ABDUR RAHIM, J.

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should be understood only to mean that the payment was to be made immediately or forthwith. He relies on *Perumal Ayyan* v. *Alagirisami Bhagavathar*(1) in support of his contention. But the learned Judges there had only to construe the document then before them and they do not lay down any general proposition which can be said to apply to this case. I may mention that in *Nettakaruppa Goundan* v. *Kumarasami Goundan*(2) an unreported case is referred to where the words "on demands" were given the same meaning as "when you require."

Apart from this it seems to me that under article 75 it might well be said that the plaintiff not having thought fit to enforce the proviso in question waived the benefit of it and if this view be correct then time will run only from the date of each fresh default. I however find that in *Hurri Pershad Choudhry* v. *Nasib Singh*(3), which is followed in *Jadab Chandra Bakshi* v. *Bhairab Chandra Chuckerbutty*(4), it is laid down that there can be no waiver within the meaning of the third clause of article 75 save by payment of and acceptance of an overdue instalment. With great deference to the learned Judges I fail to see any reason for such construction. Whether there was waiver or not is a question of fact the proof of which cannot be confined to any particular kind of evidence and it seems to me that when a man abstains to take advantage of a stipulation in his favour that is at least a very strong evidence of waiver. This petition is therefore dismissed with costs.

ORIGINAL CIVIL.

Before Mr. Justice Ayling and Mr. Justice Spencer.

1911. August 17 and 22.

V. ANDIAPPA CHETTY (PLAINTIFF),

v.

P. DEVARAJULU NAIDU'S SON BY HIS NEXT FRIEND ALASINGA NAIDU AND ANOTHER (DEFENDANTS).*

Limitation Act (IX of 1908), sec. 19—Acknowledgment of liability.

The following two letters were sent by first and second defendants respectively to plaintiff's vakil:—

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(1) (1897) I.L.R., 20 Mad., 245. (2) (1899) I.L.R., 22 Mad., 20 at p. 22.
(3) (1894) I.L.R., 21 Calc., 542 at p. 547. (4) (1904) I.L.R., 31 Calc., 297.
* Referred Case No. 13 of 1910.

(1). "SIR, "10*th June*, 1908.

"With reference to your letter of the 2nd instant, I request you to be so "good as to furnish me with a copy of a statement of accounts."

(2). "DEAR SIR, "18*th June*, 1908.

"With reference to your letter of the 2nd instant on behalf of "V. Andiappa Chetty, landing contractor, Madras, I have to inform you that I "wish to examine the accounts as my account does not show such an amount "mentioned in your letter. I therefore request you will please forward the copy "of the account or to instruct your client to send his gumastah with his account "books."

Held, that neither of the letters amounted to an acknowledgment of liability under the Limitation Act, section 19.

CASE stated under section 69, of the Presidency Small Cause Courts Act (XV of 1882), by the Registrar of the Court of Small Causes in Small Cause Suit No. 19117 of 1909.

The facts of this case appear in the judgment.

Mahomad Ibrahim Sahib for the plaintiff.

S. Guruswami Chetti, C. S. Venkatachariar and *M. A. Sriranga-chariar* for respondents.

JUDGMENT.—Two letters marked Exhibits A and B in the Small Cause Suit No. 19117 of 1909 have been referred by the Court of Small Causes, Madras, under section 69 of the Presidency Small Cause Courts Act for our opinion whether they constitute acknowledgments of liability within section 19 of the Limitation Act. The letters run as follows:—

Exhibit A.

"MADRAS, 10*th June*, '08.

"To

"R. V. SESHAGIRI RAO, B.A., B.L.,
High Court Vakil, Madras.

"SIR,

"With reference to your letter, dated 2nd instant, I request you to "be so good as to furnish me with a copy of a statement of accounts."

Exhibit B.

"MADRAS, 18*th June* 1908.

"To

"M.R.Ry. R. V. SESHAGIRI RAO, B.A., B.L.,
High Court Vakil, Madras.

"DEAR SIR,

"With reference to your letter of the 2nd instant on behalf of "V. Andiappa Chetty, landing contractor, Madras, I have to inform you "that I wish to examine the accounts as my account does not show "such an amount mentioned in your letter. I therefore request you

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"will please forward the copy of the account or instruct your client to "send his gumastah with his account books."

The cases cited at the bar and referred to in the judgments of the Judges of the Small Cause Court are *Quincey* v. *Sharpe*(1), *Sitayya* v. *Rangareddi*(2), *Jogeshwar Roy* v. *Raj Narain Mitter*(3) and *Maniram Seth* v. *Seth Rupchand*(4). The circumstances of those cases seem to be all distinguishable from the present but before proceeding to discuss them we may say at once that we agree with the observation of MACLEAN, C.J., in *Jogeshwar Roy* v. *Raj Narain Mitter*(3) that unless the language of the document be identically the same a decision upon the construction of one document is not of much assistance to the Court in construing another.

In *Quincey* v. *Sharpe*(1) the debtor took the initiative by asking his creditor for an account for work done before he received any demand to pay, thus implying that some work had been done and that it would have to be paid for.

In *Sitayya* v. *Rangareddi*(2) the accounts which had to be taken were mutual, open and current accounts to which article 85 of the Limitation Act applied; and in *Maniram Seth* v. *Seth Rupchand*(4) the accounts were open and current, though the Privy Council in the view that they took, found it unnecessary to decide whether they were also mutual and the learned Judges contented themselves with observing that the dealings were not the ordinary ones of banker and customer but rather in the nature of mutual accommodation.

Section 19 of the Limitation Act is so worded as to suggest that, where there is an acknowledgment of liability in respect of a right and it is sought to use such acknowledgment for starting a fresh period of limitation, the right acknowledged must be of the same description as the right which is the subject of the suit. Thus in a suit for the balance due upon taking accounts an admission that accounts must be taken and settled would be a pertinent acknowledgment, but it might be otherwise in a suit brought to recover a definite sum of money. So also it is not difficult to see that asking for an account in response to a creditor's demand may be a very different thing from acknowledging the necessity of settling accounts when a creditor bases his right upon accounts.

(1) (1876) L.R.I., Ex. D, 72. (2) (1887) I.L.R., 10 Mad., 259.
(3) (1904) I.L.R., 31 Calc., 195 at p. 200. (4) (1906) I.L.R., 33 Calc., 1047.

The decision in *Jogeshwar Roy* v. *Raj Narain Mitter*(1) is quoted in support of the view taken by the majority of the Judges who made this reference.

There a house-owner who received from a contractor a bill for building-work done by him wrote that the bill was incorrect in parts and that the work was unfinished but promised to examine the work and the estimates and see what was due. It was held that this was not an acknowledgment of liability within the meaning of section 19 of the Limitation Act.

In point of fact however none of these cases really stand on a parallel footing to that with which we are now dealing. Each case must be treated on its own merits. From a consideration of the wording of Exhibits A and B we are of opinion that they do not contain any acknowledgment of liability sufficient to save limitation. We think there is much force in the comparison made by the Chief Judge of the Small Cause Court between the request of the first defendant in Exhibit A for a copy of a statement of accounts and the case of a tradesman who sends a bill for a certain sum with the words "to account rendered" to which the customer replies: "Please send me a detailed bill." We agree with him in thinking that such words would not amount to an admission of liability. The expression by the second defendant in Exhibit B of a wish to examine the contractor's accounts does not carry the matter further. The questions referred to us must therefore be answered in the negative.

(1) (1904) I.L.R., 31 Calc., 195.