

CALCUTTA HIGH COURT

Kedar Nath Mitra

Vs.

Dinabandhu Saha

(Jenkins, C.J.)

25.03.1915

JUDGMENT

Jenkins, C.J.

1. The only question that arises on this appeal is whether a cheque given in part-payment of principal is sufficient to take the case out of the Indian Statute of Limitation having regard to the terms of Section 20 of that Act.

2. The facts are not in dispute. And if the cheque is sufficient for the purpose of Section 20 then this, appeal must fail.

3. It seems to me clear that if a cheque be delivered to a payee by way of payment and is received as such by him it operates as payment and is an extinguishment to that extent of the debt, though this is no doubt subject to a condition subsequent that if upon due presentation the cheque is not paid the original debt revives. There is no suggestion in this case that the cheque upon presentation was not paid. In fact, it was and so there was payment in the fullest sense of the term and thus a part of the principal of the debt has, before expiration of the prescribed period, been paid by the debtor to the creditor.

4. Then it is said that the proviso to the Section has not been complied with. That proviso is that in the case of a part-payment of the principal of a debt the fact of the payment must appear in the handwriting of the person making the same. If I am right in the view that the cheque actually was a payment the very payment was in the handwriting of the person making the same. I cannot for a moment suppose that this proviso was inserted as a sort of a trap to enable debtors to escape from the result of what they have done, and yet that would be the practical result of the argument advanced on behalf of the appellant. It seems to me that the words of the Act are amply satisfied by the circumstances of this case and I say this notwithstanding the decision in the case of *Mackenzie v. Tiruvengadathan*, which is capable of distinction from the present.

5. A point was made before us as to the appropriation of payment and the nature of the plaintiff's claim. This has not been made a ground of appeal. But even if it had been, it seems to that it is valueless. It rests upon the supposition that where, as here, there is a continuous account there is a separate cause of action in respect of each item. That seems to me to be quite opposed to the true character of such accounts. In *Bonsey v Wordsworth*¹

¹(1856) 18 C.B. 325, 334

it was said, on the strength of the previous authorities, that "where a tradesman has a bill against a party for any amount in which the items are so connected together that it appears that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another and form one continuous demand, the whole together forms but one cause of action and cannot be divided."

6. In my opinion the learned Judge was right in the conclusion at which he arrived. This appeal is dismissed with costs.

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