Piara Singh and others v. The State

Dua, J.

It is clear that this decision is hardly of any assistance to us.

I may at this stage also state that Wharton's Law Lexion and Law Lexion by R. Aiyar have been of no practical assistance in the present case as the decisions noticed in them merely construed the words in question, used in the various enactments, in their own context and background. In Stroud's Judicial Dictionary, Volume 3, however, there is a reference to *Andrews* v. *Andrews* (1), in which it is observed by Kennedy L. J. that "there are cases which indicate that 'premises' may have a wider meaning". But this general observation hardly affords any real guidance. It is precisely for this reason that I have refrained from referring to these books.

In view of the foregoing discussion this revision must fail and is, therefore, dismissed.

Before concluding, however, I cannot help drawing the attention of the Government to the fact that in criminal statutes it is always desirable to be specific, unambiguous, and precise and to use language with a well-recognised and definite meaning, so that the citizens may know as to when they are going to incur the liability in a penal statute.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Tek Chand and Shamsher Bahadur, JJ.

THE PUNJAB NATIONAL BANK, LTD.,—*Appellant*

versus

ARURA MAL DURGA DAS AND OTHERS,—*Respondents.*

Regular First Appeal No. 141 of 1954.

1960

May, 26th

Indian Contract Act (IX of 1872)—Whether exhaustive of the law relating to contracts—Section 170—Banker's

(1) (1908) 2 K.B. 567

lien and right to set off—Principles of—Partner's deposit—Whether can be set off against his firm's indebtedness and vice versa.

Held, that the statutory law in India does not expressly refer to the Banker's lien in respect of cash deposits, but the cases of different kinds of liens dealt with in the Contract Act are not all inclusive. The Indian Contract Act does not profess to be a complete code dealing with the law relating to contracts. It only defines and amends certain branches of that law. This Act is not exhaustive of the entire law relating to contracts. Where the statutory provisions do not cover a particular matter, the principles of English law, in so far as they embody the rules of justice, equity and good conscience may be applied.

Held, that strictly speaking the use of the word 'lien' in relation to money—though frequently used—is not correct. It is confined to securities and property in Bank's custody. A distinction is drawn between a Banker's lien on its client's papers, goods and security, etc., and the Bank's right to set off deposits against debts due to it from its depositors. It may arise from the contract or from mercantile usage or by operation of law. The Bank's right to apply a deposit to an indebtedness due from the depositor, results from the right of set off obtaining between persons occupying creditor and debtor relationship with mutual demand existing between them.

Held, that the rule of English law that the Bank has a lien or more appropriately, a right to set off against all moneys of his customers in his hands has been accepted as the rule in India. According to this rule when moneys are held by the Bank in one account and the depositor owes the Bank on another account, the Banker by virtue of his lien has a charge on all moneys of the depositor in his hands and is at liberty to transfer the moneys to whatever account, the Banker may like with a view to set-off or liquidate the debts. In order to create Banker's lien on several accounts it is necessary that they must belong to the payer in one and in the same capacity. Where the person has two accounts, one a trustee account and another private account at a Bank, deposits in the two accounts cannot be set off, the one against the other. The

bankers have a right to combine one or more accounts of the same customer. But it cannot combine the account belonging to another or to himself alone with another account which is the joint account with another and third person.

Held, that the banks have no lien on the deposits of a partner, on his separate account, for a balance due to the Bank from the firm or *vice-versa* for want or reciprocity. It is of essence to the validity of a banker's lien that there should be a mutuality of claim between the Bank and the depositor. In order that it should be permissible to set-off one demand against another, both must mutually exist between the same parties. The joint and several accounts operated by two or more persons cannot be adjusted against the individual deposit of one of them. The bank of course would be entitled to appropriate moneys belonging to a firm constituted by a certain set of partners for payment of an overdraft to another firm provided that firm is constituted by the same set of partners. But it is not permissible to appropriate moneys due to a firm in the account of another firm on the plea that some of the partners are common.

First Appeal from the decree of the Court of Shri Radha Krishan, Sub-Judge, 1st Class, Amritsar, dated the 23rd day of June, 1954, granting the plaintiff a decree for Rs. 5,000, with proportionate costs against defendant No. 2 (The Punjab National Bank, Ltd., Delhi).

S. L. PURI, ADVOCATE, AND MR. K. L. KHANNA, ADVOCATE, FOR MR. R. K. AGGARWAL, ADVOCATE, for the Appellant.

H. L. SIBAL AND S. K. JAIN, ADVOCATES, for the Respondent No. 1.

JUDGMENT

TEK CHAND, J.—This is an appeal preferred by the Punjab National Bank, Limited, Delhi, defendant No. 2, from the decree of the Subordinate Judge, 1st Class, Amritsar.

Tek Chand, J.

In this case a decree was passed for Rs. 5,000 with proportionate costs in favour of the plaintiffs against the Bank. The plaintiffs, who are a

The Punjab National Bank Ltd. *v.* Arura Mal Durga Das and others

Tek Chand, J.

firm of clearing agents of East Punjab Government, had instituted a suit for the recovery of Rs. 5,500 against defendant No. 1 Messrs Kakasingh Gurmukhsingh, which had been sued through its partners Sham Singh, Harbhajan Singh and Jai Ram Singh.

According to the allegations in the plaint, the plaintiffs, who are a firm registered under the Indian Partnership Act, used to carry on their business at Lahore before the partition of the country and defendant No. 1 was an approved tenderer of the Punjab Government and in that capacity it had made what is called "a call deposit" of Rs. 5,000 in favour of the Punjab Government in the Punjab National Bank, Limited, Lahore (defendant No. 2), against a call deposit receipt dated the 6th September, 1945. It was alleged that defendant No. 1 had approached the plaintiffs for a loan of Rs. 5,000 against and on the security of the said call deposit receipt and this money had been advanced by the plaintiffs to defendant No. 1 on the 24th December, 1946. Defendant No. 1 had authorised the plaintiffs to receive this amount as represented by the receipt from the Bank when it became payable. In July, 1947 the name of defendant No. 1 was removed from the list of approved tenderers, and the Punjab Government by its letter No. 6478-A-FA-CDR/47 of July, 1947 wrote to the Bank to pay Rs. 5,000 which was the amount of the receipt dated the 6th September, 1945, to defendant No. 1. A copy of this letter was also sent to defendant No. 1. It was also stated that defendant No. 1 intimated to the plaintiffs, after the 15th August, 1947, that the amount had been released. Defendant No. 1 also wrote to defendant No. 2, the Bank, to pay the amount of Rs. 5,000 to the plaintiffs and had also authorised the

plaintiffs to receive the amount from the Bank. As the Bank had not paid the amount to the plaintiffs, the latter approached defendant No. 1 who again on the 23rd March, 1948, wrote to defendant No. 2 to pay to the plaintiffs the amount of the said call deposit and gave a copy of this letter to the plaintiffs. The plaintiffs have, therefore, claimed Rs. 5,000 as principal and Rs. 500 as interest, totalling Rs. 5,500, primarily from defendant No. 1 and also from defendant No. 2.

In a written-statement filed on behalf of defendant No. 1 it was stated that Sham Singh, Harbhajan Singh and Jai Ram Singh had been carrying on business at Kamoke now in Pakistan. It was stated that the partnership had since been dissolved and the transaction, which is the subject-matter of the suit, relates to the partnership business carried on at Kamoke in the name of Messrs Kakasingh Gurmukhsingh. It was contended that the present suit had been filed against Messrs Kakasingh Gurumukhsingh carrying on business at Dhab Wasti Ram, Amritsar, which has no concern with the transaction involved. It was also stated that Jai Ram Singh was not the partner of the defendant-firm.

On the merits it was stated that defendant No. 1 had never approached the plaintiffs for a loan of Rs. 5,000 against or on the security of the call deposit receipt. On the other hand, it was pleaded that the plaintiffs had approached Jai Ram Singh at Kamoke for permission to supply goods to the Government against cash advance of Rs. 5,000. On this the right, title and interest in the aforesaid deposit were transferred in favour of the plaintiffs who were authorised to receive the call deposit from defendant No. 2 after they had supplied the necessary goods to the Government.

The Punjab National Bank Ltd. *v.* Arura Mal Durga Das and others

Tek Chand, J.

It was further denied that the name of defendant No. 1 had been removed from the list of approved tenderers in 1947. Defendant No. 1, however, stated that the amount of the call deposit became payable to the plaintiffs as a result of the plaintiffs undertaking to supply the goods to the Government in place of Messrs Kakasingh Gurmukhsingh of Kamoke. It was admitted that a letter was written by Messrs Kakasingh Gurmukhsingh at Kamoke to defendant No. 2 to pay the amount to the plaintiffs.

The Punjab National Bank as the 2nd defendant denied the averments in the plaint and stated that it wrote to defendant No. 1 that in their account with the branch office at Sheikhupura there was a debit balance of Rs. 16,777-0-8 and that they should write to the bank to adjust the amount of the call deposit receipt in that account. It was also said that the bank had a legal right to appropriate the amount in question towards the dues from defendant No. 1 even without their consent and the plaintiff had no *locus standi* to question this. In additional pleas it was stated on behalf of the bank that it had a lien according to law, banking practice and equity and this amount had consequently been appropriated and the bank was, therefore, under no obligation to pay this amount. The above pleadings gave rise to the following issues:—

(i) Does not the suit lie in the present form ? If so, how and to what effect ?

(ii) Did the plaintiff advance Rs. 5,000 to the defendant firm No. 1 on date 24th December, 1946 ? If so, on what terms and to what effect ?

(iii) Whether the defendant Bank No. 2 is not liable to repay Rs. 5,000 deposited with it by the defendant firm No. 1; if so, how and to what effect ?

(iv) Is the plaintiff's suit not within time ?

(v) Is the plaintiff entitled to recover the amount in suit from the defendant Bank No. 2 ? If so, how ?

(vi) Is the plaintiff entitled to any interest ? If so, what and from whom ?

(vii) Relief.

The first issue was decided in plaintiff's favour and on the second issue it was held that no advance of Rs. 5,000 had been made by the plaintiffs to the first defendant on 24th December, 1946, and was, therefore, decided against the plaintiff. On the third issue it was held that as the bank could not combine an account of one person with another as joint account the bank could not set off the call deposit amount against the debts in Sheikhupura Branch. It was, therefore, held that the bank was liable to repay Rs. 5,000 deposited with it. On issue No. 5, it was held that the plaintiff's suit was within limitation. The 6th issue was decided against the plaintiff and it was held that the plaintiff was not entitled to any interest. On the above findings the plaintiff's suit was decreed for Rs. 5,000 with proportionate costs against defendant No. 2 only.

Shri S. L. Puri, learned Counsel for the appellant-bank, has argued that the plaintiff-firm is a third party and there was no privity of contract as between the plaintiff and the bank and there-

The Punjab National Bank Ltd. v. Arura Mal Durga Das and others

Tek Chand, J.

fore the plaintiff could not claim the amount from the bank. In support of this contention he cited *Babu Ram Budhu Mal and others* v. *Dhan Singh Bishan Singh and others* (1), *Subbu Chetti* v. *Arunachalam Chettiar* (2), and *Jamna Das* v. *Ram Autar* (3). These cases support the principle of the English law that a stranger to the contract cannot take any advantage under it even if it is made for his benefit. The two leading cases in support of this principle are *Tweddle* v. *Atkinson* (4), and *Dunlop* v. *Selfridge* (5). In the latter case Lord Haldane said :

> "In England certain principles are fundamental. One is that only the principal who is a party to contract can sue on it."

In recent years however the force of these two authorities has been considerably diminished,—*vide Smith* v. *River Board* (6). Without in any way differing from the above principle the matters arising in this case can be otherwise disposed of.

Mr. Sibal, learned Counsel for the respondent, argued that the defendant No. 1 had assigned his claim against the bank for the refund of Rs. 5,000 to the plaintiff. Exhibit P. 2 is a letter addressed by Harbhajan Singh on behalf of firm Kaka Singh-Gurmukh Singh, dated 22nd of March, 1948, to the Manager, Punjab National Bank,

(1) A.I.R. 1957 Punj. 169

(2) A.I.R. 1930 382 (F.B.)

(3) I.L.R. 34 All. 63

(4) 1861 [B.S. 393 (397)]-124-R-610.

(5) 1915 A.C. 847 (853).

(6) 1949 All England Report 179—188.

Amritsar. In this letter the plaintiff-firm was authorised to collect the proceeds and the call deposit receipt No. 14/45, dated the 6th September, 1945. The bank was asked to receive the authority letter of Controller of Food Accounts and to make payments to the plaintiff. Exhibit P. 3 is another letter without a date from Jai Ram Singh, partner of firm Kaka Singh Gurmukh Singh, to the Manager of Punjab National Bank, Ltd., Lahore, to the same effect. With respect to these letters it was objected on behalf of the bank that there was no proof on the record that they were in fact received by the bank. There is however, no gainsaying the fact that the bank did receive the notice from plaintiff's counsel, dated 3rd September, 1948, Exhibit P.C. 5. The bank is required by this notice to pay Rs. 5,000 to the plaintiff as Messrs Kaka Singh Gurmukh Singh had intimated to the bank to pay the amount to the plaintiff.

The date of assignment is not relevant if the bank could not in law exercise its lien. In other words if it can be shown that the bank had no lien and therefore could not appropriate the amount under law, the date of assignment becomes immaterial and the assignee acquires all the rights of the assignor. In *Tolhurst* v. *Associated Cement Manufacturers* (1), the Court of Appeal, in England, stated the principles of assignment of contract in the following words :—

> "Neither at law nor in equity could the burden of a contract be shifted off the shoulders of a contractor to those of another without the consent of the contractee. A debtor cannot relieve himself of his liability to his creditor by

(1) (1903) A. C. 414 (417)

The Punjab National Bank Ltd. *v.* Arura Mal Durga Das and others

Tek Chand, J.

assigning the burden of the obligation to some one else; this can only be brought about by the consent of all three, and involves the release of the original debtor.....On the other hand, it is equally clear that the benefit of a contract can be assigned, and wherever the consideration has been executed, and nothing more remains but to enforce the obligation against the party who has received the consideration, the right to enforce it can be assigned, and can be put in suit by the assignee in his own name after notice."

An actionable claim is subject-matter of transfer as much as any tangible property. The evidence on the record proves assignment of the claim of defendant No. 1 for Rs. 5,000 in favour of the plaintiff.

The validity of the assignment, however, depends upon whether the bank had a lien with respect to this amount, and whether this could be adjusted against the debit account of firm Kaka Singh Gurmukh Singh in Sheikhupura Branch. Exhibit D.W. 1/1 is a copy of the deed of partnership, dated 13th January, 1943, executed between Sham Singh and Jai Ram Singh. In this partnership Sham Singh's share was two-third and Jai Ram Singh's share was one-third. The constitution of the other party of the same name which was at Kamoke has also been given in D.W. 1/1. It is stated therein that "the first party (Sham Singh) had in partnership with Harnam Singh, his real brother, Kirpal Singh, son of Bhai Jai Singh, and Sohan Singh, son of Bhai Kirpa Singh,

caste Arora, residents of Amritsar, started business as commission agents, regarding the purchase and sale of goods, i.e., rice, etc., under the name and style, 'Kaka Singh Gurmukh Singh, at Kamoke Mandi, District Gujranwala, with effect from 8th Magh, Sambat 1990. Afterwards Kirpal Singh and Sohan Singh, aforesaid separated from the said partnership business on the 26th March, 1938. Thus the said business remained in the partnership of the first party and Harnam Singh aforesaid. But he, too, separated from the said partnership business,—*vide* award, dated and registered on the 2nd December, 1940. Thus since the date the said Harnam Singh separated, the first party exclusively continued to run the said business till the 6th Asuj, Sambat 1999, and the second party, went on working as the Manager under the first party in the said shop.

The question which arises is, whether the Bank can claim to exercise the Banker's lien in these circumstances. Section 170 of the Indian Contract Act refers to general lien of Bankers and others in respect of goods bailed to them which runs as under:—

> "Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has render ed in respect of them".

The language of this section limits its scope to goods bailed. There are other sections in the Contract Act which deal with other kinds of lien

The Punjab National Bank Ltd. v. Arura Mal Durga Das and others

such as that of the finder of the goods (*see* section 168), bailee's particular lien under section 170; the lien of pawnee under sections 173 and 174 and lastly the lien of agents on principal's property under section 221.

Tek Chand, J.

The statutory law in India does not expressly refer to the Banker's lien in respect of cash deposits, but the cases of different kinds of liens dealt within the Contract Act are not all inclusive. The Indian Contract Act does not profess to be a complete code dealing with the law relating to contracts. It only defines and amends certain branches of that law. This Act is not exhaustive of the entire law relating to contracts. The preamble of the Indian Contract Act clearly provides "whereas it is expedient to define and amend certain parts of the law relating to contracts; it is hereby enacted as follows :—". Where the statutory provisions do not cover a particular matter, the principles of English law, in so far as they embody the rules of justice, equity and good conscience may be applied,—*vide The Irrawaddy Flotilla Company* v. *Bugwandas* (1), and *Jwaladutt R. Pillani* v. *Bansilal Motilal* (2).

Strictly speaking the use of the word 'lien' in relation to money—though frequently used, is not correct. It is confined to securities and property in Bank's custody. A distinction is drawn between a Banker's lien on its clients, papers, goods and security, etc., and the Bank's right to set off deposits against debts due to it from its depositors. It may arise from the contract, or from mercantile usage or by operation of law. Hart (Law of Banking, 3rd edition, page 810) cited

(1) I.L.R. 18 Cal. 620 (628)
(2) I.L.R. 53 Bom. 414 P.C. 418

with approval the following from the treatise of Morse on the American Law of Banking—

> "The word 'lien' cannot properly be used in reference to the claim of the bank upon a general deposit, for the funds on general deposit are the property of the bank itself. The term 'set off' should be applied in such cases, and 'lien' when a claim against paper or valuables on special or specific deposit is referred to. In the cases the words are used very loosely...The practical effect of lien and set off is much the same."

In para 390 (Volume 2, third edition(page 210) Halsbury dealing with the nature of the Banker's lien, it is stated—

> "The general lien of bankers is part of the law merchant as judicially recognised, and attaches to all securities deposited with them as bankers by a customer, or by a third person on a customer's account, and to money paid in by, or to the account of, a customer unless there is a contract, express or implied, inconsistent with the lien."

There is also a foot-note below the above observation which reads :—

> "Money, is however, not usually the subject of lien not being coupled or being earmarked and the banker's claim in such cases is probably more rightly referred to as set off and it has been held that a Bank has no lien to individual's right to set off in respect of a customer's account."

The Punjab National Bank Ltd.
v.
Arura Mal Durga Das and others

Tek Chand, J.

The rule of English law that the Bank has a lien or more appropriately, a right to set-off against all moneys of his customers in his hands has been accepted as the rule in India. According to this rule when moneys are held by the Bank in one account and the depositor owes the Bank on another account, the Banker by virtue of his lien has a charge on all moneys of the depositor in his hands and is at liberty to transfer the moneys to whatever account, the banker may like with a view to set off or liquidate the debts,—*vide Llyods Bank Ltd.* v. *Administrator-General of Burma* (1), and *Devendrakumar Lalchandji* v. *Gulabsingh Nekhesingh* (2).

In order to create Banker's lien on several accounts it is necessary that they must belong to the payer in one and in the same capacity. Where the person has two accounts, one a trustee account and another private account at a Bank, deposits in the two accounts cannot be set off, the one against the other [see *Lloyds Bank Ltd.* v. *Administrator General of Burma* (1)].

Bankers have a right to combine one or more accounts of the same customer. But it cannot combine the account belonging to another or to himself alone with another account which is the joint account with another and third person,—*vide Radha Raman Choudhry and another* v. *Chota Nagpur Banking Association Ltd* (3), and *Punjab National Bank Ltd.* v. *Satyapal Virmani* (4).

Similarly, the Banks have no lien on the deposit of a partner, on his separate account, for a balance due to the Bank from the firm. Therefore, the banker is entitled to combine all accounts

(1) A.I.R. 1934 Rangoon 66
(2) A.I.R. 1946 Nag. 114
(3) A.I.R. 1944 Pat. 368
(4) A.I.R. 1956 Pun. 118

kept in the same right by the customer. It does not matter whether the accounts are current or deposit or whether they are in the same or different branches [*Garnett* v. *MKewan* (1)]. It is of essence to the validity of a banker's lien, that there should be a mutuality of claim between the Bank and the depositor. In order that it should be permissible to set off one demand against another both must mutually exist between the same parties. On this reasoning the joint and several accounts operated by two or more persons cannot be adjusted against the individual deposit of one of them. It is not open to the bank to claim the deposit of one partner made on his separate account in order to utilise other deposit against the debit due from the firm. In other words partnership deposits cannot be applied to the individual indebtedness of one of the partners (*vide* 7 A.M. Jur., page 458). Courts in England do not allow a lien to the banker on the deposit of a partner on separate account for a balance due to the Bank from partnership firm [*vide Watts* v. *Christie* (2)]. In *Wolstenholm* v. *The Sheffield Union Banking Co., Ltd* (3), Lndley, L.J., said :—

> "*Prima facie* a separate debt cannot be set off against a joint debt either at law, in equity, or under the mutual credit clause of the Bankruptcy Act. There is no authority for the bankers having a general lien in such a case as the present."

In the same case Lord Esher, M.R., observed :—

> "The bank said, 'we shall not account to Wing's trustees for the surplus,

(1) [(1872, L.R. 8 Ex. 10.].
(2) 50 E.R. 928 (931).
(3) 54 L.T. 746 (748).

The Punjab National Bank Ltd.
v.
Arura Mal Durga Das and others

Tek Chand, J.

although the lease was his private property, because we have a right to keep it to satisfy the general account of his firm'. That was tantamount to saying, 'we are now claiming your surplus to pay the debt of somebody else'. The claim in effect was that, in virtue of the bank's general lien, they were entitled to retain the property of one man to pay the debt of another. That claim was based, not upon agreement, but on a supposed custom that bankers should in such a case have a general lien. There never was or could be a custom, however, by which you could take the property of one man to pay the debt of another. No such proposition was put forward in the cases cited, and no such proposition has ever been laid down in any of the cases respecting a banker's lien."

The proposition, therefore, admits of no doubt that a bank has no lien on a partner's private account for an overdraft on partnership account or *vice versa* for want of reciprocity.

The Bank of course would be entitled to appropriate moneys belonging to a firm constituted by a certain set of partners for payment of an overdraft to another firm provided that firm is constituted by the same set of partners,—*vide F. Jaikishan Das-Jinda Ram* v. *The Central Bank of India Ltd.* (1). But this is not the case here there being no mutuality of obligation which is an essential element in the right to set off.

There is a very good reason for not allowing the banker to claim such a lien as the consequences

(1) 1959 P.L.R. 842

to the depositors could be disastrous. Lord Langdale, M.R., in *Watts* v. *Christie* (1), state :—

> "It is of the nature and essence of transactions between banker and customer, that a customer, having a balance in the hands of his banker, should have full power over it, and be able to command payment at sight. If, where there is an account between a firm and the bank, and another account with one particular member of the firm, it be once held, that the bank has a lien upon the balance due upon the separate account of the individual partner for a balance due to the bank from the firm, there would be an end to some transactions which it is most important to commerce, should be continued."

In similar strain Clark, J. of North Carolina Supreme Court, after stating the above remarks of Lord Langdale observed :—

> "Inasmuch as the member of the partnership can draw in the name of the firm, if their overdrafts can instantly be charged up against the individual account of a member of the firm, no partner would be safe in keeping his private account in the same bank where the partnership account is kept. Otherwise his private funds, deposited perhaps for special engagements he may have in view, would be liable at any time to be swept away by checks drawn by another for his own personal ends, but in the name of the firm, and the

(1) 50 E.R. 928 (931)

The Punjab National Bank Ltd. v. Arura Mal Durga Das and others

Tek Chand, J.

partner's checks on his private account would go to protest, to his damage and inconvenience." (*J. J. Admas* v. *First National Bank of Winston* (1).

McClendon, C.J., in *Shaw, Banking Comissioner* v. *Centerfield Oil Co.* (2), said :—

> "A bank has no lien upon the deposit of a partnership for a balance due by one of the partners."

It has to be remembered that bank's right to apply a deposit to an indebtedness due from the depositor, results from the right of set off obtaining between persons occupying creditor and debtor relationship with mutual demand existing between them.

The generally accepted rule respecting a bank's right of set off was stated in 3 Ruling Case Law, 591 in the following words :—

> "The right of a Bank to apply a deposit to an indebtedness due from the depositor, results from the right of set-off, which obtains between persons occupying the relation of debtor and creditor, and between whom there exist mutual demands, and it is familiar law that mutuality is essential to the validity of a set off, and that, in order that one demand may be set-off against another, both must mutually exist between the same parties."

See also *City National Bank of Beaumont* v. *American Surety Co. of New York* (3).

(1) Lawyers' Reports (Annotated 23-24, p. 111 (112).
(2) 10 South Western Reporter 2d Series, p. 144 (146).
(3) 52 South Western Reporter 2nd Series 259 (261-62).

Applying the above priciples to the facts of this case the Bank has failed to establish its claim to set-off the sum of Rs. 5,000 against the account in its Sheikhupura branch of the firm Kakasing-Gurmukhsingh the constitution of which was different from that of the defendant-firm.

It was half-heartedly contended by the learned counsel for the Punjab National Bank that the plaintiff's suit was not filed within limitation. This contention is devoid of force. The sum of Rs. 5,000 was released by the Controller, Food Accounts, Punjab, in July 1947, Exhibit D. 3. The exact date is not given in the letter. The suit was filed on 27th March, 1949. Under Article 60 of the Limitation Act plaintiff has three years within which he can sue when the demand is made. Thus the starting point of period of limitation is the date of demand by defendant No. 1 or his assignee and not the date of the release of the security by the Government. Demand was made by defendant No. 1 on 25th February, 1948, by means of letter, Exhibit D. 4, and the plaintiff-firm made the demand on 3rd of September, 1948, the date of giving notice to the Bank from plaintiff's counsel,—*vide* Exhibit D. 6. The plaintiff's suit is, therefore, well within limitation.

In view of what has been stated above the plaintiff's suit was rightly decreed against defendant No. 2, Punjab National Bank. This appeal filed by the Bank, must, therefore, fail. Parties will bear their own costs throughout.

SHAMSHER BAHADUR, J.—I agree.

B. R. T.