APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1892.
Oct. 5, 25.

VENKATA (DEFENDANT No. 1), APPELLANT.

v.

PARTHASARADHI (PLAINTIFF), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 19—Acknowledgment in writing—Deposition signed by a witness.

In a suit brought in 1890 to recover the principal and interest due on a bond, dated 1st September 1879, which provided for the repayment of the debt secured thereby within six months from the date of its execution, it appeared that the obligor had made a part payment of Rs. 50 on the 24th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party:

Held, that an acknowledgment in order to satisfy the requirements of Limitation Act, s. 19, must be an acknowledgment of the debt as such and must involve an admission of a subsisting relation of debtor and creditor, and an intention to continue it until it is lawfully determined must also be evident.

Semble per Muttusami Ayyar, J. (*Wilkinson*, J., dissenting), that a deposition given and signed by a party as a witness in a suit is as much a writing contemplated by section 19, as is his written statement or a letter addressed by him to a third party.

APPEAL against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in original suit No. 16 of 1890.

Suit to recover principal and interest due upon a bond, dated 1st September 1879, and payable with interest in six months from that date.

The plaint was filed on 2nd April 1890. The plaintiff alleged in bar of limitation that the debt had been kept alive by acknowledgments contained in a deposition signed by the defendant and in other documents described in the following judgments of the High Court. The Acting District Judge held the suit was not barred and he passed a decree for plaintiff.

Defendant preferred this appeal.

Seshagiri Ayyar for appellant.

Rama Rau and *Krishnamachariar* for respondent.

* Appeal No. 172 of 1891.

MUTTUSAMI AYYAR, J.—The main question arising for decision in this appeal is as to limitation. The suit is one brought to recover a debt alleged to be due upon a bond, dated the 1st September 1879. The document provided for repayment of the debt within six months from the date of its execution, and on the 24th July 1882 the appellant paid Rs. 50 in part and endorsed the payment on the bond. The suit was, however, not brought till the 2nd April 1890, and it would clearly be barred unless the debt was acknowledged to be a subsisting debt within intervals of three years between the 24th July 1882 and the 2nd April 1890. The respondent's case was that exhibits C, D and E contained together three such acknowledgments, but for the appellant it was contended that they were not sufficient to satisfy the requirements of section 19 of Act XV of 1877. The Judge overruled the appellant's contention and decreed the claim, but it is urged before us that the decision of the Judge is bad in law.

Section 19 of Act XV of 1877 is in these terms : " If, before " the expiration of the period prescribed for a suit 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 person through whom he derives title or liability, a new " period of limitation, according to the nature of the original " liability, shall be computed from the time when the acknowledg- " ment was so signed." Explanation I states that for the purpose of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the right, or avers that the time for payment has not arrived, or is accompanied by a refusal to pay or coupled with a claim to a set off or is addressed to a person other than the person entitled to the debt. Exhibit C is copy of a deposition given by the appellant in original suit No. 937 of 1884 on the file of the District Munsif of Nellore and exhibits D and E are copies of his written statement and deposition in original suit No. 121 of 1887 on the file of the same Court. In connection with the language of section 19, two points arise for consideration, viz., (1) whether the expression " writing signed " by the party " includes a deposition signed by him and (2) whether the debt now sued for was acknowledged in those exhibits as a subsisting debt which it was the appellant's intention to pay, adjust or satisfy. On the first point, I am of opinion that a

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deposition given and signed by a party as a witness in a suit is as much a writing contemplated by section 19 as is his written statement or a letter addressed by him to a third party. The form of the instrument appears to me immaterial, provided that it is signed by the party concerned. The intention is merely to exclude oral evidence of the contents of the acknowledgment, and to declare that an oral admission of a debt without a new contract or consideration is not sufficient to prevent the operation of the Act of Limitation. It is true that a deposition contains a statement made under compulsion of law and recorded by a Court of Justice, but it is not on that ground the less a record of his voluntary acknowledgment, provided it is signed by him and contains a definite admission that the debt in question is a subsisting debt which it is his intention to satisfy. As in 9 Geo. IV, Cap. 14, s. 1, the object was to render an acknowledgment by mere words only ineffectual for the purpose of saving the statute, but not to prescribe a special form of writing. In *Daia Chand* v. *Sarfraz* (1), the record of rights prepared at a settlement and signed by a mortgagee was considered to contain a sufficient acknowledgment.

As regards the second point, the acknowledgment must be such as will lead the Court to infer an intention on the part of the writer to pay or satisfy the debt. "The rule" in England, says Lord Justice Cotton in *Green* v. *Humphreys*(2), "seems to be this, that "if there is an absolute, unconditional acknowledgment, not con-"trolled by any other language in the letter, then the Court comes "to the conclusion that by that acknowledgment the party intends a "promise to pay that which he acknowledges to be due. . . . What "I think we must find from the writing is not merely an acknow-"ledgment of such a state of circumstances as will throw a duty "upon the writer to pay, but words of such a character that you "may reasonably infer from the words a promise to pay. It may "be put in this way, that on a fair construction of the language "there must be an acknowledgment of the claim as one which is to "be paid by the writer." Though under explanation I appended to section 19, the acknowledgment may be accompanied by a refusal to pay or coupled with a claim of set off, yet it must be an acknowledgment of debt *qua* debt. Adverting to section 4 of Act

(1) I.L.R., 1 All., 117. (2) 26 Ch. D., 478.

XIV of 1859, this Court observed in *Kristna Row* v. *Hachapa Sugapa*(1) that the section requires the greater certainty of a written acknowledgment, but no particular form of words. It does not render it necessary that the writing should, in express terms, contain a direct admission that the debt or part thereof is due and it is left for the Court to decide in each case whether the writing, reasonably construed, contains a sufficient admission that the debt or part of it is due. Again in *Young* v. *Mangala Pilly Ramaiya*(2), this Court pointing out a distinction between the result of the decisions in England and the language of Act XIV of 1859 observed as follows : " The admission will not " be inoperative, because accompanied with expressions which " prevent the inference of a promise to pay on request ; the Act " does not give a new action upon the new promise, but by virtue " of the admission extends the period of limitation upon the old " promise and to have this effect, however, there must be a distinct " admission of a debt." It is therefore necessary that upon a reasonable construction of the language used by the debtor in writing the relation of debtor and creditor must appear to be distinctly admitted, that it must be admitted also to be a subsisting jural relation, and that an intention to continue it until it is lawfully determined must also be evident.

Before proceeding to examine whether exhibits C, D and E contain an acknowledgment clear and unambiguous in the sense indicated above, I shall refer to the circumstances in which those exhibits were given or filed. The bond sued upon was executed in favour of the respondent's brother Ragava Chari, who died on the 11th January 1884, leaving him surviving a widow named Amirthammal and a brother named Parthasaradhi Ayyangar who is respondent—plaintiff in this case. On the obligee's death, a disagreement arose between the survivors as to the right of succession to Ragava Chari's property, and Amirthammal had then a brother named Narrainasami and a paternal uncle named Bhashika Charlu, who was at that time Sheristadar in the District of Nellore. These two gentlemen took the side of Amirthammal and resorted to two devices for the purpose of frustrating the brother's claim so far as it related to the debt sued for. The first consisted in taking a fresh document from the appellant on the 22nd February 1884 in

(1) 2 M.H.C.R., 310. (2) 3 M.H.C.R., 308.

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the name of Narrainasami for Rs. 2,000 describing the debt falsely as one due upon a bond executed in favour of Bhashika Charlu. The intention was to represent the debt due to Ragava Charlu as a debt due to Bhashika Charlu, and thereby to enable the widow to exclude it from the list of debts due to her husband, for the collection of which she applied for a certificate on the following day under Act XXVII of 1860. The second device consisted in obtaining an agreement on the 3rd August 1884, whereby one Pattabi Rama Reddi and his sons undertook to pay on account of the appellant Rs. 2,000 to Bhashika Charlu in satisfaction of the debt sued for. Neither of those documents is now produced, but each was made the basis of a civil suit which failed. Amirthammal instituted original suit No. 937 of 1884 against Pattabi Rama Reddi and his sons upon the agreement taken by her uncle Bashika Charlu on her behalf in August 1884, and Pattabi Rama Reddi contended that that agreement was not completed. The appellant was not made a party to that suit, but was examined as a witness, and exhibit C is a copy of the deposition given and signed by him on the 14th July 1885. The defence set up by Pattabi Rama Reddi was upheld and the suit was dismissed. In 1887 Amirthammal's brother Narrainasami brought original suit No. 121 of 1887 upon the bond executed in his name on the 28th February 1884 against the appellant, his defence *inter alia* was that the plaintiff was not entitled to recover and the suit was dismissed on the ground that Narrainasami was a mere name-lender. In this suit, however, the appellant filed a written statement on the 4th April 1887 and gave a deposition as a witness on 21st February 1888 (exhibits D and E).

The first passage in exhibit C to which the respondent's pleader draws our attention is this: "I owed a female named Tirumala "Pitchamma. That lady had been indebted very much to others. "She desired that for the debt due by me an assignment "bond should be written in the name of Ragava Charlu and given "to her. I accordingly wrote a document for Rs. 1,600 and "handed it over to Pitchamma. The said Ragava Charlu did not "speak to me in regard to this matter. I did not at all see "Ragava Charlu." This passage discloses no distinct admission that any debt was due to Ragava Charlu even when the document now sued for was executed, but ignores, on the other hand, its delivery to Ragava Charlu or his connection therewith. The

appellant next referred in exhibit C to two sums of Rs. 440 and Rs. 400 being due to him by Pitchamma, and this is not consistent with an intention to acknowledge any debt as due to Ragava Charlu, but implies, on the contrary, a desire to dispute the competency of Pitchamma to make over the document to Ragava Charlu. The next passage relied upon on respondent's behalf is as follows: "After Ragava Charlu's death, his junior paternal "uncle's son gave me notice for his debt thinking that I owed "him. At 9 o'clock on the night of the 28th February of "that year Bhashika Charlu got a document for Rs. 2,000 "executed by me for the said document for Rs. 1,600 in the "name of Narrainasami in the house opposite to that in which "Bashika Charlu resided. Pitchamma was not present that day. "Bashika Charlu agreed that after that lady came he would settle "the dispute existing between me and her and return to me "the document for Rs. 1,600. . . . . When the said "document was executed it was said that Ragava Charlu's wife "had to put in an application next day for a certificate to collect "the debts due to him, that if a separate document was executed "for the said debt of Rs. 1,600, there would be no necessity for "including it in the list of debts to be filed with her application, "and that if it was included in that list her claim might be "questioned by others. Narrainasami caused it to be written that "the document for Rs. 2,000 was due in respect of dealings "with Bhashika Charlu. Certain lands were mortgaged by the "instrument. It was not registered. The dealings between me "and Pitchamma were not settled. I and that lady are not on "speaking terms. Though Bhashika Charlu said he would settle "he did not do so." Neither does this passage show that the appellant acknowledged that any due was due by him to Ragava Charlu. He distinctly states that he executed the document for Rs. 2,000 in favour of Narrainasami to aid Bashika Charlu in thwarting her rival claimant and misdescribed the debt as one due to Bhashika Charlu, and adds that it was executed on the assurance by Bhashika Charlu, that he would settle the account between him and Pitchamma, that the dispute between them was not settled, and that the document which was compulsorily registrable was not registered.

The last passage in exhibit C on which reliance is placed relates to the alleged undertaking by Pattabi Rama Reddi and

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sons to pay Rs. 2,000 on account of this debt. In this again the appellant stated that Pattabi Rama Reddi's undertaking was contingent on the appellant and his brothers executing him a document, then they were willing to give such document only on a certain share in a salt factory being conveyed to them in writing, and that no such share was conveyed. In the whole of exhibit C there is no unqualified and unequivocal admission that the debt was due to Ragava Charlu's widow. On the other hand, it discloses an attempt to repel the inference that the appellant owed money to him and to explain away the apparent effect of the bond being in the name of Ragava Charlu, of the endorsement of part payment by appellant and of the execution of fresh documents by which it was intended to be superseded and satisfied. If the explanation is rejected as false and worthless, a state of circumstances might, no doubt, be disclosed which would throw a duty on the appellant to pay the debt, but the acknowledgment must be a matter of inference from the debtor's statements, which must be taken as they appear whatever may be our impression as to their truth. Adverting to a similar state of facts Blackburn, J., said in *Morgan* v. *Rowlands*(1) that "the promise to pay must be inferred in fact "and not merely implied by law." It was also pointed out in *Young* v. *Mangala Pilly Ramaiya*(2) that an assertion that a sum of money will be payable on the accomplishment of a condition, that is, on the happening of an event future and uncertain is not an acknowledgment of a debt, but the allegation of incidents out of which a debt may sometime arise, whilst an admission of a debt coupled with the averments that it is not yet payable in point of time may be an acknowledgment of a debt.

Passing on to exhibits D and E, the appellant admitted in the former that he executed the document then sued on in favour of Narrainasami in renewal of the one now sued upon, that the latter instrument was not then cancelled and that Ragava Charlu's widow having died, the present respondent was the heir to his property. In exhibit E also the appellant said, "It is only for "this bond (the bond now in suit) I executed this document "(then in suit) and that I myself wrote the endorsement regarding "the part payment." These statements disclose an admission that the bond in favour of Narrainasami was given in lieu of the

(1) L.R., 7 Q.B., 493. (2) 3 M.H.C.R., 308.

bond now sued upon and that he endorsed the part payment upon it. The natural inference is that the original document was superseded and that the new document was the only one alleged to be in force. Assuming that the repudiation of Narrainasami's right to recover upon the new document as a mere name-lender affords ground for the inference that the debt due to Ragava Charlu was intended to be treated by the appellant as a subsisting debt due to his heir, still the suit would be barred unless exhibit C also contained a sufficient acknowledgment, which I think it does not.

The result is that the appeal must be allowed, that the decree of the Judge reversed, and that the suit must be dismissed with costs throughout on the ground that exhibit C contains no sufficient acknowledgment of the debt sued for and that it is barred by the Act of Limitations.

WILKINSON, J.—The plaintiff sues to recover money due on a bond executed on 1st September 1879 by the first defendant to Ragava Charlu. The defendant admitted the execution of the bond sued on, but pleaded that the bond was executed collusively, and that the suit is barred. The District Judge found that the bond had been executed for good consideration and that, as the first defendant had on three occasions admitted his liability, the suit was not barred. He accordingly decreed for plaintiff and first defendant appeals. The only question for determination is whether there has been any such acknowledgment of liability on the part of the first defendant as creates a new period of limitation.

The first of such acknowledgments is said to be contained in a deposition made by the first defendant on the 14th July 1885 (exhibit C).

In one sense, no doubt, a deposition is a writing signed by the person making the deposition, but I am not prepared to hold that it is such a writing as was in the contemplation of the Legislature when framing section 19 of the Limitation Act XV of 1877. As remarked by Mr. Justice West (*Dharma Vithal* v. *Govind Sadvalkar*(1)), the intention of the law is to make an admission in writing of an existing jural relation equivalent for the purpose of limitation to a new contract, and for this purpose the consciousness and intention must be as clear as they would be in a contract itself. But such consciousness and intention seem to me to be altogether

(1) I.L.R., 8 Bom., 99.

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wanting when a witness is under examination and cross-examination in the course of a suit, and though the statement is made on solemn affirmation and is read over to and signed by the witness, I do not think it can be said that, in affixing his signature to the deposition, the witness does so with the knowledge that he is admitting his liability in respect of an existing right, and without such knowledge there can be no acknowledgment.

I am also of opinion that there is not in exhibit C a single expression which can rightly be interpreted as containing an express or implied acknowledgment of an existing liability to discharge the bond of 1st September 1879. The first defendant admitted the execution of the bond in favour of Ragava Charlu, but alleged the subsequent execution of another deed which practically superseded exhibit A, as well as other transactions between himself and the widow of Ragava Charlu, which materially altered the relation of the parties. It has been held in *Ram Das* v. *Birjmundun Das*(1) that an acknowledgment of this nature is not a sufficient acknowledgment to create a new period of limitation. In another case (*Mylapore Iyasawmy Vyapoory Moodliar* v. *Yeo Kay*(2)), the Privy Council remark that by the word liability is meant a liability to the person who is seeking to recover or to some person through whom he claims. I do not find in exhibit C any admission of liability to Ragava Charlu or to Ragava Charlu's widow, who had instituted original suit No. 937 of 1884 against one Pattabi Rama Reddy, in the course of which the deposition marked exhibit C was given. The first defendant stated that it was at the request of his creditor Pitchamma that exhibit A was executed and that he had nothing to do with Ragava Charlu, and that when after the death of Ragava Charlu, he, at the request of Bhashika Charlu, executed a fresh bond for Rs. 2,000 in favour of one Narrainasami; he did so on the understanding that Bhashika Charlu would settle the dispute between him and Pitchamma and return the bond for Rs. 1,600. In the suit brought against him by Narrainasami (original suit No. 121 of 1887) on that second bond the first defendant denied all liability to Ragava Charlu. On the ground, therefore, that exhibit C is not such a writing as is contemplated by section 19 of the Limitation Act, and that it contains no acknowledgment that any debt was due to Ragava Charlu or his heirs under the bond

(1) I.L.R., 9 Cal., 616. (2) I.L.R., 14 Cal., 801.

executed on the 1st September 1879, I hold the suit barred and would allow this appeal and, reversing the decree of the District Judge, dismiss the suit with costs throughout.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

JAGANNADHA (PLAINTIFF), PETITIONER,

v.

GOPANNA AND OTHERS (DEFENDANTS), COUNTER-PETITIONERS.*

1892. February 16.

Agency Rules 18 *and* 20—*Agent to the Governor at Vizagapatam.*

The Agent to the Governor at Vizagapatam dismissed an appeal under the Agency Rules, No. 18. The appellant preferred a petition to the High Court against the order of the Agent:

Held, that the High Court had no power to interfere.

PETITION under the Agency Rules,† number XX, praying the High Court to revise the order by W. A. Willock, Acting Agent to the Governor of Fort St. George, in the Vizagapatam District, dated 20th September 1889.

The above order was made in appeal suit No. 7 of 1889, in which the plaintiff appealed against the judgment of H. D. Taylor, Acting Special Assistant to the Agent, in original suit No. 29 of 1888. The order was as follows :

"On perusal of the record of this suit and the petition of "appeal, the Agent sees no reason to doubt the correctness of the "decision of the Lower Court and dismisses the appeal under "Rule 18 of the Agency Rules."

The plaintiff preferred the present petition.

Anandacharlu for petitioner.

Mahadeva Ayyar for counter-petitioners.

JUDGMENT.—The Agent having dismissed the appeal under Rule 18 of the Agency Rules, we have no power to interfere.

* Civil Miscellaneous Petition No. 319 of 1890.

† Rules framed by Government for the guidance of the Governor's Agents in Ganjam and Vizagapatam, respectively, under Act No. XXIV of 1839.