
(1870) 06 CAL CK 0005

Calcutta High Court

Case No: None

Park Pittar and Another

APPELLANT

Vs

Srinath Das

RESPONDENT

Date of Decision: June 23, 1870

Judgement

Sir Richard Couch, Kt. C.J.

1. I think that the judgment of Mr. Justice Norman must be confirmed. There is no question here that both parties are traders. Here they had mutual dealings. Now section 8, Act XIV of 1859¹, says nothing of the extent of the mutual dealings. In this case there were two dealings. One was a purchase by the plaintiff from defendant of two cases of brandy, and the other the purchase of one case. These constituted a case of mutual dealings. I don't see if we went into a consideration of the extent of mutual dealings, that there is any thing at all to guide us in the case of mutual dealings. The only question is whether Mr. Justice Norman was right with regard to the mode in which he reckoned the year. The Legislature would seem to have contemplated that the accounts would be yearly accounts, and that the balance would be struck yearly; and I think when we look at the reason of that provision, it must mean that the year was intended to reckon from the time when the balance was struck. The object seems to me to be this, that if there were accounts between the parties, in many cases there would be no right to sue at all until a balance is struck,--and in other cases, even if there were a right to sue, the merchant would not sue without a balance being struck. It was intended that the year should reckon from the period when he might be expected to sue on the balance, and he is to have three years from that time as in ordinary cases. Mr. Branson has argued that this construction would enable parties to bring false actions by making up books. It may be that fraud would be practiced in some cases, but we must not put a forced construction on an Act for the purpose of preventing fraud. Fraud is prevented in other ways, and by the criminal law. This observation was made in a recent case before the House of Lords, where it was argued against the law with regard to the endorsement of one of a set of bills of lading passing property that it would open a door to fraud, and Lord Westbury

replied that fraud was prevented by other means, and not by putting a construction on a law with the view to prevent fraud. That is an answer to Mr. Branson's argument that parties would fabricate books to avoid the operation of the limitation law. If a party is able to do that, he would possibly find some easier method than making up books for a long series of years. The decree of the learned Judge will be affirmed with costs.

Phear, J.

2. I quite concur. There can, I think, be no doubt in this case that the parties are traders, and that there have been mutual dealings between them as traders. However, during the consideration of the case, I felt that there was some difficulty in arriving at a conclusion. I have no doubt that the Chief Justice is correct in the supposition that the framers of the Act when wording this section had present to their minds only the case of yearly accounts. But even if that be so, it does not necessarily follow that the year to which they refer in this section is the period of twelve months at the lapse of which the accounts are made up. But probably the reason which actuated the Legislature in giving this particular period of limitation is that which was pointed out by Mr. Evans, namely, that it is reasonable not to force a merchant to sue until the period has elapsed at which he usually makes up his accounts with his constituents; and if that be the proper guide for the construction of this section, then I think we must take it that the year which is here mentioned is the twelve months which the merchant takes customarily for the currency of his accounts before balancing them. It appeared to me at first that the last words of the section which define, so far as the Legislature has defined, the year which was contemplated, namely, "such year to be reckoned as the same is reckoned in the accounts," meant the year of the style in which the accounts were kept they seemed to me to bear that meaning more readily than any other, and that meaning would certainly make the section more completely operative than the one which I have already said I believe that the Legislature did really intend them to carry. I say more completely operative, because there is a class of cases, more or less large, and which will certainly not be easily brought within the scope of this section within the meaning of the word "year" which we feel obliged to give to it, that is, all those cases in which the merchant or trader balances his accounts at the lapse of periods which are less than twelve months. We have in this account examples of such cases, but it is rather difficult to foresee what would be the result of applying this section to one of them.

¹ Act XIV of 1859, sec. 8.--"In suits for balances of accounts current between merchants and traders who have had mutual dealings, the cause of action shall be deemed to have arisen at, and the period of limitation shall be computed from, the close of the year in the accounts of which there is the last item admitted or proved indicating the continuance of mutual dealings, such year to be reckoned as the same is reckoned in the accounts."