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[338] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

ICHHA DHANJI AND OTHERS (*Original Plaintiffs*), *Appellants v.* NATHA, MINOR, BY HIS GUARDIAN (*Original Defendant*), *Respondent.**

[9th October, 1888.]

Native banker and customer—Limitation Act (XV of 1877), s. 20, and arts. 59 and 60—Deposit—Loan—Banker crediting interest is not payment to give fresh starting point—Suit to recover money lodged with a native banker more than three years after lodgment.

The relationship between a native banker and the person depositing money with him in the ordinary way of business is that of borrower and lender, and the money lodged can be recovered as money lent. Article 59 of the Limitation Act (XV of 1877) applies to such a transaction.

The plaintiffs, who were members of the Dalvadi community, sued in 1883 to recover from the defendants the sum of Rs. 2,611-3-6 as found credited to their account in 1880 by the defendants' father, with whom the community had lodged a sum of Rs. 2,320 in 1874. They alleged that the sum was lodged on the condition that it was to be returned with interest on demand. It appeared that small sums were paid by Kalidas to the plaintiffs from time to time, and no demand had ever been made during the lifetime of Kalidas for repayment. The defendants denied the alleged condition, and contended that the suit was barred. The Court of first instance awarded the plaintiffs' claim. The defendants appealed to the Assistant Judge, who reversed the decree, being of opinion that the transaction was a loan and not a deposit, and that the suit was barred. On appeal by the plaintiffs to the High Court,

Held, confirming the decree of the lower appellate Court, that the plaintiffs' suit was barred by art. 59 of the Limitation Act (XV of 1877).

The plaintiffs contended that the money was lodged as a "deposit" and not as a loan, and that art. 60 of sch. II of the Limitation Act applied. They relied upon the following circumstances as showing the nature of the transaction, *viz.*, (1) that it was arranged that the money should remain until a favourable opportunity should occur for applying it to the building of a *dharmshala*: (2) that interest was to be paid upon it; (3) that the account was to be annually settled; (4) that it was to be withdrawn in one sum.

Held, that these circumstances, if proved, did not necessarily deprive the transaction of the character of a loan by creating a fiduciary relationship between the parties, (which is essential to a deposit in its technical sense), and thus distinguishing it from the ordinary dealings between native bankers and their customers.

It was further contended that the entry of interest in the defendants' book was made in the plaintiffs' presence, and amounted to a payment of interest within the meaning of s. 20 of the Limitation Act (XV of 1877.)

[339] *Held*, that such an entry did not amount to payment of interest within the meaning of the section so as to save limitation. Nothing took place which could be regarded as equivalent to payment of interest.

[Diss., 18 M. 390 (393); **R.**, 29 A. 773=4 A.L.J. 628 (634)=27 A.W.N. 263; 19 B. 352 (357); 19 M. 340 (342); 31 C. 519 (524)=8 C.W.N. 500; 13 Bom.L.R. 482=11 Ind. Cas, 552; 6 C.L.J. 535; 15 C.P.L.R. 147 (148); 9 O.C. 221 (223); 16 M. L.T. 199=1914 M.W.N. 606; **D.**, 24 B. 493 (499).]

IN 1874, the community of Dalvadis, (brick-makers) of Dakor lodged a sum of Rs. 2,320 with one Kalidas, the father of the defendants, and opened an account with him as their banker. The money remained with him at interest, and the amount was carried forward in his books, with the

* Second Appeal, No. 69 of 1887.

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accumulated interest, in the name of the Panch Samasta of the Dalvadis. Small sums were paid by him from time to time, and were duly debited in the account. His ledger for 1880 showed a sum of Rs. 2,611-3-6 to the credit of the account. In his ledger for 1881, Kalidas did not bring forward the amount in his hands, as he had done previously. The account for that year showed only one debit entry of Rs. 391 paid by him to a Dalvadi. The ledger for 1882 showed only one debit entry of Rs. 7, which was the amount appearing due to him by the Dalvadis.

Early in 1883, Kalidas died, no demand having ever been made upon him by the Dalvadis for repayment of the sum lodged by them with him.

In August, 1883, the plaintiffs as members of the community, brought this suit against the defendants, who were the minor sons of Kalidas, to recover from their father's estate the sum of Rs. 2,611-3-6, being the sum found credited in 1880 to the account of the community. The plaintiffs alleged that the money originally deposited was intended for the erection of a *dharmshala*, and that it was lodged with Kalidas to remain at interest with him until a favourable opportunity should occur for carrying out the object, and that the money was then to be withdrawn in one sum; that Kalidas was aware of the circumstances, and that the deposit was made on the condition that he should return the money with interest when it was demanded.

The defendants denied the alleged condition, and pleaded limitation.

The Subordinate Judge held that the suit was governed by art. 59 of the Limitation Act (XV of 1877); but that under s. 20 of that Act the plaintiffs' claim was savad by the [340] crediting of interest by Kalidas in his ledger for 1880. He passed a decree for the plaintiffs.

The defendants appealed to the District Judge, who reversed the lower Court's decree with the following remarks: —

"The Subordinate Judge has taken an erroneous view of the meaning of s. 20 of the Limitation Act. He has relied on certain sums entered in the account books of defendants' father as having been paid to some of the plaintiffs in 1881 and the crediting of interest in the same account books at the end of the year 1880, and has computed the period of limitation from those dates up to the date of institution of the suit. Section 20 of Act XV of 1877, however, requries that the payment of interest, or part payment of principal, should be made before the prescribed period; and as the deposit is said to have been made in 1874, the period of three years expired long before the earliest of the so-called payments above referred to. With regard to the crediting of interest in the debtor's own account books, however, I should hesitate to hold that such a transaction would amount to a payment within the meaning of s. 20 * * *. The fact that interest is claimed, makes it clear that the transaction must be regarded as a loan and not as a deposit * * *."

From this decision the plaintiffs preferred a second appeal to the High Court.

Shantaram Narayan, for the appellants:—The suit is governed by art 60 of the Limitation Act (XV of 1877). The money was expressly deposited on the condition that it was to be returned on demand; the object of the deposit was to enable the plaintiffs' community to build a *dharmshala*. Kalidas knew what it was for, and a fiduciary relationship was created. The money was to be drawn in one sum at a favourable opportunity, and a fixed interest was to be calculated upon it. The banker admits the debt in his ledger. This is not an ordinary banking transaction, and is not

governed by art 59 of the Limitation Act (XV of 1877). The suit falls within art. 60 and can be brought within three yeare from the date of demand. In any event, s, 20 of the Limitation Act exempts the plaintiffs from limitation. The entry of interest in the handwriting of Kalidas amounts to [341] payment of interest within the meaning of s. 20—*Spargo's Case* (1) It is not necessary that interest should actually be received by the person to whom it is payable. A credit entry made in his presence is sufficient.

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Rav Saheb *Vasudev Jagannath Kirtikar*, for the respondent:—The relation here is that of a mere banker and customer, and the money lodged with Kalidas was a loan. The suit, therefore, was rightly held to be governed by art. 59 of the Limitation Act. It is an ordinary banking transaction. Small sums were withdrawn by the plaintiffs. No conditions affecting the deposit appear in the account book. It is styled *amanat*, which does not convey the meaning of deposit in English. In the case of a deposit in its technical sense, there must be an express trust. The condition that the money was to be withdrawn in one sum does not affect the character of the transaction. To bring the suit under s. 20 of the Limitation Act there must be actual payment of interest. There was no such payment in this case. A mere entry of interest does not amount to payment—*Maber* v. *Maber* (2) though if the debtor is ready to pay, and the creditor acknowledges he has received it, no actual receipt is necessary.

Shantaram Narayan in reply:—The money was lodged to be repayable on demand, and, therefore, a suit to recover it may be brought within three years from the demand. There are four circumstances which make the transaction a deposit, *viz.*, (1) the money was not to be demanded till a *dharmshala* could be built; (2) interest was to be paid; (3) the community were to settle the account annually; (4) the money was not to be drawn upon in small amounts, but was to be withdrawn in one sum. A trust arose out of these circumstances. In *Acharatlal* v. *Pranlal* (3), it was held that though the ordinary relation of banker and customer subsisted, the cause of action arose on demand.

JUDGMENT.

SARGENT C. J.—The question for decision is whether the plaintiffs' claim is barred by the Statute of Limitations. The Courts below have applied art. 59 of sch. II of the Act of 1877. It is contended for plaintiffs that art. 60 was [342] the article applicable to the special circumstances under which, as alleged, the money was lodged with the defendant.

It had been well settled by judicial authority previously to the passing of the Limitation Act of 1877, by analogy to the rule which obtains with respect to bankers in England as settled by the case of *Foley* v. *Hill* (4) that the relationship between a native banker and the person depositing money with him in the ordinary way of business is that of borrower and lender, and that the money so lodged with a native banker can only be recovered as money lent, and not as a deposit under s. 1, cl. 15 of Act XIV of 1859 or art. 147 of the Limitation Act of 1871: see *Nasir* v. *Dayabhai* (5), *Acharatlal* v. *Pranlal* (3), and *Hingun Lall* v. *Debee Prashad* (6). That ruling was quite independent of the question as to the time from which the Statute would run in the case of a loan payable on demand, which was the subject of conflicting decisions up to 1871, when the

(1) 8 Ch. Ap. 407.
(2) L. R. 2 Ex. 153, 156.
(3) Printed Judgments for 1876. p. 53.
(4) 2 H. L. Cal. 28.
(5) 10 B.H. C. R. 300.
(6) 24 W.R. C.R. 42.

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Statute of Limitations of that year made the time run from the date of demand. By the present Act of 1877 it is made by art. 59 to run from the date of the loan, and a new art. 60 has been introduced applicable to suits to recover money deposited under an agreement that it shall be payable on demand, in which case the time runs from demand being made. But whatever may be the cases to which this article is intended to apply, it is at any rate not applicable where the transaction is regarded by the law as a loan, and which, as we have seen, is the case in the ordinary banking dealings between a native *savkar* and his customers.

But it was said that the circumstances under which the money in question was placed with the defendant were of such a nature as to distinguish it from an ordinary banking transaction, and to give it the character of a deposit as contemplated by s. 60. The circumstances relied on are: (1) That there was an understanding between plaintiffs and defendant that it would not be drawn out until a favourable opportunity presented itself; (2) that interest was agreed to be paid; (3) that the plaintiffs should come annually to settle the account; (4) that it was **[343]** understood it would be drawn out in one sum. None of these circumstances, however, supposing them to be proved, distinguish it from the ordinary dealings between native bankers and their customers which have been held to create the relationship of borrower and lender. We are unable, therefore, to distinguish this case from the ordinary relationship between a banker and his constituent, and are, therefore, of opinion that art. 59 was properly applied.

But it was said that the entry of interest in the defendant's books, made as it was alleged in the presence of the plaintiffs, amounted to a payment, which by s. 20 postponed the date from which time would run to within three years previous to the filing of the suit. *Spargo's Case*(1) was relied on; but that only decides that if the circumstances would support a plea of payment they are such as to satisfy the section. Here there were no demands on both sides to set off against one another, and nothing took place which could be regarded as equivalent to payment of interest. We must, therefore, confirm the decree with costs.

Decree confirmed.

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13 B. 343=13 Ind. Jur. 394.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Nanabhai Haridas.

BHAU BALAPA *(Original Plaintiff), Appellant v.* NANA AND OTHERS *(Original Defendants), Respondents.**

[11th October, 1888.]

Civil Procedure Code (Act XIV of 1882*), s. 424—Notice—Collector joined a party in respect of minor's property administered by him to protect minor's title—Act III (Bom.) of* 1874*, s. 10, effect of certificate under.*

The plaintiff sued, as purchaser at a court sale of the interest of defendant No. 1, to redeem and recover possession of the land in dispute, alleging that it had been mortgaged by defendant No. 1 to defendant No. 2. Defendant No. 1 denied the mortgage, and that he had any title to the land, which he said belonged to

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* Appeal, No. 40 of 1886.

(1) 8 Ch. Ap. 407.