Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kanhaya Lal v. *The National Bank of India, Limited, from the Chief Court of the Punjab (P.C. Appeal No. 14 of 1912); delivered the 25th February 1913.*

PRESENT AT THE HEARING:

LORD SHAW.
LORD MOULTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[DELIVERED BY LORD MOULTON.]

In order to render plain the nature of the question involved in the present Appeal it will be necessary to make a short reference to the history of the litigation between the parties. It furnishes abundant matter for regret. The suit was brought on the 28th August 1902, and owing to the procedure adopted it will be found that at the present date the matter is but little more advanced than it was ten years ago in spite of the fact that large sums must have been expended in the costs of the proceedings in the meantime.

The facts of the case, so far as they are relevant to the question involved in the Appeal, are very simple. On the 15th August 1902 the Defendant Bank which had obtained a decree against the Delhi Cotton Mills Co., Ld., obtained an attachment against certain mills at Sabzi Mandi, and on the 20th August 1902 took possession of them to obtain satisfaction for a sum of Rs. 83,005, the balance then unpaid under such decree. In his plaint the Plaintiff states that he was the sole proprietor of such

mills and of their contents. On thus being ousted from his property he took the course of paying under protest the sum claimed. Having thus freed his property from the attachment he at once brought the present action claiming a return of the money so paid and damages for the alleged illegal acts of the Defendants.

In reply to the above plaint the Respondent Bank filed certain preliminary pleas relating to the claim for the return of the money paid under protest, of which it is only necessary to cite the first, which was that "the suit as framed will not lie." It is admitted that this plea is in substance identical with the more usual form of plea, viz., that "the plaint discloses no cause of action."

The District Judge—no doubt with the laudable intention of shortening the proceedings and thereby lessening the costs—heard an argument on these preliminary pleas before requiring anything further to be done by the Defendants, and on the 18th November 1902 he gave judgment to the effect that so far as the recovery of the money was concerned the plaint disclosed no cause of action. He therefore dismissed with costs the claim for the recovery of the money and directed that the action should proceed on the question of damages for illegal attachment. The Plaintiff, having in vain applied for the drawing up of an Order embodying this decision, decided not to proceed with that part of the case which related to damages, and consequently did not appear on the further hearing, whereupon the District Judge dismissed the whole case for default under Section 102 of the Civil Procedure Act. The Plaintiff appealed to the Chief Court against this decision, and that Court dismissed the Appeal on the ground that no appeal lay against an Order dismissing a suit under

Section 102. From this decision the Plaintiff appealed to His Majesty in Council, and their Lordships held that the Order of the 18th November 1902 was a final decision on the case as to the recovery of the money paid, and that therefore it was not competent to the Judge to dismiss that part of the case under the powers of Section 102. They therefore remitted the case to the Chief Court in order that the Appeal to that Court, so far as it related to the recovery of the money paid, might be heard and decided on its merits.

The case having been thus remitted, the Chief Court rightly treated the Appeal as an appeal from the Order of the 18th November 1902, dismissing the case with regard to the recovery of the money on the ground that the plaint contained no valid cause of action with respect thereto. After argument the Court decided in favour of the Defendants, and dismissed the Plaintiff's Appeal with costs. From this decision the present Appeal is brought.

The question raised by this appeal is therefore a pure point of law. Both the District Judge and the Chief Court have clearly stated that the decisions which they have given are based on the allegations in the plaint, and that for the purposes of such decisions these allegations must be taken to be true in fact. This is a necessary consequence of the nature of the plea, and the same understanding must apply to the present judgment. In asking the Court to decide an issue like the present (which is essentially a demurrer by whatever name it may be called) the Defendants must be taken to admit for the sake of argument that the allegations of the Plaintiff in his plaint are true *modo et formâ*. In so doing they reserve to themselves the right to show that these allegations are wholly or partially false

in the further stages of the action should the preliminary point be overruled, but so far as the decision on the preliminary point is concerned everything contained in the plaint must be taken to be true as stated.

That being so it is only necessary to look at the plaint to see that according to English law the contention of the Defendants is unsustainable. A wrongful interference with the Plaintiff's lawful enjoyment of his own property is alleged. The Plaintiff was clearly entitled to rid himself of that unlawful interference by any lawful means without thereby affecting his right to hold the Defendants liable for that which they have thus caused him to do. It is true that paying under protest the sum demanded was not the only course open to him. He might have taken legal proceedings, by which sooner or later he might have rid himself of the interference. But to do so would have involved his submitting to the wrong for all the period necessary for those proceedings to be effective, and that might have been a serious aggravation of the wrong. To this he was in nowise bound to submit. He was free to choose a course which did not involve any such prolongation of the trespass. Accordingly he paid under protest the sum demanded, and under English law he was unquestionably entitled to demand a repayment of that sum because it was an involuntary payment produced by coercion, viz., the wrongful interference of the Defendants with his full and free enjoyment of his own property. By English law it is not open to the wrongdoer to prescribe by which of two lawful alternatives the injured man puts a stop to the wrong under which he is suffering. His choice of any one alternative does not make it as between him and the wrongdoer

a voluntary act or estop him from claiming that it was done under coercion.

The argument before their Lordships accordingly turned chiefly on contentions that the Indian Statute Law precluded the application in India of these well-known principles of English Common Law. These contentions were two in number. In the first place the Respondents contended that in case the property of a stranger is seized under an attachment, the Code of Civil Procedure requires him to proceed under the group of Sections commencing with Section 278 and that this is his only remedy. Their Lordships have no doubt that the procedure referred to is merely permissive. It is analogous to the procedure by interpleader which in England would be open in similar cases to parties owning the goods seized. But the fact that such a procedure is open to him if he chooses to adopt it interferes in no way with his right to take any other lawful alternative.

The main contention, however, was that the allegations in the plaint did not show "coercion" according to Indian Law. It was contended that nothing could be "coercion" under Indian Law unless it satisfied the definition of "coercion" which is found in Section 15 of the Indian Contract Act and that the allegations in the plaint failed so to do because they did not show that the "unlawful detaining or threatening to detain" the property was "with the intention of causing any person to enter into an agreement." Their Lordships are of opinion that this argument is not sound and that it is based on a fundamental misunderstanding of the object and effect of Section 15 of the Indian Contract Act.

Section 15 forms part of a chapter which specially deals with the requisites of a valid

contract. This chapter commences with Section 10, which may be regarded as the fundamental section, and which reads as follows :—

"All agreements are contracts if they are made by " the free consent of parties competent to contract for a " lawful consideration and with a lawful object and are " not hereby expressly declared to be void."

The sections immediately following proceed to define the terms used in this fundamental section. Sections 11 and 12 are devoted to the interpretation of the phrase "competent to contract." Section 13 deals with the term "consent." Sections 14 to 18 deal with the phrase "free consent." In so doing Section 14 commences by defining when consent is said to be "free" and lays down that it is so when it is not caused by "coercion" as defined by Section 15, "or undue influence, fraud," &c. It will therefore be seen that Section 14 relates to "free consent" as an element in the making of contracts. It is natural, therefore, that when "coercion" comes to be defined in Section 15 for the purposes of Section 14 it is defined as follows :—

" Coercion is the committing or threatening to commit " any act forbidden by the Indian Penal Code or the " unlawful detaining or threatening to detain any property " to the prejudice of any person whatever with the " intention of causing any person to enter into an " agreement."

It is clear therefore that this definition of "coercion" is solely a definition which applies to the consideration whether there has been "free consent" to an agreement so as to render it a contract under Section 10. This explains why in the definition of "coercion" it is limited to an unlawful act done "with the intention of causing the person to enter into an agreement." But it would be to make nonsense of the statute if it were to be taken to mean that "coercion" in a legal sense could

only exist if the object was to bring about a contract. Indeed such an interpretation would render the Act inconsistent with itself. Section 72, which is in Chapter 5, which deals with "certain relations resembling those created by contract" reads as follows :—

> "A person to whom money has been paid or anything "delivered by mistake or under coercion must repay or "return it."

and Illustration B to that section reads as follows :—

> "A railway company refuses to deliver up certain "goods to the consignee except upon the payment of an "illegal charge for carriage. The consignee pays the sum "charged in order to obtain the goods. He is entitled "to recover so much of the charge as was illegally "excessive."

It is impossible to contend that the coercion referred to in this Section or in the above Illustration is "with the intention of causing any person to enter into an agreement." The word "coercion" must therefore be there used in its general and ordinary sense as an English word, and its meaning is not controlled by the definition in Section 15. That definition is expressly inserted for the special object of applying to Section 14, *i.e.*, to define what is the criterion whether an agreement was made by means of a consent extorted by coercion and does not control the interpretation of "coercion" when the word is used in other surroundings.

A further contention appears to have been put forward in the Court below to the effect that the Plaintiff's only remedy was to proceed against the Delhi Cotton Mills Co., Ld., under Sections 69 and 70, in order to recover from them the money paid, seeing that they would have had the benefit of the payments in the satisfaction of the decree obtained against them. It is not a matter of surprise that

this contention was not pressed before their Lordships. It is obviously unsustainable. Those clauses do not refer in any way to remedies against the wrongdoer and are therefore wholly irrelevant to the question in this Appeal.

Their Lordships have thought it proper to deal specifically with the arguments raised on the hearing on account of the importance of the questions raised. But they are also of opinion that the matter is covered by Authority. In the case of Dooli Chand *v.* Ram Kishen Singh (L.R. 8 I.A. 93) the circumstances were very similar to those in the present case, and on Appeal to this Board their Lordships decided that money paid by the true owner to prevent the sale of his property under an execution could be recovered back.

In their judgment their Lordships say :—

"The objections taken to the action were that the "payment was voluntary. It was made to prevent the "sale which would otherwise inevitably have taken place "of the mouzah which the respondents had purchased and "was made therefore under compulsion of law ; that is "under force of these execution proceedings. In this "country if the goods of a third person are seized by the "sheriff and are about to be sold as the goods of the "defendant and the true owner pays money to protect his "goods and prevent the sale he may bring an action to "recover back the money he has so paid ; it is the com-"pulsion under which they are about to be sold that "makes the payment involuntary."

The Respondents sought to distinguish the present case from the case just cited by contending that the sale in the present case was not inevitable. But it is evident that the greater or less probability of a sale taking place does not affect the *ratio decidendi* of their Lordships in that case, which is that the payment was made under the force of the execution proceedings and that in India, as in

England, such a payment is regarded by the law as being made under compulsion.

In their Lordships' opinion, therefore, the Chief Court ought to have given judgment in favour of the Plaintiff in his appeal against the Order of the 18th November 1902. The consequence of such a decision would have been that the case would have gone back to the District Judge to be tried on the facts.

As has already been stated, the decision of this Board does not affect or prejudice any contention of either party with regard to the facts or any other contention of law not covered by the present judgment.

Their Lordships will therefore humbly advise His Majesty to allow the Appeal and to remit the case to the Chief Court in order that the case may be sent to the District Judge to hear and determine. The Respondents must pay all the costs of the second hearing before the Chief Court and the costs of this Appeal.

In the Privy Council.

KANHAYA LAL

v.

THE NATIONAL BANK OF INDIA, LIMITED.

DELIVERED BY LORD MOULTON.

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