

APPELLATE CIVIL.

Before Mr. Justice Napier and Mr. Justice Srinivasa Ayyangar.

1916.
April 14.

PAMULAPATI VENKATAKRISHNIAH (MINOR REPRESENTED BY
MOTHER AND NEXT FRIEND MANGAMMA) AND TWO OTHERS
(PLAINTIFFS), APPELLANTS,

v.

KONDAMUDI SUBBARAYUDU AND TWO OTHERS (DEFENDANTS),
RESPONDENTS.*

Limitation Act (IX of 1908), ss. 19 and 20—Endorsement of part-payment recorded by creditor and signed by debtor—Endorsement, good as an acknowledgment of liability under section 19.

A payment made by a mortgagor who was able to write, was recorded on the back of the mortgage bond by a servant of the creditor and signed by the debtor. The endorsement ran as follows:—"Rs. 378 paid towards this document, K. V. Subbarayudu." Nearly Rs. 1,500 was due on the date of payment. It did not appear whether the payment was made towards principal or towards interest.

Held, that the endorsement amounted to an acknowledgment of liability within the meaning of section 19 of the Limitation Act, though the payment was not good as a part-payment within the meaning of section 20 of the Act.

The scope of sections 19 and 20 pointed out.

Jaganadha Sahu v. Rama Sahu (1914) 17 M.L.T., 80, followed.

APPEAL against the decree of J. C. FERNANDEZ, the District Judge of Guntūr, in Appeal No. 2 of 1914, preferred against the decree of K. NARASIMHAM GARU, the District Munsif of Tenali, in Original Suit No. 1031 of 1913.

The defendant K. V. Subbarayudu, executed a mortgage deed for Rs. 1,590 on 8th January, 1896, in favour of plaintiff's father (deceased) and made two payments on 13th July, 1905 towards it. The payments were recorded on the back of the deed by the clerk of the plaintiff and were signed by the debtor. The endorsements of payments ran thus:—

"Rupees 378—13th July 1905. Rupees Three hundred and seventy-eight only have been paid towards this document by Subbarayudu.

(Signed) K. V. SUBBARAYUDU.

* Second Appeal No. 425 of 1915.

Rupees 22. Again on the same day, Rupees Twenty-two only has been paid.

(Signed) K. V. SUBBARAYUDU."

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The mortgagee brought this suit in 1913 to recover the balance due on the document, *viz.*, Rs. 1,528.

The Courts below found that the part-payments were made by the defendant, that the defendant was able to write and that the endorsements of payments were recorded by the plaintiff's clerk and signed by the defendant, who was however found able to write. The Lower Courts found that there was no intention to pay any interest as such and holding that the endorsements were not good as acknowledgments of liability, dismissed the suit.

Hence this Second Appeal by the plaintiff.

V. Viswanatha Sastriyar for the appellants.

T. V. Venkatarama Ayyar for the respondents.

NAPIER, J.—I adhere to the opinion expressed by me in *NAPIER, J. Jaganadha Sahu v. Rama Sahu* (1), on the same words as are in this document. I have no doubt that there is in this endorsement an acknowledgment. I cannot accept the argument, that section 20 of the Limitation Act IX of 1908 prevents the operation of section 19. It is argued that this is a special provision limiting the application of section 19 and taking part-payments out of section 19. I cannot treat these sections as being one general and the other special. Section 19 only operates as against the person making the acknowledgment, while section 20 makes the part-payment good in favour of any suit on that liability. The second difference is that an acknowledgment need not be addressed to the person entitled; while under section 20, the payment is, of course, not a payment unless made to the person entitled. It is clear, therefore, that section 20 has a wider operation and that would account for the Legislature requiring actual handwriting before giving full effect to the language; but where there is not the handwriting, but only the signature, its operation is limited.

The appeal is allowed and the case is remanded for disposal.

Costs in this case will be costs in this cause.

SRINIVASA AYYANGAR, J.—The short question in this appeal is whether the plaintiffs' suit is barred by limitation. The suit

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is one to enforce a simple mortgage by sale of the security and it is admitted that unless a payment of Rs. 400 in 1905 which is endorsed on the mortgage instrument saves the bar, the action will be barred. The payment is admitted to have been made for principal. Although the endorsement is signed by the debtor, the writing is not that of the debtor but that of the creditor. It is therefore clear that the payment is ineffective to give a fresh period of limitation under section 20 of the Limitation Act. But it is argued for the appellant that although the payment as part-payment of principal is useless to save the bar under section 20, the endorsement by the debtor on the bond signed by him is an acknowledgment under section 19. In a case exactly similar to this in *Jaganadha Sahu v. Rama Sahu*(1), my learned brothers NAPIER and SADASIVA AYYAR, JJ., held that such an endorsement, if it complied with the requirements of section 19, may be good as an acknowledgment. I respectfully agree. I have no doubt that the terms of the endorsement in this case, amount to an acknowledgment of liability. The debtor states in terms that he pays Rs. 378 towards the amount due on the bond and on the same day, made another payment of Rs. 22 and made another endorsement. I construe the endorsement as meaning that the debtor made a part-payment of the amount due on the bond (on that day over Rs. 1,500 was due as shown on the face of the bond) which is certainly an acknowledgment that more money was due.

It is contended by the learned pleader for the respondents, that sections 19 and 20 are mutually exclusive, that section 20 is a special section dealing with a particular species of acknowledgment (that is, by part-payment) and in such cases unless the case falls under section 20, that acknowledgment has no effect. I am unable to agree with this contention.

Acknowledgments under section 19 have an operation which is different from the operation of part-payments under section 20. The distinction between the effects of acknowledgments and part-payments has often been pointed out in England: see *Bolding v. Lane*(2) and *Lewis v. Wilson*(3)—and the same distinction appears to have been made in the enactment of sections 19

(1) (1914) 17, M.L.T., 80.

(2) (1863) 1 De G. J. Sm., 122; s.c., 46, E.R., 47. (3) (1836) 11 A.C., 639.

and 20. At any rate, it is impossible not to give effect to an acknowledgment which fulfils the requirements of section 19 though the acknowledgment may evidence also an ineffectual payment under section 20. The two sections deal with two different matters. They can be read together and there is no inconsistency. I think therefore that the appeal must be allowed and the suit remanded to the First Court for a trial of the other issues.

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APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastriyar and
Mr. Justice Phillips.*

BALLAPRAGADA RAMAMURTHY (OF BALLAPRAGADA
RAMAMURTHY & Co.), (PLAINTIFF), APPELLANT,

1916,
April, 28.

v.

THAMMANA GOPAYYA AND ANOTHER (DEFENDANTS),
RESPONDENTS.*

*Limitation Act (IX of 1908), sec. 19—Letter of acknowledgment, construction of—
Conditional acknowledgment, operation of—Performance of condition, necessity
for—Contract not to plead limitation, legality of—Contract Act (IX of 1872),
sec. 23—Estoppel against statute of limitation.*

The plaintiff filed a suit on the 19th September, 1912, to recover damages for breach of an oral contract by the defendant, of which performance was due in 1906, and relied on a letter dated 20th September, 1909, written by the defendant to the plaintiff as saving the bar of limitation. The letter was to the effect that, if certain arbitrators should decide that the defendant should pay any amount he would immediately pay, but, if the arbitrators failed to decide, that the plaintiff might sue and that the defendant would not plead limitation. The arbitration failed. The plaintiff sued as aforesaid on the 19th September, 1912, but the defendant pleaded limitation in bar of the suit.

Held:

- (1) that the letter amounted only to a conditional acknowledgment;
- (2) that where there is a promise to pay on a condition, that condition, in order that the promise may operate as an acknowledgment, must be fulfilled;

In re River Steamer Company (1871) L.R., 6 Ch. App., 822; *Maniram Seth v. Seth Rupchand* (1906) I.L.R., 33 Calc., 1047 and *Arunachella Row v. Rangiah Appa Row* (1906) I.L.R., 29 Mad., 519, referred to.

* Second Appeal No. 585 of 1915.