Privy Council Appeal No. 93 *of* 1934
Allahabad Appeal No. 12 *of* 1933

Babu Manmohan Das - - - - - - - - *Appellant*

v.

Baldeo Narain Tandon and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1937.

Present at the Hearing :
LORD THANKERTON.
SIR SHADI LAL.
SIR GEORGE RANKIN.
[*Delivered by* SIR SHADI LAL.]

This appeal arises out of a suit brought by the plaintiff Baldeo Narain Tandon (hereinafter referred to as Tandon) against a firm called the United Provinces Aniline Dyes Company (described as " the firm " for convenience) for the recovery of Rs.14,950 with interest. The High Court of Judicature at Allahabad, dissenting from the trial Judge, has granted a decree in favour of the plaintiff; and from that decree Manmohan Das, one of the partners of the firm, has appealed to His Majesty in Council.

The plaintiff stated that the sum of Rs.14,950 was advanced by him as a loan to the firm by a cheque for that amount. The cheque in question was drawn by the Secretary of the Finance Board of the Congress Reception Committee, Amritsar, on the 12th August, 1923, in favour of another firm called Bond Brothers for the price of the work done by them for the Reception Committee. It was endorsed by two of the partners of Bond Brothers, namely, Tandon and Banerji, in favour of one Sri Kishan Das Wahal.

Now, it is common ground that Sri Kishan Das Wahal was the manager of the defendant firm, and it appears that the money payable on the cheque was received by him on behalf of the firm. The plaintiff claims that he received the cheque from his partners in Bond Brothers in part payment of the money due to him by the latter, and that he made it over to the firm as a loan.

The first question for consideration is whether the firm received the money, which was payable on the cheque. It is conceded that, if the money was received by the firm, it must be deemed to be a loan made by the plaintiff. Now,

a satisfactory proof of the receipt of the money is furnished by the account books of the firm; and it cannot, therefore, be disputed that the plaintiff is entitled to recover it.

The money due on the cheque was paid on the 30th August, 1923, by the Central Bank of India at Amritsar, on which the cheque was drawn, and the suit for its recovery was instituted on the 27th August, 1926. It is suggested that the suit is governed by article 58 of the first schedule to the Indian Limitation Act, 1908, which prescribes a period of three years for a suit for the recovery of money lent when the lender has given a cheque for the money lent by him. That article, however, applies to a case, in which the lender draws his own cheque and gives it to the borrower. It does not govern a suit in which he transfers to the borrower a cheque which had been drawn by another person and endorsed in his favour by the payee. The period of three years prescribed by the article begins to run from the date on which the cheque is paid, and a cheque is paid when it is cashed by the lender's bankers; *Garden* v. *Bruce,* [1868] L.R. 3, C.P. 300. It is only then that the lender's money passes into the hands of the borrower, and the loan is made by the former to the latter; the mere handing over of a cheque by the lender to the borrower does not amount to a payment of the cheque. Nor does the period begin to run against the lender when the cheque received by the borrower is given by him to his own bank, and the amount is credited to him by the bank.

The suit does not, therefore, come within the ambit of article 58, but is governed by article 57, which is a general article applicable to a suit for the recovery of money payable for the money lent; and the *terminus a quo* is the date on which the loan is made. The loan in the present case was made on the 30th August, 1923, when the money was received by the borrower; and the suit, which was brought within three years from that date, must be held to be within the time.

The only other point argued on behalf of the appellant, Manmohan Das, is that he was not a partner in the firm in question, when the loan was contracted; and he cannot, therefore, be liable for the payment of the debt. The learned Judges of the High Court at Allahabad, upon an examination of the evidence, have decided that the appellant was a partner at the time of the transaction, and this conclusion is supported, not only by the testimony of the plaintiff, but also by the balance sheets of the firm. The evidence, which stands unrebutted, shows that the appellant was a partner in the firm when the money was lent, and it is immaterial that he severed his connection with the firm afterwards.

The judgment given by the High Court cannot be challenged on any of the grounds urged on behalf of the appellant, and must be affirmed. Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed.

(46832—3A) Wt. 8751—17 180 1/38 P. St. G. 338

In the Privy Council.

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v.

BALDEO NARAIN TANDON
AND OTHERS

DELIVERED BY SIR SHADI LAL

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