ORIGINAL CIVIL.

Before the Honourable Mr. Farran, Chief Justice, and Mr. Justice Starling.

1895. *July* 26.

MANCHERJI BOMANJI (ORIGINAL DEFENDANT), APPELLANT, *v.* NUSERW A'NJI MANCHERJI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Limitation Act (*XV of* 1877), *Sch. II, Art.* 115—*Agreement—Construction.*

The plaintiffs were husband and wife, and they were married on the 14th March, 1888. On the day of their marriage the defendant, who was the father of the first plaintiff, gave him a note addressed to his (the defendant's) firm as follows :—

"Do you be pleased to pay Rs. 7,000, namely, seven thousand, for ornaments in respect thereof, together with interest thereon at the rate of Rs. 4, namely four, per one centum per one annum, within a period of 3, namely three, years from this day."

The plaintiff took this note to the defendant's firm, and in return received the following document addressed to himself :—

"You sent one 'chithi' (note) for Rs. 7,000, namely, seven thousand, on me. The sum which your father Set Mancherji Bomanji Panthaki caused to be paid to you in respect of the ornaments appertaining to your marriage has been credited to your account, bearing interest at 4, namely four, per cent. For the same this 'receipt' has been given in writing."

No money was actually paid by the defendant to the plaintiffs, and none was lodged with the defendant's firm by the plaintiffs, but subsequently to the above transaction an account was kept in the defendant's books, in which the first plaintiff was duly credited with interest every year. In March, 1894, the plaintiff demanded from the defendant the amount standing to his credit on this account. The defendant pleaded limitation.

Held that the purpose for which the money was to be paid, *viz.*, the purchase of ornaments for the wife, indicated that it was the intention of the parties that payment should not be made until the plaintiffs were prepared to purchase ornaments, and that until then the money should remain with the defendant's firm. The intention was that the money should not be paid until the plaintiffs required it for the purpose for which it was destined, and demanded it. The contract was not broken until the plaintiffs demanded the money, which they did in March, 1894. Article 115 of Schedule II of the Limitation Act (XV of 1877) applied to the case, and the suit was not barred.

APPEAL from Candy, J.

Suit for Rs. 7,000 and interest at 4 per cent. from the 14th March, 1888.

*Suit, No. 179 of 1894.

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The first and second plaintiffs were husband and wife and the defendant was the father of the first plaintiff. The plaint alleged as follows :—

"The first plaintiff was married in the year 1838 to the second plaintiff, and on the occasion of his marriage the defendant, in accordance with Pársi custom, agreed to present to the plaintiff and his wife ornaments of the value of Rs. 7,000 ; but as the defendant did not wish to expend the money in ornaments at that time, it was agreed between the first plaintiff and the defendant that the sum of Rs. 7,000 should remain as a deposit with the defendants'. firm of Bomanji Máneckji, and should be paid to the plaintiffs, with interest at 4 per cent. *per annum*, when the moneys were demanded for the purpose of getting the ornaments made. The defendant in the meanwhile was to keep the said moneys as a depository and trustee for the plaintiffs and to credit the same in the first plaintiff's name in the books of the firm."

The plaintiff deposed that in pursuance of the above stated arrangement the defendant on the 14th March, 1888, gave him a note, or order, addressed to his (the defendant's) firm, which ran as follows :—

"(To) Andhiáru Máneckji Panthaki. To wit. My son Bhai Nusserwánji Mancherji Panthaki marries to-day. Do you be pleased to pay Rs. 7,000, namely, seven thousand, for ornaments in respect thereof, together with interest thereon at the rate of Rs. 4, namely, four per one centum per one annum, within a period of 3, namely, three years from this day. Bombay, the English date the 14th of March, in the year 1888, written by A (Ahdhiáru) Mancherji Bomonji Panthaki."

The plaintiff deposed that he took this note to the defendant's firm, and in return received the following document addressed to himself :—

"(To) The respected Bhai Nusserwánji Mancherji Panthaki. To wit. You sent one 'chithi' (note) for Rs. 7,000, namely, seven thousand, on me. The sum which your father Set Mancherji Bomanji Panthaki caused to be paid to you in respect of the ornaments appertaining to your marriage has been credited to your account, bearing interest at 4, namely, four per cent. For the same this 'receipt' has been given in writing. Bombay, the English date the 14th of March, in the year 1888, written by Bomanji Máneckji Panthaki. The handwriting of Dinsháji."

It was admitted that no money was actually paid by the defendant to the plaintiffs, and none was paid to or lodged with the defendant's firm by the plaintiffs.

The plaint stated that the defendant had since kept the said money and credited the first plaintiff with interest and struck the balance every year. The plaintiff demanded these moneys from the defendant by letter on the 9th and 22nd March, 1894,

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but the defendant had not sent any reply to these letters of demand. This suit was filed on the 12th April, 1894.

The defendant denied the agreement stated in the plaint and pleaded limitation. As to this last plea, the plaintiff contended that the case fell within article 60 of the schedule to the Limitation Act (XV of 1877), and that time ran only from the date of demand.

The case was heard as a short cause by Candy, J., who held that article 60 applied, and passed a decree for the plaintiff.

The defendant appealed.

Macpherson (Acting Advocate General) and *Kirkpatrick* for the appellant:—There was no consideration for the alleged agreement. The plaintiffs had been betrothed for years, and it does not appear that the subsequent marriage took place because of the alleged promise to give Rs. 7,000. It was a voluntary promise of a gift— *Breton* v. *Woollven* (1). In any case, the suit is barred. The documents show this was not a case of deposit. If there was an agreement at all on the 14th March, 1888, it was merely an agreement to pay Rs. 7,000 within three years. On the expiration of the three years, *viz.*, on the 14th March, 1891, the plaintiff's right of action (if any) accrued, and he had three years from that date in which to sue. This suit was not filed till 12th April, 1894, and was then barred. They referred to *Ichha Dhanji* v. *Natha*(2); *Ishur Chunder Bhaduri* v. *Jibun Kumari Bibi*(3); *Dorábji Jehángir Randiva* v. *Muncherji Bomanji Panthaki*(4).

Inverarity and *Russell* for the respondent:—This was an agreement or gift in consideration of the plaintiffs' marriage. The circumstances show that this money has really been held as a deposit by the defendant, for the plaintiffs. The money was put aside as a fund to be applied in purchasing ornaments in accordance with Pársi custom whenever the plaintiffs desired to purchase them. They demanded their money for the purpose of buying these ornaments in March, 1894, and this suit was filed in this year. They referred to Story on Bailments, paras. 4 and 41; *Tidd* v. *Overell* (5); *Atkinson* v. *Bradford Equitable Society*

(1) 17 Ch. D., 416.
(2) I. L. R., 13 Bom., 333.
(3) I. L. R., 16 Cal., 25.
(4) I. L. R., 19 Bom., 352 at p. 3
(5) L. R. (1893), 3 Ch., 154.
(6) 25 Q. B. D., 377.

FARRAN, C. J.:—Upon the first point which has been urged upon us in this appeal, that there was no consideration for the agreement deposed to by the plaintiff in his examination, and further evinced by the exhibits, we do not entertain doubt, but as it is desirable to have a clear view of the facts before us when considering the second and more important question, we state them as they present themselves to our minds.

The plaintiff Nusserwánji, who is the son of the defendant, was in the year 1888 about to marry the second plaintiff, Meherbái. It is customary amongst Pársis for the father of the bridegroom, on the occasion of the marriage of his sons, to give ornaments, or money for the purchase of ornaments, to the bride. Such ornaments are considered to be the joint property of the husband and wife. Previous to the marriage, the defendant promised to give Rs. 7,000 to his son Nusserwánji to purchase such ornaments, and Nusserwánji agreed to that amount. The marriage subsequently took place. Upon the occasion of the marriage, the defendant, not finding it convenient to pay the Rs. 7,000 in cash, handed Nusserwánji, or his wife, an order addressed to his place of business, which was carried on in the name of Bomanji Mancherji Panthaki, and which, for brevity (though inaccurately) we shall refer to as "the defendant's firm." The order is dated the 14th March, 1888, and is to the following effect:—"My son Nusserwánji marries to-day. Do you be pleased to pay Rs. 7,000 for ornaments, together with interest thereon at the rate of 4 per cent. per annum within a period of three years from this day." Our interpreter informs us that the exact literal translation of the direction for payment is "Do you be pleased to pay Rs. 7,000 in three years from this day's time." The meaning is the same. It is, we think, a direction to pay the Rs. 7,000 with interest, but giving three years within which the firm could not be called on to pay.

This document the plaintiff Nusserwánji took or sent to the defendant's firm, and was given a receipt signed in the name of the firm. It runs thus—"To Bhai Nusserwánji Mancherji

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Panthaki. You sent one 'chithi' for Rs. 7,000 on me. This sum, which your father Mancherji Bomanji Panthaki caused to be paid to you in respect of the ornaments appertaining to your marriage, has been carried to your account, bearing interest at 4 per cent. For the same this receipt is given."

An account was thereupon opened in the books of the defendant's firm, which has ever since been carried on, but no interest nor any part of the principal sum has ever been paid to the plaintiff.

The above two documents must, we think, be read together. The receipt, when read in connection with the order, is, we think, a receipt by the defendant's firm for Rs. 7,000, payable with interest at 4 per cent., but not to be demanded as of right within three years. Being given in the plaintiff Nusserwánji's name, it is a receipt in his favour. The result of the transaction appears thus to be that the plaintiff Nusserwánji, in lieu of the Rs. 7,000 which his father had promised to give on his marriage, accepted the undertaking of the letter in the name of his firm, and the father in the name of his firm undertook to pay the plaintiff Rs. 7,000 with interest, but not before the expiration of three years.

Now, on the question of consideration, we should feel no difficulty in holding that the marriage took place at the father's request, and upon the understanding that the father should make the customary presents for ornaments, which by agreement between father and son were fixed at Rs. 7,000. It is a much stronger case than that of *Shadwell* v. *Shadwell*(1), where such a request was implied by the majority of the Court. But even without implying a request, it is, we think, clear that the marriage took place upon the faith of the father's promise, and so the case falls within the principle of *Hammersley* v. *De Biel*(2), and within the meaning of section 8 of the Contract Act (IX of 1872). The plaintiff by contracting the marriage, fulfilled the condition upon which the promise was made.

Turning now to the question of limitation, it has been considered by the Divisional Court that a case of trust has been made

(1) 9 C. B. N. S., 159. (2) 12 Cl. and F., 45.

out in respect of the sum of Rs. 7,000 referred to in the exhibits, and that the defendant in some way held that sum in trust for the plaintiffs. This view was not strenuously upheld in the argument before us, and indeed in a later judgment in the case of *Dorábji Jehángir Randiva* v. *Muncherji Bomanji Pánthákí*[1] the learned Judge has himself receded from it. The documents, in our opinion, do not evidence a trust, nor can we imply a trust from the surrounding circumstances so as to bring the case within the meaning of section 10 of the Limitation Act (XV of 1877); and, unless we can do that, it is useless to speak of a trust in this connection. The Division Court has also held that, if the Rs. 7,000 were not held by the defendant in trust for the plaintiff, the case falls within article 60 of the second schedule to the Act, so that the claim is not barred. The wording of the documents, however, shows that the Rs. 7,000 were not deposited under an agreement that they should be payable on demand, inasmuch as they were not necessarily payable for a period of three years, nor indeed can it, in fact, be said that there ever was a deposit, though a liability to pay the amount was for consideration undertaken by the defendant's firm. The case must, therefore, fall under some other provision of the law.

The provision governing it is, in our opinion, article 115. There is no other article suggested, or that we can discover, specifically applicable to the case. Limitation under that article (115) begins to run from the time when the contract is broken. What that time is, must depend upon the terms, express or implied, of the contract itself, whether it is an absolute contract to pay Rs. 7,000 with interest on the expiration of three years from the date of the contract, or whether it is a contract to pay that sum on demand, subject to the three years' grace allowed to the defendant. The documents, evidencing the contract, are loosely and inartificially drawn, and do not clearly specify the exact obligations which they impose on the defendant's firm, or, in other words, upon the defendant. Ordinarily it is the duty of the debtor to pay his debt when due to the creditor—Story's Contracts, 967. If he does not do so, he breaks his contract,

(1) I. L. R., 19 Bom., 352 at p. 358.

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and time begins to run against the creditor. We think, however, in the present case that the documents, read in the light of the surrounding circumstances, show that such was not the nature of the obligation which the defendant undertook. The contract, though in substance a promise to pay by the defendant, is in form a direction to a third party to pay. No definite time for such payment is specified; it is left to depend upon the convenience of the parties. The purpose for which the payment was to be made, the purchase of ornaments for the wife, is set forth on the face of the document. This is an indication, we think, that it was the intention of the parties that the payment should not be made until Nusserwánji and his wife were prepared to purchase ornaments, and that until then the money should remain at interest with the defendant's firm.

These circumstances, coupled with the near relationship between the parties, lead, we think, to the conclusion that the parties intended that the money should not be paid until the plaintiffs required it for the purpose for which it was destined and until Nusserwánji demanded it. The contract was not, therefore, we think, broken until the plaintiffs demanded the money, which they did for the first time within the period of limitation. The appeal will be dismissed with costs.

Appeal dismissed.

Attorneys for the appellant:—Messrs. *Bicknell, Motilál and Mervánji.*

Attorneys for the defendants:—Messrs. *Crawford, Burder & Co.*