

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Karim Nensey v. Heinrichs and Another, from the High Court of Judicature at Bombay; delivered 13th June 1901.*

Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD ROBERTSON.

SIR RICHARD COUCH.

SIR FORD NORTH.

[*Delivered by Lord Hobhouse.*]

The question raised in this Appeal is whether the High Court of Bombay has placed a wrong construction on a written agreement made between the Appellant who is Plaintiff in the suit, and the Respondents who are Defendants. The agreement is in the form of a letter from the Defendants to the Plaintiff dated 4th August 1894 and expressed as follows :—

“ Mr. Karim Nensey,

“ In consideration of your having at our request signed  
“ the agreement of dissolution of partnership made between  
“ Mr. Peeroo Mahomed and Messrs. Nensey Peeroo, Kassum  
“ Peeroo, Fazul Peeroo and yourself, and dated the 30th July  
“ last, we hereby agree to pay you on behalf of Mr. Nensey  
“ Peeroo a sum of rupees five hundred per month payable on  
“ the first of each month until such time as your father, Mr.  
“ Nensey Peeroo, makes provision for your maintenance, so as  
“ to give thereby himself the above sum every month for such  
“ maintenance.

“ Yours truly,

“ (Signed)      GLADE & COMPANY.”

The circumstances bearing on the nature of the agreement are as follows. The Plaintiff

was a partner in trade with his grandfather Peeroo Mahomed, his father Nensey Peeroo, and his uncles Kassum and Fuzul. The profits were shared in various amounts, the Plaintiff's share being two annas. It does not appear whether the partnership was for any definite period, or whether any notice was required to dissolve it. In the year 1894 a deed of dissolution was prepared and executed by the Plaintiff's four partners on the 30th July. It contains statements of the pecuniary relations of each partner to the firm as shown by the books, whether a debtor or a creditor to it, and of the terms on which each is to retire and release his partners. The Plaintiff's father is stated to be very heavily indebted. The Plaintiff is stated to be indebted, and it appears by the books proved by his uncle Fazul that his debts amounted to Rs. 76,000 or more. The deed provides that he shall transfer all his interest to his grandfather; that his debt to the firm shall be written off; and that his grandfather shall free him from responsibility for any debt of the firm.

The Plaintiff hesitated to sign this document. When the four others executed it they inserted a statement to the effect that he had not executed it, but it was hoped that he would do so.

The Defendants carry on business in partnership under the firm of Glade & Co. They employed the Plaintiff's firm, or his father as one of the firm, to transact their Maccudum business; and they were consulted about the dissolution. For some reason they were desirous that the dissolution should take place as arranged, and were willing to give the Plaintiff some benefit to induce him to agree. Negotiations between them resulted in the letter of 4th August now sued on; and on the same day the Plaintiff signed the dissolution deed.

The Plaintiff's family are Khojas, who, though Mahomedans, have some peculiar customs. It is not shown what is the custom prevailing in their caste with reference to a son's right to maintenance from his father, nor is it shown what were the legal incidents of the property, of which the father appears to have been in possession, as between him and the family. At any rate no suggestion is made by the Plaintiff that the custom of the caste gives him any stronger claim for maintenance than among Hindoos a son would have against a father in possession of family property. Nensey Peeroo may have been bound to maintain the Plaintiff, out of family property; but there is nothing to show that he was bound to maintain an adult son, or to give him any definite sum or proportion, or to settle property on him by way of permanent provision.

As a matter of fact Nensey Peeroo was on bad terms with the Plaintiff and did not provide any maintenance at all for him. Consequently the Plaintiff had recourse to the Defendants who paid him the stipulated sum up to the month of April 1898. In March of that year Nensey Peeroo died. The Defendants then declined to pay anything more, conceiving that their liability did not extend beyond Nensey Peeroo's life.

The Plaintiff alleges that his father, to whom he took out administration, died not only intestate but insolvent, and that the Defendants had agreed unconditionally to secure him an income of Rs. 500 per month. On that view he brought the present action, which was tried in the High Court before Mr. Justice Tyabji. That learned Judge declared that the stipulated amount was to be paid to the Plaintiff for his life, and passed a decree on that footing. His reasons are not stated. On appeal by the Defendants, the Court, consisting of Chief Justice Jenkins and Mr. Justice Candy was of a different opinion, and dismissed the suit.

The learned Chief Justice held that the liability of the Defendants was intended to take the place of the maintenance which it was expected that Nensey Peeroo as a father would allow to his son without any intimation that there is any joint family property or that the father is subject to legal claims for maintenance of an adult son. The learned Judge speaks of him as a Mahomedan father. Mr. Justice Candy construes the document to mean that the Defendants were to do their best to persuade the father to make provision for the son, and were to pay him Rs. 500 a month until they succeeded in that work of persuasion. Then finding it proved that the Defendants had done their best to persuade Nensey Peeroo while he was alive, he held that their contract had been fully performed. The grounds taken by the two learned Judges differ in expression, but in substance they amount to the same thing, viz., that the obligation of the Defendants to maintain did not extend beyond the life of Nensey Peeroo. If the inheritance then devolving on the Plaintiff has turned out to be insufficient, that was a contingency not provided for. The Defendants did not undertake that Nensey Peeroo should die rich enough to leave the Plaintiff an inheritance worth Rs. 500 per month.

Their Lordships have no hesitation in concurring with the decree appealed from. It is true that the agreement provides for payment by the Defendants to the Plaintiff without any definite limit of time except the making of a provision by Nensey Peeroo; and it was argued at the Bar that the provision intended was an actual settlement of property by the father on the son in perpetuity. That puts a strain on the words which they cannot bear. Gifts or contracts expressed to be for maintenance, and indefinite as regards duration, may be shown by the acts of the parties or other circumstances to be intended

to operate in perpetuity; but *prima facie* they are limited to the life either of grantor or grantee. In this case the language of the contract points strongly to the life of the intended or supposed grantor as the limit of the benefit. Whatever may be the relations between a Khoja father and son in this respect, the maintenance spoken of is one to be given by the father himself every month to the son, just as a Hindoo father in possession of family property might make a definite allowance to his son. What the Defendants guarantee is that the father shall be bound to allow Rs. 500, and that if he does not they will pay on his behalf. There is nothing to show that they intended to incur more liability than Nensey Peeroo would have incurred if he had executed a bond obliging himself to pay his son Rs. 500 for maintenance. Upon his death his paternal obligation to maintain his son would come to an end, and the son's share in the family property would take its place. The Defendants have not guaranteed the amount of Nensey Peeroo's estate, nor have they undertaken to pay, on his behalf and by way of maintenance, money which could only be expected to come from him while living.

Such being the reasonable construction of the agreement on its face, it only remains to say that there is nothing in the position of the parties to give it any other construction. A great deal has been said at the Bar of the Plaintiff's relinquishment of his interest in the partnership. For all that appears his interest was nothing more than a right to have the accounts taken and the surplus, if any, divided. No attempt is made to show that the terms on which he retired were other than favourable to him, or that by the contract as now construed the Defendants did not pay an ample price for avoiding the

litigation on which he might have insisted. Allowing that the expressions of the contract are not precise, and that the construction placed on them by the First Court might be shown under supposable circumstances to be the true one, their Lordships find nothing in the evidence to suggest that the meaning which most easily fits the words leads to any unreasonable conclusion, or that it was not the real intention of the parties.

They will humbly advise His Majesty to dismiss the Appeal. The Appellant must pay the costs.

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