

## Ogilvie v Adams [1981] VR 1041

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### Facts

- Morris Ogilvie, the trustee in bankruptcy of William Henry's estate, sued the defendants as the executors and trustees of the will and estate of the bankrupt's wife, Doris Melba Adams, for \$63,200.00 lent by the bankrupt to his wife in April 1957.
- The terms of the loan were written on one instrument:
  - "...I, D.M.A, hereby acknowledge to have received from you the sum of \$63,200 being a loan to me repayable on demand. Dated this 29th day of April 1957. Signed D.M.A."
- The Statement of Claim alleged that the money was loaned to the deceased on terms that she would be liable to repay the sum on demand for repayment. By demand dated 12 July 1972, the Plaintiff demanded repayment.
- The Defendants alleged that any debt was barred but the *Limitation of Actions Act 1958* (Vic) and that the document was a promissory note.

### Issues

- Was the debt statute barred?
- Was it repayable on demand?

### Held

- Loans *simpliciter* are repayable on demand from the moment the money is lent to the borrower.
- The document was not an acknowledgment of the debt or promissory note. There was no promise to pay at all, other than by implication.
- The debt was statute barred.

### Quotes

*"In my opinion there can be no doubt as to how the aforesaid question of construction should be answered, and indeed I consider that, from the late seventeenth century at the latest, there could be only one answer to it, namely, that the case discloses a loan the only terms of which were those acknowledged in writing by the borrower to the lender, and no demand is necessary to found the cause of action for repayment, and the cause of action commenced instanter upon the making of the loan. Where there is a loan of money simpliciter (i.e. with nothing at all said as to repayment), the money is repayable instanter. Where there is a loan of money and the borrower contracts to repay on demand, again the money is repayable instanter. Where there is a loan of money which is recorded or acknowledged by the parties to be a loan repayable on demand, again the money is repayable instanter.*

*The common law has always regarded the fact of indebtedness as a continuing detention by the debtor of the creditor's money, and this whether the creditor brought an action of debt or an action in indebitatis assumpsit. Therefore if A lends money to B, then instantly B is detaining A's money. In order to prevent a cause of action for recovery arising in A instantaneously on paying the money, the parties must expressly contract out of that situation by words clearly inconsistent with that situation."*

(Fullagar J (emphasis added))

### **Full Text**

The full text is available here: <https://victorianreports.com.au/judgment/view/1981-VR-1041>

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