

(1870) 03 CAL CK 0018
In the Calcutta High Court

Parbati Charan Mookerjee

APPELLANT

Vs

Ramnarayan Matilal and Others

RESPONDENT

Date of Decision : 11-03-1870

Acts Referred:

Citation : (1870) 03 CAL CK 0018

Judgement

Macpherson, J.—The plaintiff seeks to recover rupees 1,100, being the balance of an amount deposited by him with three brothers, Nilmani, Gabind Chandra, and Ramnarayan Matilal. The plaintiff states the deposit was made in 1255 (1848), and that the three brothers agreed to pay him rupees 9 per month for interest, which was, in fact, for years paid to him by them or their representatives. The case which the plaintiff has proved is that he was a distant relation and dependant of the family of Biswanath Matilal, the father of Nilmani, Gabind Chandra, and Ramnarayan Matilal; and that he had lived in their family dwelling-house for many years; that, in 1255 (1848), being about to leave Calcutta, and to take up his abode permanently at Benares, he placed in the hands of the three sons of Biswanath (who was then dead), the sum of rupees 1,200, when it was agreed that the money should remain with them, and they should remit him rupees 9 monthly, but that when he wanted back the principal, he should have it. It is proved that the plaintiff went to Benares, and that the rupees 9 were remitted from 1255 (1848), until within the last twelve months, or thereabouts. It is proved, I think, beyond all doubt, that the rupees 9 per month were, from time to time, remitted till recently; but I do not decide (because in the view I take of the plaintiff's position, it is unnecessary for me to decide) whether any part of the rupees 9 was remitted by or with the knowledge of the sons of Nilmani or of the sons of Gabind Chandra: I leave the question whether they or any of them made those payments open. It is contended, on behalf of the sons of Nilmani and Gabind Chandra, that the suit is barred, as the money was not a deposit within the meaning of clause 15 of section 1 of Act XIV of 1859. Ramnarayan Matilal admits the plaintiff's claim, but says that, as one of the three brothers (who were joint in all respects at the time they received the

money), he is liable for only a one-third share of it. I think it impossible to treat the transaction as a deposit within the meaning of clause 15, for there never was any deposit of property or money which it was intended should be returned specifically. It seems to me, however, that the plaintiff might have not unreasonably contended that his cause of action did not arise till early in 1869, when he first demanded the repayment of his principal. In applying the provisions of Act XIV of 1859, the date on which the cause of action first arose must always be ascertained with accuracy; and as the plaintiff had agreed to leave the money in the hands of Nilmani, Gabind Chandra, and Ramnarayan, until he asked them to give it back to him, it appears to me that the natural and logical mode of ascertaining when the plaintiff's cause of action arose, would be to inquire when he first demanded back his money. There was, in fact, no contract by the defendants to return the money till it was demanded; and if the matter were open to me now, I should have no difficulty in deciding that the cause of action did not arise till 1869, when the plaintiff first demanded back his money. But I do not consider that the question is still open to me, after the reported decisions in English cases, in which it has been held that, when money is payable on demand, the period runs from the date of the agreement to repay on demand. I confess I do not appreciate the principle on which those cases are supposed to be decided. The English cases, however, being such as they are, though I dissent from them, I consider myself bound to follow them, and bound to hold that the cause of action arose when the money was put in the hands of the three brothers; and therefore that the suit is now barred. I do not, however, consider that these parties stand on exactly the same footing as the parties in the ordinary cases where money has been deposited with a banker. The position of the parties, and the contract entered into, seems to me to be of a different nature in some material respects; but the money being payable on demand, I am bound, as I have said, by the English cases.

2. Judgment will go against Ramnarayan for the full amount, as he admits the contract to be such as the plaintiff alleges, and that the principal remains still unpaid and justly due. But the suit will be dismissed against the other two defendants, with costs on scale No. 2. The plaintiff is entitled only to costs on scale No. 1.