

APPELLATE CIVIL.

Before G. D. Khosla, C.J., and Gurdev Singh, JJ.

THE PUNJAB NATIONAL BANK, LTD.,—Appellant.

versus

M/S. IQBAL SINGH-KALYAN SINGH AND OTHERS,—
Respondents.

Regular First Appeal No. 81 of 1953.

1960

Sept. 19th.

Negotiable Instruments Act (XXVI of 1881)—Ss. 93, 94 and 98 (c) and (g)—Notice of dishonour of cheque given to drawer after two years—Whether reasonable—Drawer closing his account from the drawee bank before cheque presented for payment—Drawer later on promising to pay the amount of the cheque—Notice of dishonour—Whether necessary to be given to the drawer—Object of the notice stated.

Held, that the notice of dishonour of the cheque served by the payee to the drawer after two years of its dishonour cannot be said to have been served within a reasonable time as required by section 94 of the Negotiable Instruments Act. But no notice of dishonour is necessary to be given to the drawer of the dishonoured cheque in the case in which the drawer had closed his account in the drawee bank before the presentment of the cheque as in such a case he did not suffer any damage for want of notice and where after having obtained the knowledge of the dishonour of the cheque, he promised unconditionally to pay the amount due on the cheque.

Held, that the object of giving notice is not to demand payment for the party giving notice but to warn the party of his liability and in the case of drawer to enable him to protect himself as against the drawee or acceptor who has dishonoured his draft. In a case like the present where the cheque is dishonoured merely because the drawer had closed his account there is no question of giving him a notice with the object of protecting himself against the drawee because the possibility of his being

held liable by the drawee had ceased as soon as the account was closed. Generally where the drawer has no funds belonging to himself in the drawee's hands neither the presentment for payment nor notice of dishonour is necessary to charge the drawer.

First Appeal from the decree of the Court of Shri Mehar Singh Chaddah, Senior Sub-Judge, Gurgaon, dated the 5th day of February, 1953, dismissing the plaintiff's suit and further ordering that the plaintiff would bear the costs of defendants No. 1 to 5 and defendant No. 6 would bear his own costs.

S. L. PURI AND RAJ KUMAR AGGARWAL, ADVOCATES, for the Appellant.

M. R. PUNJ, H. S. GUJRAL & DALIP SINGH, ADVOCATES, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—This is a plaintiff's appeal against the judgment and decree of Shri Mehr Singh Chaddah, Senior Subordinate Judge, Gurgaon, dated the 5th of February, 1953, dismissing the suit of the Punjab National Bank, Ltd., for recovery of Rs. 11,930-3-9 from the respondents. The appellant has also been burdened with costs of defendants Nos. 1 to 5. Gurdev Singh,
J.

Before the partition of the country, the Punjab National Bank had its head office at Lahore. One of its pay offices was at Jamke Chatha where the firm Messrs Iqbal Singh-Kalyan Singh, defendant No. 1 was carrying on the business as merchants and commission agents. The defendants Nos. 2 to 5 are the partners of that firm. Balwant Singh, defendant No. 6, then carried on the business of Clearing Agents at Lyallpur (now in Pakistan), under the name and style of Messrs Narain Singh-Sunder Singh.

The Punjab
ational Bank
Ltd.
v.
M/s.
Iqbal Singh
alyan Singh
and others,

Gurdev Singh,
J.

According to the averments in the plaint, the defendant firm Messrs Iqbal Singh-Kalyan Singh had a cash credit account against the pledge of agricultural commodities with the local branch of the Punjab National Bank at Jamke Chatha. In the beginning of August, 1947, they requested the plaintiff Bank to deliver stocks to defendant No. 6, who were Clearing Agents, against the receipt of a cheque for Rs. 10,110-7-0 and to credit its proceeds to the account of defendant No. 1 by discounting the same. Accordingly on the 9th of August, 1947, a cheque for that amount drawn by the firm Messrs Narain Singh-Sunder Singh (defendant No. 6) on the Bharat Bank, Ltd., Lahore, in favour of the plaintiff Bank was discounted by the Branch office of the plaintiff Bank at Jamke Chatha and the proceeds of the same were credited to defendant No. 1's account, after releasing a portion of the pledged stocks. This was at a time when serious communal disturbances broke out in Lahore. On account of the complete breakdown of law and order which is a matter of recent history, the cheque in question remained lying with the other records of the plaintiff Bank at Jamke Chatha. It was only in the year 1948, when those records were salvaged, that the cheque was presented to the Bharat Bank Ltd., Lahore, on or about the 30th of June, 1948, but it was dishonoured as evidenced by Exhibit P. 18. Prior to that on the 23rd of April, 1948, notices, copies of which are Exhibits P. 3 and P. 4, were issued to the firm defendants Nos. 1 to 6.

Later the plaintiff Bank filed a claim with the Director-General of Food, East Punjab Government against the Clearing Agents defendant No. 6. A Committee was set up by the Government to settle the disputes between the sellers

and Clearing Agents. Balwant Singh, defendant No. 6, appeared before that Committee and admitted his liability for the amount of the cheque adding that he was awaiting the payment from the Imperial Bank of India, Lahore, who had realised the amount from the consignee for the stocks. Despite subsequent notices of demand neither defendant No. 1, nor defendant No. 6, paid a single penny towards the amount due to the plaintiff Bank.

The Punjab
National Bank
Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others

Gurdev Singh,
J.

Proceedings against Goverdhan Lal, defendant No. 5, one of the partners of Messrs Iqbal Singh-Kalyan Singh were *ex parte*. For the purpose of this appeal it is not necessary to get into the details of the pleas taken up by defendants Nos. 1 to 4. It will suffice to say that while admitting that they had instructed the plaintiff Bank to release stocks on receipt of the cheque for Rs. 10,110-7-0 from defendant No. 6, they disclaimed liability for this amount on the plea that the cheque had not been presented within a reasonable time and no notice of dishonour had been given. These defendants further asserted that the suit against the firm, defendant No. 1 (of which they were partners) for the amount in dispute was not maintainable as it was one of the items in the running account which Messrs Iqbal Singh-Kalyan Singh had with the plaintiff Bank.

Balwant Singh, defendant No. 6, proprietor of Narain Singh-Sunder Singh, disputed the liability of the firm *inter alia* on the pleas that the cheque was without consideration, that the Bank was never instructed to discount the cheque but was merely asked to realise the amount and credit it to the account of Messrs Iqbal Singh-Kalyan Singh, that defendant No. 6

The Punjab National Bank Ltd.,
 v.
 M/s. Iqbal Singh Kalyan Singh and others
 ———
 Gurdev Singh,
 J.

never admitted his liability before the Committee appointed by the East Punjab Government to settle the disputes between the Clearing Agents and sellers and that, in any case, defendant No. 6 was absolved from the liability as no notice of demand or dishonour was ever served upon it. The trial before the Senior Subordinate Judge proceeded on the following issues:—

- (1) Did defendants No. 1 to 5 request the plaintiff to deliver the goods of defendants Nos 1 to 5 to defendant No. 6, against the receipt of cheque Exhibit P/1 on 9th August, 1947, and credit the amount to the account of defendants Nos. 1 to 5 and was this amount so credited?
- (2) Was the cheque, Exhibit P. 1, presented to the plaintiff by defendants Nos. 1 to 5?
- (3) Was cheque, Exhibit P. 1, presented by the plaintiff to the Bharat Bank within reasonable time?
- (4) If issue No. 3 is negatived, was the presentation not necessary legally or on account of the circumstances mentioned in the plaint?
- (5) Whether the notice of dishonour was sent by the plaintiff to the defendants within reasonable time, if not what is its effect?
- (6) Is the plaintiff entitled to interest, if so, at what rate, from which date and to what amount?

- (7) Was the transaction in suit a part of a running account and, therefore, this suit does not lie against defendants Nos. 1 to 5? The Punjab National Bank Ltd.,
v.
M/s. Iqbal Singh Kalyan Singh and others,
- (8) Is the suit barred by Order 2, Rule 2? Iqbal Singh Kalyan Singh and others,
- (9) Did defendants Nos. 1 to 5 deposit stocks of rice and *toria* with the plaintiff as security and what was its value and, therefore, the plaintiff is not entitled to sue without accounting for the stocks? Gurdev Singh,
J.
- (10) Are the defendants entitled to relief under the provisions of Act 25 of 1949, if so, in what manner and to what extent?
- (11) If it is proved that the amount of cheque was credited to the account of defendants Nos. 1 to 5 is not the defendant No. 6 liable for the amount?
- (12) Is L. Jaswant Rai entitled to bring this suit on behalf of the Bank?
- (13) Did the plaintiff release defendant No. 6?

Issues Nos. 1 to 3, 8 and 10 to 13 were decided in favour of the plaintiff, while issues Nos. 4 to 7 and 9 were found against it. The suit against defendants Nos. 1 to 5 was dismissed on the ground that the transaction of the cheque in suit was a part of the running cash credit account which the firm Messrs Iqbal Singh-Kalyan Singh, had with the Bank and no suit for recovery of one of the items could lie without the Bank accounting for

The Punjab
National Bank
Ltd.,

v.

M/s.

Iqbal Singh
Kalyan Singh
and others,

Gurdev Singh,
J.

the agricultural commodities which were pledged with it as security.

So far as defendant No. 6 was concerned the learned Senior Subordinate Judge found that he was clearly liable as drawer of the cheque but in view of the fact that the notice of dishonour of the cheque was not served upon him till more than two years after the date on which the drawee Bharat Bank had refused to honour it, the defendant No. 6 was exonerated from all liability in respect of it.

Though in the grounds of appeal the decision of the trial Court on issues Nos. 7 and 9 holding that the suit was not maintainable against defendants Nos. 1 to 5 was assailed, yet at the hearing of the appeal the learned counsel for the appellant, Shri Shambhu Lal Puri, did not address any arguments on this point and expressly stated that he disputed the findings of the trial Court regarding the liability of defendant No. 6 alone.

As observed earlier, while dealing with issues Nos. 1 to 3, the learned Senior Subordinate Judge has held that the cheque Exhibit P. 1 for Rs. 10,110-7-0 was issued on behalf of the Clearing Agents defendant No. 6 in favour of the plaintiff Bank in compliance with the instructions of Messrs Iqbal Singh-Kalyan Singh, defendant No. 1 and the same was for consideration. This cheque was presented for payment to the Bharat Bank Ltd., at Lahore on the 29th/30th of June, 1948, but was dishonoured. There was no doubt a gap of several months between the date the cheque was received by the plaintiff Bank at Jamke Chatha and the day it was presented for

payment to the drawee, yet the learned Subordinate Judge has found that in view of the communal disturbances and its aftermath, the presentation of the cheque was within a reasonable time and it did not absolve defendant No. 6 from liability. While dealing with issue No. 5, he, however, held that the notice of dishonour having not been served upon the defendant within a reasonable time as required by section 94 of the Negotiable Instrument Act, the defendants were exonerated from liability under the cheque. It is this latter finding which has been vehemently contested on behalf of the appellant.

The Punjab
National Bank
Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others,

Gurdev Singh,
J.

It is the plaintiff's own case that the cheque in question, Exhibit P. 1, was presented for payment to the Bharat Bank at Lahore and was dishonoured on the 29th of June, 1948. In para No. 7 of the plaint it was asserted that after the return of the cheque from the drawee Bank, notices of the dishonour were issued to the defendant. These notices, according to the appellant's counsel, are Exhibits P. 7, dated the 29th of July, 1948 and P. 5, dated 31st of July, 1950, addressed to defendants Nos. 1 to 6, respectively. In fact, these were the notices which were issued by the plaintiff only a couple of days prior to the institution of the suit calling upon the defendants to pay the amount of the dishonoured cheque. In other words the notice of dishonour was given to the defendants two years after the date on which the payment had been refused by the drawee. This certainly is not due compliance with the provisions of section 93 of the Negotiable Instruments Act, which lays down that a notice of dishonour must be given to all parties whom the holder seeks to make severally liable thereon except the drawee of the dishonoured cheque.

The Punjab
National Bank
Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others,
Gurdev Singh,
J.

From the letter, Exhibit P. 2, which the plaintiff Bank has placed on record, we find that on the 4th of May, 1948, it was informed by the Manager of its Branch at Panipat within the territory of the Indian Union that Balwant Singh, defendant No. 6, proprietor of firm Messrs Narain Singh-Sunder Singh owned a bungalow at Mathura and was putting up there. This information was in possession of the plaintiff nearly two months before the cheque was dishonoured but we find that no notice of dishonour was issued to defendant No. 6, or any other defendant till the end of July, 1950. No explanation for this inordinate delay in issuing the notice is forthcoming. In the circumstances the learned Subordinate Judge was perfectly justified in holding that the provisions of section 93 of the Negotiable Instruments Act, had not been complied with as the notices had not been served on the defendants within a reasonable time.

Mr. Puri in fact accepts this finding but he contents that in the circumstances of the present case no notice of dishonour was necessary because: (a) defendant No. 6 was aware of the fact that the cheque had not been cashed and despite that promised before the Committee appointed by the East Punjab Government to settle the disputes between the Clearing Agents and sellers to make payment of the amount of the cheque, and (b) the defendant No. 6 could not suffer any damage for want of notice because on the day the cheque was presented at the Bharat Bank, Ltd., at Lahore defendant No. 6 had no account. Reliance in this connection is placed upon clauses (c) and (g) of section 98 of the Negotiable Instru-

ments Act which lays down—

				The Punjab National Bank Ltd.,
"98. No notice of dishonour is necessary—				v.
* * *				M/s.
* * *				Iqbal Singh
(c) when the party charged could not				Kalyan Singh
suffer damage for want of notice;				and others,
* * *				<hr/> Gurdev Singh,
* * *				J.
(g) when the party entitled to notice,				
knowing the facts, promises uncon-				
ditionally to pay the amount due on				
the instrument."				

Referring to clause (c) of section 98 quoted above, the learned counsel for the appellant has invited our attention to the fact that the cheque was dishonoured by the Bharat Bank Ltd., Lahore, solely on the ground that defendant No. 6 had no longer any account with that Bank as the same had been transferred to Delhi Branch. The question for consideration is whether the non-service of notice upon the drawer (defendant No. 6) in such circumstances could result in any damage to them. After giving my anxious consideration I am of the opinion that this question must be answered in the negative. The object of giving notice is not to demand payment for the party giving notice but to warn the party of his liability and in the case of drawer to enable him to protect himself as against the drawee or acceptor who has dishonoured his draft. In a case like the present where the cheque is dishonoured merely because the drawer had closed his account, there is no question of giving him a notice with the object of protecting himself against the drawee because the possibility of his being held liable by the drawee had ceased as

The Punjab National Bank Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others,

soon as the account was closed. Generally, where the drawer has no funds belonging to himself in the drawee's hands neither the presentment for payment nor notice of dishonour is necessary to charge the drawer.

Gurdev Singh,
J.

In *Chunilal v. Amarendra* (1), it was held that when a cheque is dishonoured on account of the fact that the drawer has no account no question of damage to the drawer or his representative by reason of absence of notice of dishonour arises. This view finds support from *Bickerdike v. Bollman* (2), where Mr. Justice Buller observed as follows:—

“The law requires notice to be given for this reason, because it is presumed that the bill is drawn on account of the drawee's having effects of the drawer in his hands; and if the latter has notice that the bill is not accepted, or not paid, he may withdraw them immediately. But, if he has no effects in the other's hands, then he cannot be injured for want of notice. Soon after I sat on this bench I tried a cause at Guildhall, on a bill of exchange which was neither drawn or accepted by a person residing in Holland, and a full special jury, under my direction, found a verdict for the plaintiff, notwithstanding no notice had been given to the drawer of the bill's having been dishonoured, because he had no effects in the hands of the person on whom the bill was drawn. That verdict was

(1) A.I.R. 1953 Assam 94.

(2) (1786) I.T.R. 405.

never objected to: and if it be proved on the part of the plaintiff that from the time the bill was drawn, till the time it became due, the drawer never had any effects of the drawee in his hands, I think notice to the drawer is not necessary; for he must know whether he had effects in the hands of the drawee or not; and if he had none, he had no right to draw upon him, and to expect payment from him; nor can he be injured by the non-payment of the bill, or the want of notice that it has been dishonoured."

The Punjab
National Bank
Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others,

Gurdev Singh,
J.

Dealing with a similar question, Bramwell, J., in *Carew v. Duckworth* (1), stated—

"The true rule should be, that no notice of dishonour is required where it would convey no information, that is, when the party sued knew beforehand that the bill would not be paid; but that where he did not know, it is right that he should be informed of the non-payment. If this rule should be adopted, the question would be, did he, practically speaking, know beforehand that the bill would not be honoured? This may depend on a variety of circumstances; he might think that the cheque would be honoured by favour, though in fact, there were no assets to meet it."

The Court then held that want of effects which will excuse notice of dishonour need not be a want of any effect; it is sufficient, if there are no

(1) (1869) L.R. 4 Exch. 313.

The Punjab National Bank Ltd., v. M/s. Iqbal Singh Kalyan Singh and others, Gurdev Singh, J.

effects sufficient for the payment of the cheque. In *Subrao Manjaya v. Sitaram Shivrambhat and others* (1), despite the finding that the *hundi* had not been presented within a reasonable time and no notice of it was given to the drawer, Fulton and Growe, JJ., held that neither of these facts could exonerate the drawer who admittedly had no funds belonging to him in the hands of the drawee and had suffered no loss owing to the failure of the holder in presenting the *hundi* in time or giving notice of dishonour. I thus, find that clause (c) of section 98 of the Negotiable Instruments Act is fully applicable to the facts of the present case and no notice of dishonour was necessary to charge defendant No. 6, the drawer of the cheque in question, with liability.

Another ground on which the learned counsel for the appellant has claimed exemption from notice is that defendant No. 6, in the course of the meeting convened by the Director-General of Food, East Punjab, in August, 1949, had accepted his liability and promised to pay the amount. Defendant No. 6, Balwant Singh, appearing as his own witness admitted that he was present at such a meeting and made a statement that the price of the goods to which the cheque related should be paid to the plaintiff Bank, but he asserts that it was not an unconditional promise to pay as he had also stated at the same time that this would be paid to the plaintiff, if it was collected by the Imperial Bank. The plaintiff's witness Chaman Lal Sethi, P.W. 1, Law Assistant of the Punjab National Bank who had also attended the meeting, however, deposed that Balwant Singh, defendant had not only admitted that he had issued the cheque in dispute and

(1) 2 Bom. L.R. 691.

the amount was due from him but had also stated that the money was lying with the Imperial Bank of India and he would pay off the amount to the plaintiff Bank. We have, however, not to depend upon the statement of these interested persons, as Charanjiva, C.W.4, Assistant Accounts Controller, Food Department, Simla, was examined and he has deposed to the proceedings of the Committee appointed by the Punjab Government. He tells us that in the meeting of 5th of August, 1949, the Clearing Agent (defendant No. 6), had stated that he had sent a bill for the realisation of Rs. 10,110-7-0 to Messrs Volkart Brothers, who were the agents for Madras Government consignees of consignment in question and he was quite prepared to make the payment if the Imperial Bank who had realised the same from Volkart Brothers paid it to him. The witness then placed on record extracts from the proceedings of the meeting held on the 19th of December, 1949, wherein the following passage occurs:—

The Punjab
National Bank
Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others,
Gurdev Singh,
J.

“As regards the second item of Rs. 17,000 the Bank’s representative present states that the Bank should be paid Rs. 10,110-7-0 on account of the cheque issued by the clearing agents in their favour. This amount according to S. Balwant Singh, representative of the clearing agents has now been realised by the Imperial Bank of India, Lahore, from Messrs Volkart Brothers, who had previously refused to make the payment on behalf of Madras Government. The Controller of Food Accounts would now realise this amount of Re. 10,110-7-0 and pay the same to the Punjab National Bank. S. Iqbal Singh of Messrs Iqbal

The Punjab
National Bank
Ltd.,

v.

M/s.

Iqbal Singh
Kalyan Singh
and others,

Gurdev Singh,
J.

Singh-Kalyan Singh is also present and he has no objection to this decision."

This clearly goes to show that Balwant Singh, defendant No. 6, made an unconditional acknowledgment of his liability and promised to pay the amount of the cheque in question. It is significant that though Charanjiva, C.W. 4, was examined as far back as 2nd of January, 1952, and the defendant Balwant Singh came into the witness-box, thereafter about a year later in January, 1953, he did not even assert that the record of the proceedings, Exhibit C.W. 4, produced by Chiranjiva was not correct. In this state of evidence the plaintiff's plea that defendant No. 6 had admitted his liability and promised to pay the amount unconditionally must be accepted. Though it is true that when this admission was made no formal notice of dishonour had been served upon defendant No. 6, yet the proceedings of the meeting referred to above clearly indicate that Balwant Singh, defendant, was aware of the fact that his liability in respect of the cheque had not been met by the drawee Bank and the amount was still outstanding against him. If that was not so there would have been no occasion for him to make even a conditional promise to pay the amount of the cheque to the plaintiff Bank. Thus the case falls under clause (g) of section 98 of the Negotiable Instruments Act and the claim of the plaintiff cannot be thrown out against defendant No. 6 on account of his failure to serve a notice of dishonour of the cheque within a reasonable time.

The respondent's learned counsel has urged relying upon *Bahadur Chand v. Gulab Rai* (1), and *Nenu Ram v. Shivkishen* (2), that this Court

(1) A.I.R. 1929 Lahore 577.

(2) A.I.R. 1950 Rajasthan 55.

should not extend the benefit of section 98 to the appellant as he had never pleaded exemption of notice in the trial Court nor was the matter put in issue. All that the two decisions referred to above lay down is that the onus of proving that the holder was excused from giving a notice of dishonour lay upon him and he must also prove that non-service of notice has occasioned no damage to the drawer. The facts on which those decisions proceed are entirely different from the case which is before us. In the instant case it has been found by the learned Subordinate Judge, and rightly so, that the cheque was presented to the drawee within a reasonable time but it was dishonoured because the drawer had closed his account with the drawee who had no funds of the drawer in its hands from which any payment could be made. The onus which rested on the plaintiff is thus amply discharged and I see no justification for refusing to apply the law contained in section 98 of the Negotiable Instruments Act and depriving the plaintiff of the relief on a mere technicality. The defendant No. 6 had to prove that a notice of dishonour was necessary despite the circumstances which bring the case within section 98, Negotiable Instruments Act, before he can urge that the notice was not served upon him within a reasonable time.

For the reasons stated above I reverse the findings of the trial Court on issue No. 5. I, however, agree with the findings of the trial Court on issue No. 6, that non-payment of the amount was due to the circumstances beyond the control of defendant No. 6. Thus, there is no justification for allowing interest on the principal amount. I would, therefore, accept the appeal and modifying the judgment and decree of the Senior Subordinate Judge pass a decree for Rs. 10,110-7-0 in favour

The Punjab
National Bank
Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others

Gurdev Singh,
J.

The Punjab National Bank Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others, *B.R.T.*

of the plaintiff Bank against defendant No. 6. In view of the circumstances of the case I would leave the parties to bear their own costs.

KHOSLA, C.J.—I agree.

Gurdev Singh,
J.

CIVIL MISCELLANEOUS

Before G. D. Khosla, C.J., and D. K. Mahajan, J.

RAGHBIR SINGH RAJA SANSI,—*Petitioner.*

versus

THE COMMISSIONER OF INCOME-TAX, SIMLA,—
Respondent.

Income-Tax Reference No. 19 of 1958

Income-tax Act (XI of 1922)—S. 16 (I) (C)—Scope and interpretation of—Benefit accruing to the transfer or directly or indirectly—Effect of.

1960

Sept. 22nd.

Held, that section 16(1)(C) of the Income-tax Act, 1922, deals with a transfer of his assets by the assessee. If the transfer is irrevocable, there is no question of the income from those assets being considered the income of the assessee for the purposes of the Income-tax Act, but the proviso makes it clear that even when a transfer purports to be irrevocable, it may be deemed to be revocable in certain circumstances and those circumstances are two, namely (1) where the income from the assets is transferred to the transferor and (2) where there is provision in the deed of transfer enabling the transferor to resume power, directly or indirectly, over the income or assets or the property so transferred. If the case does not fall within either of these two exceptions, then the transfer must be deemed to be irrevocable and the income from the property transferred will be the income of the transferee and not of the transferor. It is, therefore, immaterial whether the transferor derives any benefit, direct or indirect, from the transfer or not. It may be that he indirectly benefits from the income of the property transferred, but as long as the transaction is of such