruddín Tyabji for the plaintiffs.

Mayhew for the defendant.

The only issue was, whether the suit was barred by the Law of Limitation.

Cur. adv. vult.

29th March 1870. WESTROPP, J. (after reading the promissory note, said):—The only defence made is that this suit is barred by the Limitation Act (XIV. of 1859, Sec. 1., cl. 16). The sole issue, therefore, is whether the suit is barred by that Act.

For the plaintiffs it is contended that the Act would not begin to run against the note until after a demand had been made, and that no demand was proved to have been made, and *Carter v. Ring (a)* and *Thorpe v. Booth (b)* were relied on; but *Carter v. Ring* is not in point here. It was an action on a bond, not on a promissory note, and the bond was conditioned to be void on payment on demand; and, therefore, Lord Ellenborough held that express evidence of a demand was necessary in order to show a forfeiture, as there could not be a forfeiture until default of payment upon an actual demand. The plaintiff, as argued

(a) 3 Camp. 459.

(b) Ryan & Mood 389.

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by Abbott for the defendant, was there seeking to recover the penalty, which is a collateral sum, and the cases with regard to payment of money on request, where there is an antecedent duty, and in which, therefore, the bringing of the action was considered a sufficient demand, did not apply. The decision in *Thorpe v. Booth* does not govern this case. There the promissory note was payable twenty-four months *after demand*, and it was held that the Statute of Limitations was no answer to an action upon that note, commenced within six years from the presentation for payment, *i.e.*, from the making of the demand. The demand was there necessary, in order to give a terminus whence the twenty-four months should run.

But in the present case the note is payable "after six months whenever you may demand the same." That is, the lapse of six months must precede the demand, and not as in *Thorpe v. Booth*, where the demand should have preceded the currency of the twenty-four months. Here the six months began to run from the date of the note; and, after that period had elapsed, the note was in the same position as any ordinary note payable on demand. In the case of ordinary notes payable on demand, the words "on demand" do not constitute a condition precedent, but merely import that the debt is due and payable immediately; and, therefore, on a bill or note payable on demand the Statute of Limitations has been held to run from the date of the instrument, and not from the time of the demand: *Christie v. Fonsick (c)*: Byles on Bills, p. 320, 8th ed. This is so even where the note is made payable with interest, as here: *Norton v. Ellam (d)*; and where a note payable on demand was given by a separate agreement as security for a banking account, it was held at *Nisi Prius*, by Baron Martin, that the Statute of Limitation ran from the day the note was given, and that the note was not kept alive by the banking account or payments made on that account: *Hartland v. Jukes (e)*. Were it necessary to consider whether or not there has been a demand in this case, it may be that the payment by the defendant of

(c) Selwyn's N. P., p. 351, 9th ed. (d) 2 M. & W. 461. (e) 3 Fos. & F. 149.

Rs. 2,500 on the 20th of November 1859 might entitle the Court to presume a prior demand of payment, but, as there was not any legal necessity for a demand, I do not give any opinion as to whether the part-payment would warrant such a presumption. For the reasons already given, I think that this action is barred by the Limitation Act (XIV. of 1859, Sec. 1., cl. 16), and, therefore, that the issue must be found in the affirmative for the defendant.

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But as it is not pretended that more than half of the amount of the note has been ever paid, and the only excuse put forward for not paying the remaining half and interest is the statement of the defendant's counsel, unsupported by any evidence given in this cause, that the defendant has, in some manner not disclosed, rendered himself useful to the late Jáfar Alí, and, therefore, that the latter did not intend to enforce the payment of the balance due on the note, I must, in making a decree for the defendant on the ground that this action is barred by the Limitation Act, decline to award him any costs.

Decree for the defendant without costs.

Attorney for the plaintiffs : C. Tyabji.

Attorney for the defendant : Khandarav Moroji.

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Appeal Suit No. 164.

April 7.

MULTA'NI MULCHAND CHUTUMAL *et al.* *Appellants.*

THAKAR SUNDARJI NA'RANJI *Respondent.*

Authority of Agent how proved—Insurance—Procedure—Nonsuit.

To prove the authority of an agent who underwrites a policy of insurance, it is not necessary, in order to charge his principal, that the instrument appointing such agent should be produced, if it is shown that he has been in the habit of underwriting policies for his principal, and that the latter has been in the habit of paying losses upon policies so subscribed.

Semle—When at the close of the plaintiffs' case the evidence adduced is not sufficient to connect the defendant with the instrument sued upon, the presiding Judge acts rightly in entering a decree for the defendant without hearing his evidence.

THIS was a suit brought on a policy of insurance, bearing date the 20th of March 1866, effected by the plaintiffs