Present: Schneider A.J.

1920.

KASIPATHY *v.* KANAPATHIPILLAI.

13—C. R. Batticaloa, 1,185.

Prescription—Action for return of money given for safe keeping—Cause of action arises on refusal to return.

Where money is entrusted by one person to another for safe keeping, prescription in respect of a claim for the return of the money begins to run from the date of his refusal to return the money after demand, and not from the date of deposit.

THE facts appear from the judgment of the Commissioner of Requests (C. Coomaraswamy, Esq.):—

The plaintiff brings this action for the recovery of a sum of Rs. 263 entrusted by him to defendant in 1913. According to plaintiff this sum consists of two sums of Rs. 165 and Rs. 98. For the sum of Rs. 165 the defendant promised to transfer a land to plaintiff, but has not done so. Hence the present action. It is argued that the action is prescribed. I do not think so. The money was not lent to defendant. Plaintiff was living in defendant's house, and the money was, apparently, entrusted to defendant for safe keeping. Therefore, the cause of action arose when defendant refused to return the money.

As regards the question whether plaintiff actually entrusted the money to defendant, although there is no direct evidence on the point, yet the admission by defendant in the presence of two respectable witnesses, whose evidence I see no reason to disbelieve, shows that plaintiff's story is true. As regards the document D 1, it also supports plaintiff's story. If plaintiff merely wanted money he would have asked for it. On the other hand, in D 1 plaintiff asks for the transfer of this land. The tone of the letter is apparently due to the fact that defendant is plaintiff's uncle, and the plaintiff tried not to give any offence to defendant.

I therefore hold that plaintiff is entitled to recover the sum of Rs. 165.

As regards the sum of Rs. 98, the evidence of the rural constable is that plaintiff told him that the money was given partly to defendant and partly to his wife. Defendant cannot be sued for the money due by his wife. It is not known how much was given to defendant and how much to his wife. The plaintiff cannot succeed on that claim.

I enter judgment for plaintiff for Rs. 165, with costs.

Tisseverasinghe, for the defendant, appellant.—The plaintiff entrusted the money to the defendant in November, 1913, and the action was brought on September 30, 1919. The action is, therefore, prescribed. Prescription ran from the date of the deposit. The statement that money was repayable on demand is clearly an attempt to get over prescription, and in the absence of strong proof should not have been accepted by the Commissioner.

1920.

Kasipathy v. Kanapathipillai

Bartholomeusz, for the plaintiff, respondent.—There is no appeal on the facts. The finding is that money was entrusted to defendant for safe keeping. The cause of action arose only on demand. Counsel referred to *In re Tidd, Tidd v. Overell.*[1]

July 6, 1920. SCHNEIDER A.J.—

The point involved in this case is a very simple one. The only question is, when prescription should begin to run in the circumstances of this case upon the findings of fact arrived at by the learned Commissioner. His finding is that the money was originally entrusted by the plaintiff to the defendant for safe keeping in 1913, and that demand for its repayment or restoration was made in January, 1919. Counsel for the defendant-appellant contended that prescription should be reckoned from the date of the deposit. I do not think that this contention should be supported. The period of prescription is to be reckoned, according to the Ordinance, from the date the cause of action arises on a deposit. The cause of action would be the refusal to return that deposit. That refusal could only arise when a demand has been made. The principle involved in this case is laid down in the case of *In re Tidd, Tidd v. Overell.*[1] That decision is based upon the authority of a passage from *Pothier*, which runs thus: "Where a man deposit money in the hands of another, to be kept for his use, possession of the custodee ought to be deemed the possession of the owner, until an application and refusal, or other denial of the right; for, until then, there is nothing adverse, and I conceive that upon principle no action should be allowed in these cases without a previous demand; consequently, that no limitation should be computed further back than such demand." I am indebted to counsel for the reference to this case.

I dismiss the appeal, with costs.

Appeal dismissed.

(1893) *L. R. 3 Ch. 154.*