

(1880) 02 CAL CK 0012

Calcutta High Court

Case No: None

Hajee Syud Mahomed

APPELLANT

Vs

Mussamut

RESPONDENT

Ashrufoonnissa

Date of Decision: Feb. 24, 1880

Citation: (1880) ILR (Cal) 759

Hon'ble Judges: Pontifex, J; Mcdonell, J

Bench: Division Bench

Judgement

Pontifex, J.

In order to bring the case within Article 87 of Act IX of 1871, and to prevent limitation, the plaintiff would have to show that there was a mutual, open, and current account between the parties, in which there were reciprocal demands. Now I must say that I should have considerable hesitation in holding that there was ever between these parties a mutual account, although, in the instances, which I have mentioned, the defendant had in fact paid moneys into plaintiff's bank which were in excess of his liabilities; for I do not think that the defendant could at any time have said--"I have an account against you, the banker." During nearly the whole of that time the banker could have said "I have an account against you, the defendant;" but unless they could each have said to the other. "I have an account against you," I do not see how these could be "mutual" accounts. But even supposing that the accounts between these two parties could be called mutual accounts, and that they were open and current until they were stopped, still it appears to us that they could only be "mutual" down to the 12th June 1873, when the last payment of Rs. 1,083-8 was made by the defendant into the plaintiff's bank. After that time the defendant made no payments whatever, and from that time the account was only one way. But besides the account being mutual, open, and current, there must, to bring it within Clause 87, have been reciprocal demands between the parties.

2. Now, no doubt, when, at the commencement of these accounts, the defendant paid money into the bank, and when at the other times that I have mentioned there was a balance due to him from the bank, it might be said that he had a demand against the bank, and that therefore there were reciprocal demands between the parties down to July 1872, which was the last occasion that there was a balance in favour of the defendant; but from that date it appears to us that it cannot be said that there were reciprocal demands between the parties.

3. Then, under Article 87, the time within which the plaintiff must sue is "the time of the last item admitted or proved in the account." According to my reading of the article, the word "item" means the last admitted item on the defendant's side of the account, or, in other words, the last reciprocal item. But in this case that item would be that of the 2nd July 1872, or at latest the payment in June 1873.

4. From that time no payments whatever were made by the defendant. In the accounts furnished by the plaintiff it appears that, down to September 1873, the plaintiff did make payments on the defendant's behalf, payments which the plaintiff was authorized to make; but after September 1873, it appears to us that the plaintiff made no payment that was authorized by the defendant.

5. It is true that, for the purpose of saving limitation, having instituted the suit in December 1876, the plaintiff has included in his accounts certain payments in October, November, and December 1873, and in January 1874,--namely Rs. 10 for Dr. Sandford's fee in each of those months; but of course he is not entitled to rely upon these payments in order to take his case out of the Limitation Act, unless he was authorized by the defendant to make them.

6. We are satisfied upon the evidence, so far as it was read to us, that the defendant was in no way bound to pay for medical attendance on Mr. Wilson and Mr. McGregor. Mr. Wilson in his examination states,--" I sanctioned Mr. McGregor paying the doctor's fees out of the factory account estimate, intending to refund the same myself if objected to by the defendant." The payments made to the doctor being, so far as the defendant was concerned, wholly gratuitous and unauthorized, we think the plaintiff is not entitled to rely upon them. So that even if the case does fall under Article 87, yet the last item on either side of the accounts would be in September 1873, and that being so, the suit would be too late, and must fail on the ground of limitation. But then it is said that the plaintiff can rely upon Article 62, inasmuch as he furnished accounts every month down to January 1874, and that each of these accounts, so furnished, must be taken as a stated account; and he claims under Article 62 to sue from the time that the accounts were stated,--i.e., from the time that he delivered his last account in January 1874. But we think it clear that even if the account delivered in September 1873 could on that date be treated as a stated account, the plaintiff could not, by adding small and unauthorized items in both November and December 1873, and in delivering his account, renew the statement of account up to January 1874, so as to give him the benefit of Article 62.

We think that his case fails on this ground also, and. that his suit was properly dismissed on the score of limitation.

7. There is a cross-appeal with respect to certain sums allowed by the lower Court,--namely, the doctor's fees,--which the plaintiff stated had been paid, and also interest which the lower Court seems to have allowed, although it refused to give a decree for the principal. As we have previously observed, the plaintiff had no authority to make these payments to the doctor, and therefore he is not entitled to recover them; and with respect to the interest that has been awarded, we do not see on what principal a decree can be given for interest when by the judgment of the Court no principal is due. We think, therefore, that the defendant is entitled to a decree on his cross-appeal.

8. We should have had more reluctance in dismissing the plaintiff's suit on the score of limitation but for certain circumstances. We find that the whole of these transactions between the plaintiff and the defendant occurred during the time that Mr. Wilson was the manager for the defendant. Now the plaintiff must have known very well that Mr. Wilson was discharged in January 1874, and that there were disputes going on between him and the defendant; yet, notwithstanding this, the plaintiff, according to his own case, waits to the very last minute before he institutes his suit, though his claim might have materially affected the disputes between the defendant and Mr. Wilson. The plaintiff has himself to blame if now he is not entitled to a decree.

9. We cannot dismiss this case without remarking that the "paper-book" has been prepared without due regard to the interests of the parties. The vakeels might have agreed to print in the space of half a sheet such items of the accounts as were necessary for the decision of the case, instead of which there have been no less than 70 or 80 pages of unnecessary accounts printed.

10. We dismiss plaintiff's appeal with costs, and we allow the cross-appeal but without costs.

11. The result is that plaintiff's suit is dismissed.