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IN THE COURT OF APPEAL

R.M. COURT CIVIL APPEAL NO. 47/65

Before: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Waddington

BETWEEN ERIC CHANNER - Defendant/Appellant

AND HAROLD WAITE - Plaintiff/Respondent

Mr. K. Van Cork for Defendant/Appellant
Messrs. J.R. Cools-Lartigue and R.N.A. Henriques for Plaintiff/Respondent

26th October, 1966

WADDINGTON, J.A.,

This is an appeal from the judgment of the learned Resident Magistrate for the parish of Manchester whereby he entered judgment for the plaintiff in the sum of £38.6.4d and costs on the 15th of April, 1965. The plaintiff's claim was to recover from the defendant a sum of £20 being a balance of cash loaned in the year 1962, and a sum of £18.6.4d, a balance due for lumber supplied in the parish of Manchester, making a total of £38.6.4d. The defendant in stating his defence to the claim denied that he had borrowed £20 from the plaintiff in August, 1962, and also denied that he owed the plaintiff £18.6.4; and alternatively, he relied on the Limitation of Actions Law, Chapter 222, and particularly sections 46, 48, 49 and 51 of that Statute, and on that reliance alleged that the debt of £18.6.4d would be statute-barred.

In his evidence, the plaintiff stated that the defendant had a running account with him in respect of lumber supplied to the defendant from the year 1948 onwards. He tendered in evidence, with the consent of the defence, a statement of the

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account, and that statement showed that up to the 31st December, 1953, there was a balance owing of £21.6.4d. The statement also showed that on the 29th of October, 1960, a credit was given to the defendant for the sum of £1 which the plaintiff stated in cross-examination was paid to him by the defendant. The plaintiff also said that on the 4th of August, 1962, he loaned the defendant the sum of £20. The defendant had come to him at his gas station and requested this loan, and he thereupon made this loan to him, and a few days after the loan was made, the defendant paid him £2, which, from the records, appeared to have been appropriated against the £20 that was loaned.

The case for the defendant was that, he admitted having had transactions with the plaintiff and that in 1951 he owed the plaintiff some £30 odd. He said however, that the plaintiff had sold a piece of land for him and had repaid himself out of that sale, in 1952, and that since that date he had not had any further transaction with the plaintiff. He denied that he had paid the plaintiff any money in August, 1962, and likewise denied having borrowed any money from the plaintiff in 1962.

The learned Resident Magistrate in his Reasons for Judgment made certain findings of fact. He found that the plaintiff was a truthful and straightforward witness, whom he believed, and he accepted the documentary evidence which the plaintiff had tendered in support of his case. On the other hand, he said he did not believe the defendant at all and he found that he was flagrantly untruthful. He found the following facts:-

(1) that the ledger sheets tendered in evidence as exhibit I, were a true and correct statement of the transactions between the parties;

(2) that against a balance of £21.6.4d from 1954, the defendant did pay £1 to the plaintiff on

the 29th of October, 1960; and

(3) that the plaintiff did make a loan of £20 to the defendant on the 4th of August, 1962, and that the defendant made a further payment of £2 thereafter.

So far as the Statute of Limitations was concerned, the learned Resident Magistrate said that in view of his findings of fact, the provisions of the Limitation of Actions Law, Chapter 222, raised by the defence were not considered relevant, and as a result, he entered judgment for the plaintiff in the sum of £38.6.4d.

With regard to the portion of the claim in respect of the loan of £20 in August, 1962, there was clear evidence before the learned Resident Magistrate on which he could find that that loan had been made and that £2 had been paid on account thereof. It is our view, therefore, that we cannot interfere with that portion of the judgment and there must at least be judgment for the plaintiff in respect of the balance owing on that loan, namely, £18.

With regard, however, to the other portion of the claim, namely, the balance of £21.6.4d owing on 21st December, 1953, learned counsel for the appellant has submitted that the provisions of the Limitation of Actions Law, Chapter, 222, and particularly sections 46 and 48 would render the claim for that amount statute-barred. He submitted that a part-payment would not revive a debt unless there were circumstances to show that a fresh promise to pay could be inferred from that part-payment, and in support of that submission, he cited two cases, the case of Tanner v. Smart (1827) 6 B. & C. 603, and the more recent case of re Footman Bower & Co. Ltd. [1961] 1 Ch. 443, also reported at [1961] 2 All E.R. 161.

This latter case supports the view that in England before the passing of the Limitation Act, 1939, a payment made

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on account of a statute-barred debt did not revive the creditor's remedies in respect of the balance unless a promise on behalf of the debtor to pay the balance could be inferred from the circumstances. At p. 164 of the All England Report, Buckley, J., said:

> "... Before that Act there was no statutory provision that in the case of a simple contract debt part payment should stop time running under the Limitation Act, 1623. For a payment to have this effect it was necessary that it should amount to an acknowledgment of the debt and import a new promise to pay the outstanding balance. The mere act of the creditor appropriating a payment to a statute-barred debt could not have this effect, for such an acknowledgment and promise could only come from the debtor. "

Mr. Cools-Lartigue on behalf of the respondent has accepted that position but he submitted that the court was entitled to infer a fresh promise to pay from the fact of payment, and from the whole circumstances that for a long time the plaintiff and the defendant had dealt with each other on a running account. He cited the case of Friend v. Young (1897) 2 Ch. 421 (in which there were special circumstances from which a promise to pay the balance of a statute-barred debt was inferred on the making of a part-payment), and submitted that if in fact there was a running account between the parties, then the payment of the £1 on the 29th of October, 1960 in the circumstances of this case would constitute an acknowledgment of the debt, and from that acknowledgment could be inferred a promise to pay the balance.

It does not appear that the learned Resident Magistrate addressed his mind to this aspect of the law at all. Indeed, he held that because of the payment of the £1 which he found was made to the plaintiff on the 29th October 1960, the provisions of the Limitation of Actions Law were not considered relevant. The only evidence as to the payment of this £1 came from the

plaintiff himself, and the statement of account which was submitted in evidence. Mr. Cork has directed the attention of the court to section 48 of the Limitation of Actions Law, Cap. 222, which is as follows:-

> " No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to tak the case out of the operation of the said Statute"

and he submitted that merely to tender a ledger sheet showing a payment would not be sufficient proof of such payment to revive the debt.

It is our view that there was no evidence to show the circumstances under which this £1 was paid to the plaintiff. There was no evidence from which a court could find that the circumstances were such that a promise to pay the old statute-barred debt could be inferred. If there was any such evidence, then it would be the duty of this court, perhaps, to refer the matter back for a new trial so that the court below could consider that evidence, but, as the case stands, there is no evidence on which this court could say that a promise to pay the statute-barred debt could be inferred. In the circumstances, we agree with the submissions made by Mr. Cork, and it is our view that the plaintiff was precluded by virtue of the Limitation of Actions Law, Cap. 222, from recovering from the amount claimed in respect of the debt alleged to be due on the 31st of December, 1953, namely, £21.6.4d.

For these reasons, we will amend the judgment entered in the court below by directing that judgment be entered for the plaintiff in the sum of £18 and costs appropriate to that amount. The appellant will also have a proportion of the costs of the appeal, which has been allowed in part, which we fix at £6.6/-.

Duffus, P.,

I agree.

Henriques, J.A.,

I agree.