APPELLATE CIVIL.

Before Mookerjee and Buckland JJ.

1921

Feb. 7.

PRASANNA KUMAR ROY

v.

NIRANJAN ROY.*

Acknowledgment of Debt—Limitation Act (IX of 1908) s. 19.

Where the principal sum advanced on a mortgage bond was Rs. 5,700 and on payment of Rs. 1,751 an endorsement was made on the back of the bond in the following terms—"Paid on account of the principal as per separate accounts Rs. 1,751 only."

Held, that the endorsement constituted a valid acknowledgment of debt within the meaning of section 19 of the Limitation Act.

Shearman v. *Fleming* (1) distinguished.

APPEAL by Prasanna Kumar Roy, the plaintiff. This appeal arises out of a suit for the enforcement of a mortgage-bond dated the 4th June 1892; as the suit was instituted on the 4th June 1919, the defendants pleaded limitation, the plaintiff relied upon an acknowledgment of the debt made by an endorsement on the back of the bond in May 1906 in the following terms "paid on account of the principal as per separate accounts Rs. 1,751 only." The Subordinate Judge held that the endorsement did not constitute a valid acknowledgment and dismissed the suit as barred by limitation, the plaintiff appealed to this Court.

Sir E. C. Mitter, Dr. Sarat Chandra Basak, Babu Chandra Sekhar Sen, Babu Probhat Chandra Dutt,

* Appeal from Original Decree, No. 256 of 1919, against the decree of Jagadish Chandra Goswami, Subordinate Judge of Chittagong, dated May 31, 1919.

(1) (1870) 5 B. L. R. 619.

and *Babu Rama Prasad Mookerjee*, for the appellant. The endorsement on the back of the bond is to the effect that the payment is made on account of the principal, there is no ambiguity and there is an acknowledgment of the outstanding debt. *Jaganadha Sahu* v. *Rama Sahu* (1), *T. Ramakrishna Chetty* v. *G. Venkata Subbiah Chetty* (2), *Maniram* v. *Seth Rup Chand* (3), *Pamulapati Venkatakrisniah* v. *Kondamudi Subbarayudu* (4), *Reguna Nagendran Chetty* v. *Kuppusami Aiyen* (5).

Babu Bipin Behari Ghose, *Babu Probodh Kumar Das*, *Babu Paresh Chandra Sen*, *Babu Nripendra Nath Das* and *Babu Surendra Nath Bose*, for the respondents. The endorsement does not amount to an acknowledgment of liability; "on account of principal" may mean that interest was given up and the entire amount of principal remaining due was paid, the acknowledgment of liability must be in clear terms and one is not entitled to bring a case under section 19 by implication: *Madharav* v. *Gulabbhai*(6), *Shearman* v. *Fleming* (7), referred to.

MOOKERJEE J. This is an appeal by the plaintiff in a suit to enforce a mortgage security executed on the 4th June 1892 by three persons whose representatives are the defendants in the action. The sum advanced was Rs. 5,700 and carried interest at the rate of Rs. 14 per mensem. The loan was repayable in two years. The present suit was instituted on the 4th June 1919, and consequently the question of limitation arose for consideration. The plaintiff relied

(1) (1914) 27 Ind. Cas. 747 17 M. L. T. 80.
(2) (1914) 28 Ind. Cas. 15; 17 M. L. J. 139.
(3) (1906) I. L. R. 33 Calc. 1047.
(4) (1916) I. L. R. 40 Mad. 698.
(5) (1916) 36 Ind. Cas. 593.
(6) (1898) I. L. R. 23 Bom. 177.
(7) (1870) 5 B. L. R. 619

1921

PRASANNA KUMAR ROY v. NIRANJAN ROY.

MOOKERJEE J.

upon section 19 of the Indian Limitation Act and based his contention on an endorsement in the following terms, made on the back of the mortgage bond on the 27th May 1906 by two of the mortgagors and the representatives of the third mortgagor: "Paid "on account of the principal as per separate accounts, "rupees one thousand seven hundred fifty-one "only." The Subordinate Judge has held that this did not constitute a valid acknowledgment within the meaning of section 19 and that the suit is accordingly barred by limitation. On the present appeal, we have been invited to consider one question only, namely, whether the suit is or is not barred by limitation.

Section 19 provides that where before the expiration of the period prescribed for a suit or application in respect of any property or right an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by some persons through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. The question for determination is, whether the endorsement constitutes an acknowledgment of the right claimed by the plaintiff, namely, the right to recover his dues under the mortgage-bond. In the Court below reliance was placed on behalf of the defendants upon the decision in *Shearman* v. *Fleming* (1) and in this Court the argument has been fortified by a reference to the decision in *Madharav* v. *Gulabbhai* (2). On behalf of the plaintiffs, on the other hand, reference has been made to the decision of the Madras High Court

(1) (1870) 5 B. L. R. 619.

(2) (1898) I. L. R. 23 Bom. 177.

in *Jaganadha Sahu* v. *Rama Sahu* (1) which follows the earlier decision in *Visvanatha* v. *Sri Ram Chandra* (2) based on the decision of the Judicial Committee in *Maniram Seth* v. *Seth Rupchand* (3). Reference has also been made to three later decisions of the Madras High Court in *Ramakrishna* v. *Venkata Subbiah* (4), *Pamulapati Venkata Krishniah* v. *Kondamudi Subbarayudu* (5) and *Regina Nagendra Chetty* v. *Kuppusami Aiyen* (6). Whether a particular endorsement does or does not constitute an acknowledgment of the right claimed by the plaintiff must obviously depend upon its terms, and no useful purpose can be served by a meticulous examination of other endorsements made under different circumstances and expressed in different phraseology. We may point out, however, that the decision in *Shearman* v. *Fleming* (7) is plainly of no assistance to the defendants, because the terms of the endorsement in that case namely, "a remittance to old accounts" do not imply that when credit had been allowed for the sum remitted, any sum would remain due from the remitter. It may also be pointed out that the decision in *Madharav* v. *Gulabbhai* (8) merely shows that a promise to pay, unaccompanied by an acknowledgment of the existence of a debt, cannot save limitation. The endorsement which we are called upon to consider is, in our opinion, sufficiently plain and admits of one interpretation only. No doubt it does not specify the principal sum due at the time of the endorsement; but, the expression "the principal" must be taken to refer to

(1) (1914) 17 M. L. T. 80.
(2) (1914) 17 M. L. T. 78
(3) (1906) I. L. R. 33 Calc. 1047.
(4) (1914) 17 M. L. J. 139.
(5) (1916) I. L. R. 40 Mad. 698; 2 M. W. N. 256.
(6) (1916) 4 Mad. L. W. 148.
(7) (1870) 5 B. L. R. 619.
(8) (1898) I. L. R. 23 Bom. 177.

1921

PRASANNA KUMAR ROY v. NIRANJAN ROY.

MOOKERJEE J.

the principal mentioned in the bond on the back whereof the endorsement was made. An examination of the bond then shows that the principal advanced was Rs. 5,700. Consequently, a payment of Rs. 1,751 on account of that principal cannot be taken to wipe out the liability and there was thus an acknowledgment of the right of the mortgagee to recover whatever balance might be found to be due. In this connection reference may usefully be made to a passage from the judgment of the Judicial Committee in *Maniram* v. *Seth Rup Chand* (1). "In a case of very great weight, the authority of which has never been called in question, Mellish L. J. laid it down that an acknowledgment to take the case out of the statute of limitation must be either one from which an absolute promise to pay can be inferred, or *secondly*, an unconditional promise to pay the specific debt, or, *thirdly*, there must be a conditional promise to pay the debt and evidence that the condition has been performed." Then follows the important observation: "An unconditional promise has always been held to imply a promise to pay, because that is the natural inference, if nothing is said to the contrary. It is what every honest man would mean to do." We feel no doubt whatever that the endorsement relied upon by the plaintiff in the present case constitutes an acknowledgment within the meaning of section 19 and that consequently the claim is not barred by limitation.

The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and the case remitted to him for trial of such other questions as may be in controversy between the parties. The plaintiff is entitled to his costs in this Court as also one-half of the costs (other than Court-fees) already

(1) (1906) I. L. R. 33 Calc. 1047.

1921

PRASANNA KUMAR ROY v. NIRANJAN ROY.

incurred in the Court below. The costs of the trial after remand will be in the discretion of the Subordinate Judge.

The appellant will be entitled to a refund of the Court-fees paid on the memorandum of appeal under section 13 of the Court-fees Act.

BUCKLAND J. I agree.

A. S. M. A. *Appeal allowed; case remanded.*

APPELLATE CIVIL.

Before Mookerjee and Buckland JJ.

1921

Feb 10.

CHANDRA KUMAR CHAKRAVARTI

v.

PRASANNA KUMAR CHAKRAVARTI.*

Probate—Accounts—Probate and Administration Act (V of 1881), s. 50, clause 5 of the explanation and s. 98, sub-s. (1)—Liability to submit accounts, if periodical—Incorrect accounts for period antecedent to the final grant of probate, if just cause for revoking the probate.

The statute contemplates the submission of one account only and the executors are under no liability to submit accounts periodically.

Untrue accounts submitted for the period antecedent to the final grant of probate is not a just cause for revoking the probate under clause 5 of the explanation to s. 50 of the Probate and Administration Act.

APPEAL by Chandra Kumar Chakravarti and another, the petitioners.

This appeal arose out of an application for revocation of probate of a will. One Tarini Charan Chakravarti died in 1909 after making a testamentary disposition of his properties. The opposite parties

* Appeal from Original Decree, No. 239 of 1919, against the decree of W. A. Seaton, District Judge of Chittagong, dated Aug. 20, 1919.