A

KANDSAMI PILLAI

v.

PERMAL PILLAI

B

(COURT OF APPEAL, 1973 (Gould V.P., Marsack J.A., Henry J.A.), 22nd, 28th November]

Civil Jurisdiction

Estoppel—equitable—promissory—payment of part of civil debt in satisfaction of whole—whether payment of balance can be later enforced.

C

The debtor who owed his uncle $1,300 sent his agent with $1,000. The debtor had, in fact, the full $1,300 available. The uncle agreed to accept the $1,000 in full satisfaction and signed a notice to this effect. Subsequently the uncle issued a bankruptcy notice claiming the $300 balance. The trial judge held that equity would not in the circumstances allow the appellant to bring further proceedings for its recovery and set aside the bankruptcy notice.

D

Held: 1. There was nothing in the facts to make it inequitable for the appellant now to enforce payment of the balance.

2. In the absence of true accord and satisfaction, payment of part of a debt does not debar a creditor from suing for the balance.

E

Cases referred to:

Foakes v. Beer (1884) 9 App. Cas. 605; 51 L.T. 833.

Hughes v. Metropolitan Railway Co. (1877) 2 App. Cas. 439; 36 L.T. 932.

Tool Metal Manufacturing Co. v. Tungstan Electric Co. [1955] 2 All E.R. 657; [1955] 1 W.L.R. 761.

Birmingham & District Land Co. v. London & North Western Railway Co. (1888) 40 Ch. D. 286; 60 L.T. 527.

F

Combe v. Combe [1951] 1 All E.R. 767; [1951] 2 K.B. 215.

Central London Property Trust Ltd. v. High Trees House Ltd. [1947] K.B. 130; 175 L.T. 333.

Emmanuel Ayodeji Ajayi v. R.T. Briscoe [1964] 3 All E.R. 556; [1964] 1 W.L.R. 1326.

G

C.I.R. v. Morris [1958] N.Z.L.R. 1126.

D & C Builders Ltd. v. Rees [1965] 3 All E.R. 837; [1966] 2 W.L.R. 288.

Appeal from the judgment of the Supreme Court setting aside a bankruptcy notice.

G. P. Shankar for the appellant.

H

K. C. Ramrakha for the respondent.

The following judgments were read:

HENRY J.A.: [28th November 1973]—

This appeal raises the question whether respondent is still indebted to appellant in the sum of $313.88 being the balance of a judgment obtained in 1969. The dispute turns on a payment of $1,000 made on March 24 1970 in respect of a judgment debt then standing at approximately $1,300. There was a serious conflict of evidence but the learned trial Judge has made certain findings of fact which have not been challenged on appeal. Appellant and respondent are brothers. They were not on speaking terms so one Chinsami s/o Narain Chetty, an uncle was asked by respondent to make a payment of $1,000 to appellant in full settlement of the debt. The evidence of Chinsami was accepted so the appeal turns on the legal effect of the evidence of Chinsami and respondent. On this evidence the trial Judge found that the said sum of $1,000 was paid on the assurance of appellant that no further payment would be enforced by the appellant. The trial Judge held that equity would not, in the circumstances found by the Court, permit appellant to bring further proceedings for its recovery. The further proceeding was a fourth bankruptcy notice founded on the alleged debt of $313.88. The said notice was set aside and appellant was ordered to pay costs.

In evidence Chinsami said on the occasion when the payment of $1,000 was made:—

> " I discussed the debtor's debt with Kandsami. We were given chairs to sit, tea to drink. Kandsami asked me the reason for our visit. I said, "You have issued a notice against your brother. I asked him to forgo some of the debt." At first he said, " I won't forgo any." I said, " Do not quarrel within the family. You should accept a little less." He still kept saying " No. " I then took out all the money I had taken, placed it on the table and asked him to take it. He at first wouldn't take it. Then the other Kandsami said, " You are getting all this money in a lump sum. If you refuse it, you may get it in bits and pieces. " After that the judgment creditor came to pick the money. I then asked him to hold on, to give us a receipt before taking the money so that there would be no dispute in future. After that he went inside his room and brought a notebook. He then made out a receipt and said. " Uncle, take this receipt " I said, " I don't know how to read. Please read it out to me so that I know what is in it." He then read it out to me to say that he was taking the money in full settlement of the debt. He then handed the receipt to me.
>
> " Not true that I offered to pay the Creditor $1,300; that when he had signed the receipt I said I would pay only $1,000. I told him beforehand I had only $1,000. I did not offer to pay the balance on 31st December 1970. He did not take the receipt from me and add any words at the bottom."

The document signed was in the form following:

24.3.70

" THIS IS TO CERTIFY THAT I HAVE RECEIVED THE FULL AMOUNT DUE TO ME UNDER THE (P.N.) AND BANKRUPTCY WHICH I TOOK AGAINST PERMAL PILLAI.

I HAVE NO CLAIM AGAINST PERMAL PILLAI FROM TODAY.

(SGD.)
K. PILLAI
24.3.70 "

Respondent in evidence said:

A " On receipt of this notice money was arranged with Narsey. I borrowed $1,400 from him. Documents were made at Mr. P. B. Patel's office. Mr Hanish Sharma is now with that office I gave a Crop Lien to Mr Narsey I went to Mishra, the Solicitor. As a result of his advice I went to my uncle Chinsami and gave him £500 ($1,000) can't remember the date. We then went to Ba. I kept the other $400 with me. Kandsami s/o Chandunam went with us to Ba. I did not go to the Judgment Creditor's house."

B

It is trite that at common law the acceptance of a lesser sum than is owing will not amount to accord and satisfaction of a larger sum. The trial Judge cited well-known words of Lord Denning M.R. when his Lordship said the harshness of the common law has been relieved—equity has stretched out a merciful hand to help the debtor. The question is: Is that so in the instant case? The trial Judge said the sum of $1,000 was all the respondent had. But with respect, that was not so.
C Respondent had borrowed $1,400. He kept $400 and gave the balance of $1,000 to Chinsami who told appellant that was all the money he (Chinsami) had. This appears later in his evidence. The relevant passage reads:—

" Not true that I offered to pay the Creditor $1,300; that when he had signed the receipt I said I would pay only $1,000. I told him beforehand I had only $1,000. I did not offer to pay the balance on 31st December 1970. He did
D not take the receipt from me and add any words at the bottom "

The facts in this case closely resemble those in *Foakes v. Beer* (1884) 9 App. Cas. 605 in which Mrs. Beer undertook, for a lesser payment, not to take any proceedings whatsoever. If the facts go no further that, in my respectful view, is still good law. The equity, of which the learned trial Judge spoke, was stated by Lord Cairns L.C. in *Hughes v. Metropolitan Railway Co.* (1877) 2 App. Cas. 439, 448 where he said:

E "..... It is the first principle upon which all courts of equity proceed if parties, who have entered into definite and distinct terms involving certain legal results ..... afterwards by their own act, or with their own consent, enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, that the person who otherwise might have enforced those rights will not be allowed to enforce them where it
F would be inequitable, having regard to the dealings which have taken place between the parties."

In *Tool Metal Co. v. Tungstan Electric Co.* [1955] 2 All E.R. 657, 660 Viscount Simonds said:

" My Lords, the decision of the Court of Appeal in the first action was
G based on nothing else than the principle of equity stated in this House in *Hughes v. Metropolitan Rv. Co.* (1877) (2 App. Cas. at p. 448) and interpreted by Bowen, L.J., in *Birmingham & District Land Co. v. London & North Western Ry. Co.* (1888) (40 Ch. D. at p. 286) in these terms:

It seems to me to amount to this, that if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be
H kept in suspense or abeyance for some particular time, those persons will not be allowed by a court of equity to enforce the rights until such time has elapsed, without at all events placing the parties in the same position as they were before.'

These last words are important, for they emphasise that the gist of the equity lies in the fact that one party has by his conduct led the other to alter his position. I lay stress on this, because I would not have it supposed, particularly in commercial transactions, that mere acts of indulgence are apt to create rights, and I do not wish to lend the authority of this House to the statement of the principle which is to be found in *Combe v. Combe* [1951] 1 All E.R. at p. 770 and may well be far too widely stated."

A

at p. 686 Lord Cohen said:

B

"..... the party setting up the doctrine must show that he has acted on the belief induced by the other party."

This principle of equity was brought to the fore by Denning J. in *Central London Property Trust Ltd. v. High Trees House Ltd.* [1947] K.B. 130 and later reported in [1956] 1 All E.R. 256.

The principles were recently stated by the Judicial Committee of the Privy Council in *Emmanuel Ayodeji Ajayi v. R. T. Briscoe* [1964] 3 All E.R. 556 at p.559 where Lord Hodson said:

C

" Their lordships are of opinion that the principle of law as defined by Bowen, L.J., has been confirmed by the House of Lords in the case of the *Tool Metal Manufacturing Co., Ltd. v. Tungsten Electric Co., Ltd.*, where the authorities were reviewed, and no encouragement was given to the view that the principle was capable of extension so as to create rights in the promise for which he had given no consideration. The principle, which has been described as quasi estoppel and perhaps more aptly as promissory estoppel, is that when one party to a contract in the absence of fresh consideration agrees not to enforce his rights an equity will be raised in favour of the other party. This equity is, however, subject to the qualification (*a*) that the other party has altered his position, (*b*) that the promisor can resile from his promise on giving reasonable notice, which need not be formal notice, giving the promisee a reasonable opportunity of resuming his position, (*c*) the promise only becomes final and irrevocable if the promisee cannot resume his position."

D

E

In New Zealand, notably in *Commissioner of Inland Revenue v. Morris* [1958] N.Z.L.R. 1126, the Courts have laid down the principle that the debtor must show an alteration of his position as a result of the promise.

F

The evidence in the instant case must be examined to see whether it is inequitable (as that term is used in the cases) for appellant to enforce payment of the balance of the debt by reason that his conduct caused respondent to alter his position (per Viscount Simonds (*supra*)). Respondent must prove the facts he relies on as giving rise to the principle: *Tool Metal Case* (*supra*) per Lord Tucker at p. 672. The evidence is that respondent had raised more than sufficient money to pay the debt. He gave his uncle only $1,000. The uncle represented that that was all he had, and that otherwise appellant would get the debt " in bits and pieces ". This was less than the whole truth. Appellant then accepted the sum of $1,000 and gave the written acknowledgement. I can see nothing in these facts to make it inequitable for appellant now to enforce payment of the balance, however much one deplores the morality of appellant's conduct. Even if the test stated by Lord Denning M.R. in *D. and C. Builders Ltd.* [1965] 3 All E.R. 837 is applied, namely, was there " true accord "? the answer again must be that there was not. Respondent had raised sufficient money to pay the debt but, through his agent, represented that he had only $1,000. His agent said that, if this sum were not accepted in full settlement, payment of the debt would be long delayed. It is a fair inference that,

G

H

if appellant had refused to accept the statement that $1,000 was all he had " and
A had enforced his claim the amount would in all probability have been paid in full. The position might have been different if $1,000 was all respondent was able to or had raised by a crop lien and he had told appellant before payment was made. That is not this case.

The statement by the uncle that $1,000 was all the money available (for that is the effect of what he said) was untrue so far as concerns respondent. Respondent had
B $1,400 and sent his uncle forth with only $1,000. Any representation such as that made by the uncle was false qua respondent. Respondent had $1,400 available for the purpose and the existence of $400 was suppressed. No equity can be founded on such a falsehood. One cannot, however, blame respondent for endeavouring to get the best settlement but his agent went too far.

Counsel for respondent relied solely on a submission that the bankruptcy notice, extant at the time when $1,000 was paid, should have been set aside on the ground
C that the debt had been compounded to the satisfaction of appellant in terms of the notice itself—a similar form of which appears in the case. The relevant words, after making demand for payment of the sum owing, went on to say:—

> " .... or you must secure or compound for the said sum to his satisfaction or to the satisfaction of this Court or you must satisfy this Court that you have a counterclaim, set off or cross demand against him which equals or
> D exceeds the sum claimed by him and which you could not set up in the action or other proceedings in which the Judgment or Order was obtained ".

This point was not argued in the Court below. To compound in that context means some form of settlement, not necessarily a discharge of the debt. To release the obligation under the judgment there must be some act or thing which either law or equity considers has resulted in discharging the obligation to pay. The clear
E issue here is whether or not promissory estoppel is a shield for respondent. The exercise of the power of the Court to act on the bankruptcy notice once it is proved that the sum is still owing is not a matter before this Court.

I would allow the appeal with an order as to costs as proposed by the learned Vice President.

F GOULD V.P.:

I have had the opportunity of reading the judgment of Henry J.A. in this case and for the reasons he has given I agree that the appeal must be allowed. I do so with regret, as the findings of the learned trial judge indicate that the conduct of the appellant in the transaction was very much open to criticism. Also it could be argued on behalf of the respondent that there was an assumption that he would suffer some detriment, in that he would, after the settlement with the appellant,
G have conducted his affairs as a man freed from any threat of bankruptcy. But there was no evidence to support this approach, and as is indicated in *Tool Metal Co. v. Tungstan Electric Co.* [1955] 2 All E.R. 657 it lay upon the respondent to prove his detriment.

The learned judge said that there was no false promise on the part of Chinsami which might have induced the appellant to give the receipt under a misapprehen-
H sion. That may be strictly so, but there was a false representation that $1,000 was all that was available. This, with the statement that if he did not take the $1,000 he might get it in bits and pieces, brings the facts very close to those in *D. & C. Builders Ltd. v. Rees* [1965] 3 All E.R. 837, which the learned judge relied upon and in which it was held that there was no true accord.

I agree that the submission of counsel for the respondent that there was a "compounding", cannot be entertained in these proceedings as it was not an issue in the Supreme Court. I do not however wish to be taken as expressing any opinion on the question whether only a binding agreement can amount to a compounding.

A

All members of the Court being of the same opinion the appeal is allowed and the order setting aside the bankruptcy notice is quashed. There will be no order for costs in either Court.

B

MARSACK J.A.:

It is with great reluctance that I have come to the conclusion, for the reasons stated by my learned brothers, that the appeal must be allowed. The action of the Appellant in issuing a series of four bankruptcy notices since 25th February 1970, and taking no action on the first three, appears on the face of it to amount to a gross abuse of judicial process; and this Court should be slow to afford him any assistance in his course of action.

C

The law on the subject is however, well established, that in the absence of a true accord and satisfaction, or of what is referred to by Henry J.A. as promissory estoppel, payment of part of a debt, even if accepted as payment in full, does not debar the creditor from suing for the balance. As is said in Jowitt's Dictionary of English Law, the agreement is the accord, and the satisfaction is the consideration for it. For reasons clearly set out in the judgment of Sir Trevor Henry, there was in this case no consideration for the acceptance of part of the debt in settlement of the whole debt; and so, though there was accord, there was no satisfaction.

D

Accordingly, slightly paraphrasing the words of Winn L.J. in *D. and C. Builders Limited v. Rees* [1965] 3 ALL E.R. 837 at p. 846, I am of the opinion that appellant is free in law, if not in good conscience, to insist on payment of the balance due.

In expressing the view that the balance of the original debt is recoverable, I am not to be taken as giving any opinion as to what course the Court should follow in respect of the fourth Bankruptcy Notice.

E

As to costs, I agree with the order proposed by the learned Vice-President.

Appeal allowed.

F