Privy Council Appeal No. 115 *of* 1928.

Oudh Appeal No. 1 *of* 1926.

The National Bank of Upper India, Limited (in liquidation) - *Appellants*

v.

Bansidhar and another - - - - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH OCTOBER, 1929.

Present at the Hearing:

LORD ATKIN.
SIR JOHN WALLIS.
SIR GEORGE LOWNDES.
SIR BINOD MITTER.

[*Delivered by* SIR GEORGE LOWNDES.]

On the 22nd December, 1917, the first respondent executed in favour of the National Bank of Upper India, Limited, a promissory note payable on demand for Rs. 20,000, and interest, together with a formal receipt for the money. The bank is now in liquidation and the liquidators, suing in the name of the bank, claim from him the money due under the note. The second respondent, his brother, has been joined with him as a defendant to the suit, but no relief is sought as against him before this Board, and there seems to be no reason why he should have been made a party to this appeal. The suit was dismissed by both Courts in India, and the liquidators have appealed to His Majesty in Council.

The appellant Bank asserted in their plaint that the Rs. 20,000 was advanced to the first respondent, and that he and his brother

made various repayments in respect of principal and interest upon which reliance was placed to save limitation, the suit having been instituted more than three years after the date of the note. It is not now disputed, however, that the true facts are as follows :

One Bishambhar Nath, who was a director of the bank, had been allowed by the bank's manager, Ram Nath Sapru, to become indebted in a large sum to the bank, and in December, 1917, in view of the approaching half-yearly audit, it was desirable that the account should be squared in some way so as not to show the director as a debtor to the bank. The first respondent, who carried on business in Lucknow with his brother, the second respondent (who was also a director of the bank), was accordingly persuaded to execute the promissory note sued on, so as to show him as the bank's debtor for Rs. 20,000, and this amount was credited in the books of the bank to Bishambhar, thus wiping out his indebtedness. No part of the Rs. 20,000 came into the hands of the first respondent, and he apparently had nothing to gain by the transaction, the plain effect of which was to substitute him as a debtor of the bank for Rs. 20,000 in the place of Bishambhar. The first respondent has deposed that he was assured by both Bishambhar and Ram Nath that he would not be held liable on the note, and that the debt would be discharged by Bishambhar. In this he is confirmed by Bishambhar, who admits that the debt was really his, and their Lordships have no reason to doubt that this is true. Ram Nath, the only other party to the transaction, was dead at the date of the suit. The payments upon which the appellant bank relied to save limitation were none of them made by or under the instructions of the first respondent. The particular payment which has been relied upon before the Board, viz., a payment of Rs. 908-6-3 on account of interest, under date the 23rd December, 1918, was part of a sum of Rs. 6,000 paid to the bank on that day by Bishambhar. It was apparently allocated by the bank to different accounts in which Bishambhar was interested, and this allocation, including the credit of the Rs. 908-6-3 to interest due on the first respondent's promissory note, was accepted by Bishambhar, as is shown by the entries in his books a few days later. The Rs. 908-6-3 appears in the bank's books as paid by the first respondent personally, but no attempt has been made to support this, and their Lordships have no doubt that the entry is, to say the least of it, incorrect.

Upon these facts two main defences were taken to the suit, viz. (1) that there was no consideration for the promissory note, and (2) that the suit was out of time. The Trial Judge held that there was consideration in that the Rs. 20,000 was credited to Bishambhar's account, but that no payments by the first respondent having been established the suit was barred by limitation. On appeal to the Chief Court the principal judgment was delivered by Ashworth, J.C., the Chief Judge, Sir L. Stuart, concurring. Their conclusions are summed up in the following words : " The suit must fail not only because the suit is time barred

but also because there was no consideration for the defendant No. 1 (the first respondent) signing the pronote in his personal capacity. If he signed the pronote on behalf of Bishambhar, then he did this on the inducement of the bank, and the bank must proceed against Bishambhar." The suit was accordingly dismissed.

Before this Board it was suggested that the contract between the first respondent and the bank was induced by fraud, and was, therefore, voidable at his instance. It is sufficient for their Lordships to say that fraud was not pleaded in the Trial Court, nor was any issued directed to it, and it would be impossible for them to allow such a defence to be raised at this late stage of the proceedings.

So far as the representations of Bishambhar and Ram Nath that the first respondent would not be held liable upon the promissory note are relied upon as an oral agreement between the parties, they are clearly inadmissible in evidence under S. 92 of the Evidence Act. On this point their Lordships are in agreement with the Trial Judge.

In their Lordships' opinion the true legal effect of the transaction is that as between the first respondent and the bank the promissory note was an effective contract, the credit to Bishambhar being, as the Trial Judge held, a sufficient consideration, but that as between Bishambhar and the first respondent, the former undertook to discharge the liability to the bank.

The learned Judges of the Chief Court seem to have come to the conclusion that the first respondent signed the promissory note merely as the agent of Bishambhar, and that therefore the bank could not sue him upon it as principal. They held that the bank, in ratifying the loan, which was in excess of the manager's authority, must be taken to have ratified the whole transaction (S. 199 of the Contract Act), and thus to have become responsible for the inducement held out by their manager. They thought, therefore, that the case came within the exception to S. 28 of the Negociable Instruments Act, which provides that where an agent signs his name to a promissory note without indicating thereon that he signs as agent or that he does not intend thereby to incur personal responsibility, he is liable personally on the instrument, *except to those who induced him to sign upon the belief that the principal only would be held liable.*

Their Lordships are unable to take this view of the transaction. The first respondent's counsel, at an early stage of the proceedings, formally disclaimed the theory of agency, which, indeed, is negatived by the evidence of both the first respondent himself and his witness Bishambhar. But, apart from this, their Lordships are satisfied that the essence of the tripartite arrangement of the 22nd December, 1917, was to conceal Bishambhar's indebtedness from the bank and to make the bank believe that the first respondent was their debtor for the Rs. 20,000 and interest.

Their Lordships cannot doubt that the first respondent lent himself to this scheme fully understanding that its object was the deception of the bank, and they think that under these circumstances it would be impossible for them to hold that he was induced by the bank to believe that he would not be held liable upon his written contact.

The question of limitation turns upon the payment of the Rs. 908-6-3 on the 23rd December, 1918, and falls to be decided under S. 20 of the Limitation Act, the material portion of which is as follows :—

> 20. When interest on a debt . . . is before the expiration of the prescribed period, paid as such by the person liable to pay the debt . . . or by his agent duly authorized in this behalf . . . a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made.

Two questions have been raised upon the terms of this section. It is said, first, that the payment having been made by Bishambhar in discharge of what was in reality his own debt, it cannot save limitation against the first respondent, and secondly, that in any case Bishambhar's payment was not made specifically on account of interest, and was, therefore, not a payment of interest " as such " within the meaning of the section.

In answer to the first question, counsel for the appellant contended that even if Bishambhar could not be regarded as duly authorized by the first respondent to make a payment of interest on his behalf, he was himself under a direct obligation to the first respondent to satisfy the debt, and in that sense was at all events " a " person liable to pay it. In support of this contention the case of *Bradshaw* v. *Widdrington* [1902], 2 Ch. 430, and other similar English decisions were relied upon. Their Lordships do not think it necessary to discuss the applicability of these cases to the construction of the Indian Act. Upon what they have already held to be the true meaning and effect of the transaction of the 22nd December, 1917, it was agreed between Bishambhar and the first respondent that the former would discharge the latter's debt to the bank in respect of both principal and interest, and it is clear from the first respondent's evidence that he left it to Bishambhar to do so. Under these circumstances, it being admitted that no formal authorization of the agent is required under this section, their Lordships find no difficulty in implying authority from the first respondent to Bishambhar to pay the interest on his behalf as it became due. Whether the English cases to which reference has been made above would engraft a larger principle upon the section may possibly have to be considered on some future occasion. Their Lordships note that Farwell, L.J., in *Re Lacey* [1907] 1 Ch., 330, appeared to regard *Bradshaw* v. *Widdrington* as one only of implied agency.

The only remaining question is whether the Rs. 908-6-3

was paid by Bishambhar as interest. It appears from the entries in his books that on the 23rd December, 1918, he paid a lump sum of Rs. 6,000 to the bank. There were evidently several different accounts with the bank upon which payments had to be made by him for interest on the 31st December, and this lump payment was probably to put his own account in funds for this purpose. Assuming that the bank merely allocated this sum to the different items of interest, including the Rs. 908-6-3 due for interest in respect of the first respondent's promissory note, and communicated the allocations to him, it is, nevertheless, clear that Bishambhar ratified them as he entered the items individually in his own books under date 31st December. It is, however, proved that it was the bank's practice to send out formal notices of the interest that would be due on particular accounts at the end of each half-year, and it is not unreasonable to assume that Bishambhar had received, either directly from the bank or through the medium of the persons in whose names these accounts stood, notice of the payments that he would have to make. On this assumption it is obvious that the Rs. 6,000 was paid in to meet his liabilities for interest, and his subsequent entry of the details would be a confirmation of the particular items. Their Lordships have, therefore, come to the conclusion that the Rs. 908-6-3 was paid as and for the interest which was due under the promissory note on the 31st December, 1918. They have the less hesitation in coming to this conclusion in view of the fact that this defence was not raised at the trial of the suit in India. If it had been so raised it is more than possible that conclusive evidence might have been forthcoming as to the allocation of the Rs. 6,000 which would have made this contention impossible.

The result is that in their Lordships' opinion the payment in question must be taken to have been made by Bishambhar as the agent and under the implied authority of the first respondent; that the money was paid as and for interest, and that the payment was effective to save limitation against the first respondent.

For the reasons stated above their Lordships are of opinion that the appeal should be allowed; that the decrees of the Indian Courts should be set aside, and that in lieu thereof the appellant bank should have a decree against the first respondent for the sum of Rs. 20,000 and interest as claimed in the plaint, and they will humbly advise His Majesty accordingly. The first respondent must pay the costs of the appellant bank throughout these proceedings and the bank must pay such costs as have been incurred by the second respondent.

In the Privy Council.

THE NATIONAL BANK OF UPPER INDIA, LIMITED (IN LIQUIDATION)

v.

BANSIDHAR AND ANOTHER.

DELIVERED BY SIR GEORGE LOWNDES.

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