

previous decisions had not been carried too far; and the gift was allowed to stand with respect to persons alive and capable of taking at the date of the gift, but was set aside with regard to persons unborn at the date of the gift.

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The principles of Muhammadan Law which prohibit indefinite gifts and gifts *in futuro* appear to us equally to exclude the validity of such gifts to take effect at an indefinite future time. The rules referred to would seem to indicate that Muhammadan Law tends to correspond more closely with Hindu than with English Law in its principles. We dismiss this Second Appeal but without costs, as in the Court below, the point being a novel one, and by no means free from difficulty.

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## APPELLATE CIVIL.

*Before Mr. Justice Kernan and Mr. Justice Brandt.*

LA'KSHMAYYA (PLAINTIFF), APPELLANT,  
and  
JAGANNATHAM AND OTHERS (DEFENDANTS),  
RESPONDENTS.\*

1887.  
February 18.  
March 9.

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*Limitation Act—Act XV of 1877, Sch. II, Art. 85—Mutual current accounts—  
Reciprocal demands.*

A employed B as his agent. B alone kept written debit and credit accounts. A sued B for a balance due on the account between them :

*Held*, that the debit and credit account showed reciprocal demands between plaintiff and defendants, and that the account was a mutual open and current account within the meaning of Limitation Act, 1877, Schedule II, Art. 85.

THIS was an appeal against the decree of H. LeFanu, District Judge of Kistna, in appeal suit No. 199 of 1884, modifying the decree of Subba Rao, District Munsif of Masulipatam, in original suit No. 631 of 1883.

Defendant No. 1 (the other defendants being undivided members of his family) worked certain harbour boats belonging

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\* S.A. 472 of 1886.

LAKSHMAYYA to the plaintiff on commission, and was authorized to pay money  
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 JAGANNATHAM on the plaintiff's account for the expenses of working the boats,  
 &c. Debit and credit accounts were rendered to the plaintiff on  
 31st December 1879, which showed a balance in the defendants'  
 favour of Rs. 17-1-3. This item was brought into account ren-  
 dered on 30th March 1880 and formed part of a balance in the  
 defendants' favour of Rs. 45-3-6, which was again brought into  
 accounts rendered on the 7th July 1880, showing a balance in  
 defendants' favour of Rs. 179-11-4. The defendants left off work-  
 ing the plaintiff's boats in April 1880. On the 14th March 1881,  
 defendant No. 1 sent signed copies of the accounts of 30th March  
 1880 and 7th July 1880 (Exhibit A) to the plaintiff together with  
 a letter demanding payment of the balance (Exhibit B).

The plaintiff sued to recover a balance alleged to be due to  
 him on the boat accounts. The plaint was filed on the 6th July  
 1883, and (as amended) stated that the cause of action arose on  
 the 14th March 1881, the date of Exhibit B which was relied on  
 as an acknowledgment within the meaning of s. 19 of the Limi-  
 tation Act.

The lower Courts held that the plaintiff's claim was barred by  
 limitation.

The arguments employed in this second appeal appear suffi-  
 ciently for the purpose of this report from the judgment of the  
 Court (Kernan and Brandt, JJ).

*Rámá Ráu* for appellant.

*Anandacharlu* for respondent No. 1.

JUDGMENT.—The plaintiff, under a kararnamah, dated the 10th  
 of January 1879, entrusted the defendant with the working of his  
 boats, and authorised the defendant to receive the moneys payable  
 by people using the boats, and to pay on his account money for  
 expenses incurred in and for the working of the boats. The defen-  
 dant was entitled to receive commission for his work. The defen-  
 dant worked the plaintiff's boats from about the 10th January 1879  
 to April 1880. The defendant kept the accounts of receipts and  
 payments in respect of the boats and in respect of moneys paid to  
 the plaintiff, and of moneys paid at his request to other parties  
 and in respect of moneys due on other accounts settled between  
 the plaintiff and the defendant and for commission due to the  
 defendant. An account was furnished to the plaintiff by the

defendant up to 31st December 1879, which showed a balance of Rs. 17-1-3 due by the plaintiff to the defendant. That item is brought into another account furnished by the defendant to the plaintiff up to the end of March 1880; and the latter account showed a balance due by the defendant to the plaintiff of Rs. 45-3-6, which sum is the first item in the last account furnished by the defendant to the plaintiff down to and including a debit to the plaintiff on the 7th July 1880. This last account after crediting the plaintiff with all receipts by the defendant therein specified, and debiting the plaintiff with various payments as above mentioned, and with a charge for Rs. 200 for discontinuing the defendant in the business, showed an alleged balance of Rs. 179-11-4 due to the defendant.

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The plaint was filed on the 6th July 1883. The cause of action was originally stated in the plaint to have arisen on the 7th July 1880, but the plaint was amended stating that the cause of action arose on the 14th of March 1881, the date of Exhibit B. The defendant pleaded that plaintiff's claim was barred by limitation. At the trial it appeared that the plaintiff, in April 1880, ceased to allow the defendant to work the boats, and that in Exhibit B, a letter of the defendant to the plaintiff, dated 14th March 1881, the defendant says he sent in April 1880, when the plaintiff took the boats, an account to the end of March 1880 and an account to the 7th of July 1880, and that he sent two duplicate accounts signed by the defendant, and he says, "with regard to them you owe us Rs. 179-11-4." The defendant then calls on the plaintiff to pay that sum and interest within one week, and threatens that otherwise the defendant will sue the plaintiff in a Civil Court. The duplicate accounts referred to in that letter are mutual open current accounts within s. 85 of the Limitation Act of 1877, and the Courts below were in error in holding the plaintiff's suit barred by limitation.

The accounts are not accounts containing only one side of the account, but they contain items of debit and credit to both parties on mutual credit, and the account between them was open and current. The case of *Catling v. Skoulding*(1) is probably the first reported case in which the case of mutual accounts, not being merchant's accounts was discussed. In that case another case of

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(1) 6 Term. Reports, 189.

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*Cotes v. Harris* was referred to in which the account was all on one side; and Lord Kenyon says, in such case "the last item within the limitation in the account would not draw after it those of longer standing, but it was not doubted that if there had been mutual demands the plaintiff might have recovered." Other cases on the subject of mutual accounts are collected in the notes to *Webber v. Tivill.*(1)

There were here reciprocal demands between the plaintiff and the defendant apparent on the accounts, viz., the money received by the defendant for the earnings of the boat formed to that extent the plaintiff's demand, and the payment by the defendant at the plaintiff's request to other parties and the payment to the plaintiff and payments for the expenses of working the boats and the commission due to him to that extent formed the defendant's demand against the plaintiff. In order that an account shall be deemed to be a mutual account, it is not necessary that parties shall have each kept accounts in writing. It is enough if the dealing amounted to mutual debits and credits on both sides, and if the account is kept in writing, it is enough if one of the parties keeps it so. In *Khushalo v. Behari Lal*,(2) art. 85, schedule II of the Limitation Act, was held to apply to an account of debits and credits kept by a banker. In *Nárrandás Hemráj v. Vissandas Hemráj*(3) it was held that when the course of business has been of such a nature as to give rise to reciprocal demands between the parties art. 85 would apply: *Watson v. Aga Mehedee Sherazee*.(4)

It is not necessary to consider the question raised, whether the defendant's letter of the 14th of March 1881 was an acknowledgment within s. 19 of the Limitation Act, or whether it could be received in evidence without being stamped.

The suit must for the above reasons be remanded for retrial on the merits. Costs of the appeal to be provided for in the revised decree.

(1) 2 Saunders, 127.

(2) I.L.R., 3 All., 523.

(3) I.L.R., 6 Bom., 134.

(4) L.R., 1 I.A., 346.