ORIGINAL CIVIL.

Before Buckland J.

1932

Nov. 24.

SATYAKETU DATTA

v.

RAMESHCHANDRA SEN.*

Limitation—Promise to pay barred debt, if may be inferred from acknowledgment in writing—Indian Contract Act (IX of 1872), s 25(3)—Indian Limitation Act (IX of 1908), s 19.

A promise to pay a time-barred debt, sufficient to satisfy section 25, sub-section (3) of the Indian Contract Act must be express and may not be inferred from a mere acknowledgment.

Spencer v. *Hemmerde* (1), *Ganga Prasad* v. *Ram Dayal* (2), *Gobind Das* v. *Sarju Das* (3) and *Maganlal Harjibhai* v. *Amichand Gulabji* (4) considered.

If a promise to pay a barred debt cannot be inferred from an acknowledgment, the precise effect of the language used becomes important.

ORIGINAL SUIT.

The facts of the case are sufficiently set out in the judgment and arguments of counsel have been fully dealt with therein.

Pugh and *Sambhu Banerji* for the plaintiff.

H. D. Bose, A. N. Chaudhuri and *S. R. Das* for the defendant.

BUCKLAND J. This is a suit to recover the sum of Rs. 6,895 for principal and interest upon a time-barred promissory note. On the 22nd June, 1927, the plaintiff lent Rs. 5,000 to the defendant, who, by his promissory note in the usual form, promised to pay that sum with interest at 9 per cent. per annum to one S. C. Datta, the plaintiff's brother, who endorsed the note over to the plaintiff. On the 10th January, 1931, after the promissory note had become

* Original Suit No. 2078 of 1931.

(1) [1922] 2 A. C. 507.
(2) (1901) I. L. R. 23 All. 502.
(3) (1908) I. L. R. 30 All. 268.
(4) (1928) I. L. R. 52 Bom. 521.

time-barred, the defendant wrote to the plaintiff a letter in the following terms :—

My dear Ketu,

I have been expecting you for some time.

I am quite willing to renew the note. Come and see me with it either to-morrow evening or on Monday. Phone me beforehand.

Yours sincerely,

(Sd.) R. C. Sen.

The only question that arises in this case is whether the suit is barred by limitation. To determine this, it has to be considered, not whether this letter is an acknowledgment in writing within the meaning of section 19 of the Limitation Act, for such an acknowledgment must be made before the expiration of the period of time prescribed for a suit, but whether, as has been submitted on behalf of the plaintiff, there was a promise to pay the debt, made without consideration, but nevertheless valid, by virtue of section 25, sub-section (*3*) of the Indian Contract Act. By that section, it is provided that an agreement made without consideration is void, unless it is a promise made in writing and signed by the person to be charged therewith to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. Mr. Pugh on behalf of the plaintiff has drawn my attention to *Spencer* v. *Hemmerde* (1), where the English law on the subject of acknowledgments, sufficient to take a case out of the statute of limitations, was discussed at length. For reasons, which will appear, it suffices to say with the utmost brevity that the rule applied in that case is: "If there is an "acknowledgment in writing which satisfies the Act "(9 Geo. 4, c. 14) there arises by implication "of law a promise by the debtor to pay the "debt." (Per Lord Wrenbury at page 537.) Such acknowledgment may be made either before or after the debt has become time-barred and, consequently,

(1) [1922] 2 A.C. 507, 537.

1932

Satyakelu Datta v. *Rameshchandra Sen.*

Buckland J.

though it may be that the authority cited would be of assistance in considering the sufficiency of an acknowledgment under section 19, different considerations arise in determining whether or not there was a promise within the meaning of section 25 (*3*) of the Indian Contract Act.

I have been referred to the decisions of other Indian High Courts for the purpose of establishing the proposition that no such promise may be inferred from a mere acknowledgment, a point on which I am informed there is no reported decision by this Court. In *Ganga Prasad* v. *Ram Dayal* (1), the learned Judges observed with reference to cases cited in their judgment,—

> Thus it seems that there is a consensus of opinion that a mere acknowledgment does not amount to a new contract. In all these cases the question for decision was really one of limitation; but if an acknowledgment does not amount to a new contract for the purpose of giving a fresh period of limitation, it does not amount to a contract which can be sued upon. No doubt, as pointed out in the Bombay case, in England an acknowledgment, if unconditional, is held to be sufficient evidence of a new contract which can be sued upon, but there no difficulty arises with reference to the law of limitation, because an unconditional acknowledgment takes the case out of the statute of limitation, whether it is made before or after the period of limitation expires. In India it is otherwise. An acknowledgment in writing signed by a debtor provides a fresh period of limitation, only if it is made before the period of limitation expires. After the period expires, nothing short of a fresh contract will revive the debt and provide a fresh period of limitation.

In *Gobind Das* v. *Sarju Das* (2), the learned Judges, referring to an expression in a judgment of their Lordships of the Privy Council, observed,—

> If we were to give to this passage the wide meaning contended for and hold that whenever there is a clear acknowledgment of a debt, whether time-barred or not, that is equivalent to a promise, upon which a suit may be maintained, the result would be that the effect of the opening words of section 19 would be nullified. That section renders it necessary that the acknowledgment referred to therein must be made before the expiration of the period prescribed for the suit. .... Under section 25, sub-section (*3*) of the Indian Contract Act, a promise made in writing and signed by a person to be charged therewith to pay a barred debt is a good consideration, but there must be a distinct promise and not a mere acknowledgment.

(1) (1901) I. L. R. 23 All. 502, 504. (2) (1908) I. L. R. 30 All. 268, 270.

The only other case cited upon the point is *Maganlal Harjibhai* v. *Amichand Gulabji* (1), where Patkar J. observed,—

> If there is an express promise to pay, made in writing and signed by the person to be charged therewith to pay a time-barred debt, it may be made the basis of a suit, but we think that an implied promise to pay, to be inferred from an acknowledgment which contains no express promise to pay a time-barred debt, cannot be made the basis of a suit.

If that passage correctly expresses the law in this country, application of the principles of English law is excluded. In considering the question, independently of the authorities, I must confess to difficulty in appreciating why, if a promise to pay may be inferred from an acknowledgment according to the principles of English law, a promise sufficient to satisfy section 25 (*3*), which does not in terms state that the promise should be express, may not equally well be inferred from an acknowledgment. In cases of acknowledgments under 9 Geo. 4, c. 14 and section 19 of the Indian Limitation Act and under section 25 (*3*), a writing signed by the debtor is an essential requirement and furnishes no ground for making a distinction. I agree, however, that to adopt such a rule would be to ignore the opening words of section 19 and would, apart from the terms of the first explanation to section 19, bring all cases within the scope of section 25 (*3*), which cannot have been the intention of the legislature. The point is one of very great interest and had it not been for the decisions of the other High Courts I should have been disposed to take the view, as stated by Sir Frederick Pollock in his well-known work (Indian Contract Act, 5th Edition, 197), that section 25 (*3*) reproduces modern English law, and that the English rule should be applied. But sitting singly as a Judge of first instance, though I am not bound by such decisions, I should not feel justified in preferring such a view to one which is so amply supported by authority.

There is a further point to be considered. The section requires that there should be a promise to

(1) (1928) I. L. R. 52 Bom. 521, 527.

1932

Satyaketu Dutta v. *Ramesh-chandra Sen.*

Buckland J.

pay the debt made by the person to be charged. If such a promise cannot be inferred from an acknowledgment, the precise effect of the language used becomes important and the question arises whether the letter of the 10th January, 1931, expresses a promise on the part of the defendant to pay the debt. The words relied upon are the words "I am quite "willing to renew the note." I will assume that the words "I am quite willing" are words of promise. But what does he then say? He promises to execute another document which will give the plaintiff the right to claim payment by him. This, in my judgment, cannot be held to be a promise to pay the debt, which is what the section requires, and, therefore, there was no contract within the meaning of section 25 and the suit must fail, and will be dismissed with costs on scale No. 2.

Suit dismissed.

Attorneys for plaintiff: *N. C. Bose & Co.*

Attorneys for defendant: *Dutt & Sen.*

S. M.