The District Judge in the present case on account of the view he took of his powers, refused to deal with the merits of the claim of the obstructor who is the son of the insolvent and who put forward certain contentions. We set aside the order of the District Judge and remand the application to be disposed of by him according to law in the light of the observations contained in this judgment.

Costs of this Appeal will abide the result.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Venkatasubba Rao.

KANDASAMI REDDI AND OTHERS (DEFENDANTS 1 TO 5 AND 7 TO 11), APPELLANTS,

1921, December 7.

v.

SUPPAMMAL AND ANOTHER (PLAINTIFFS) RESPONDENTS.*

Limitation Act (IX of 1908), sec. 19—Acknowledgment—Previous statement when good as an acknowledgment.

A statement by a person that he executed a hypothecation in favour of another cannot be construed as containing an implied acknowledgment of liability unless it is clear therefrom that he admitted that the debt was still subsisting or unless there was a clear necessity at the same time to mention the fact of discharge. *Venkata* v. *Parthasaradhi*, (1893) I.L.R., 16 Mad., 220 followed, *Maniram Seth* v. *Seth Rupchand*, (1906) I.L.R., 33 Calc., 1047 (P.C.), explained.

APPEAL against the order of remand of C. R. VENKATESWARA AYYAR, Acting Subordinate Judge of Rāmnād at Madura, in Appeal Suit No. 80 of 1919 (Appeal No. 280 of 1919 on the file of the Rāmnād District Court), preferred against the decree of M. SUBRAHMANYA AYYAR,

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* Appeal against Order No. 139 of 1920.

KANDASAMI REDDI v. SUPPAMMAL.

District Munsif of Satur, in Original Suit No. 527 of 1916.

The facts are set out in the Judgment.

K. V. Sesha Ayyangar for appellant.—Before a statement can be relied on as an acknowledgment of liability, it must be clear therefrom that there is an admission that the liability is subsisting on the date of acknowledgment. There is no such admission derivable from the statement in this case. It was unnecessary to make a further statement in the plaint in 1912 that the debt was later on discharged. I rely on *Venkata* v. *Parthasaradhi*(1).

F. S. Vaz for the respondent.—If the admission in 1912 is that there was a debt in 1907 without mentioning that it was later on discharged, that is a good acknowledgment. I rely on *Maniram Seth* v. *Seth Rupchand*(2), *Ranganayakalu Aiya* v. *Subbayan*(3), *Sheikh Mahomed* v. *Jamaluddin Mahomed*(4), *Subharama Aiyar* v. *Veerabadra Pillai*(5), *Guru Ch. Saha* v. *Surendra Krista Ray Chowdry*(6).

K. V. Sesha Ayyangar in reply argued that the acknowledgment must show on its face that the liability was admitted to be existing and cited *Maniram Seth* v. *Seth Rupchand*(2), *Hingan Lal* v. *Mansa Ram*(7), *Andiappa Chetty* v. *Alasinga Naidu*(8), *Ramamurthy* v. *Gopayya*(9), *Ram Khelwan Mahto* v. *Nanhoo Singh*(10).

AYLING, J.

AYLING, J.—The sole question for our determination is one of limitation. Plaintiffs sue on a mortgage bond (Exhibit A), dated 11th November 1907; and it is admitted that the suit is time-barred unless a certain passage in a plaint, Exhibit B, filed by the

(1) (1893) I.L.R., 16 Mad., 220.
(2) (1906) I.L.R., 33 Calc., 1047 (P.C.).
(3) (1909) 5 M.L.T., 71.
(4) (1908) 10 Bom. L.R., 385.
(5) (1921) 41 M.L.J., 217.
(6) (1913) 19 C.W.N., 263.
(7) (1896) I.L.R., 18 All., 384.
(8) (1913) I.L.R., 36 Mad., 68.
(9) (1917) I.L.R., 40 Mad., 701.
(10) (1907) 6 C.L.J., 514.

defendants (appellants before us) against plaintiffs (Original Suit No. 1011 of 1912) can be relied on as an acknowledgment of liability under section 19 of the Indian Limitation Act, 1908. The passage runs thus:

"7. The first plaintiff and his brother the second plaintiff, namely, Suppa Reddy, jointly executed to him (first defendant) on the said date an hypothecation deed for Rs. 200 after deducting the sums paid towards the said othi amount of Rs. 275. Along with the said deed, the deed of othi executed in the year 1888 and the othi deed of 1907 were also given to the first defendant."

First plaintiff and second plaintiff referred to were respectively defendants 1 and 2 in the suit before us and the first defendant was the present second plaintiff. It is admitted that the hypothecation deed referred to is Exhibit A on which the present suit is based. The question is whether this passage should be construed as an implied acknowledgment of liability under Exhibit A, i.e., an acknowledgment that, at the time the plaint, Exhibit B, was presented, Exhibit A was still undischarged. That this is the test to be applied is clear from the section itself. "Liability" can only signify present liability at the time of acknowledgment; and this is clearly laid down in *Venkata* v. *Parthasaradhi*(1). Mr. Vaz, who argued the case for respondents, suggested that the effect of the latter judgment had been largely affected, if not altogether destroyed by the Privy Council judgment in *Maniram Seth* v. *Seth Rupchand*(2) and by the later cases based thereon. This does not seem to be so. It is not suggested that the acknowledgment need be express, and the cases relied on are useful as throwing light on the circumstances in which it should be inferred that the liability is subsisting. But that is all. The express

(1) (1893) I.L.R., 16 Mad., 229. (2) (1905) I.L.R., 33 Calc., 1047 (P.C.)

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admission in Exhibit B is merely that the present defendants 1 and 2 executed the suit mortgage on 11th November 1907, and handed it over to second plaintiff with the earlier possessory mortgages of which it was the subject. Are the circumstances such that we can infer that the defendants meant to imply that Exhibit A was still outstanding?

Mr. Vaz has argued that this inference is a necessary legal inference from the simple fact that in reciting the fact of execution defendants do not say that the documents had been discharged. This contention we cannot admit. There is certainly nothing in the Privy Council judgment in *Maniram Seth* v. *Seth Rupchand*(1), to support it. In that case, there was an admission, dated 20th September 1899, by the defendant that at the time of the death of plaintiff's father (6th October 1898) there were open accounts between them. The exact passage ran:

"The applicant Rup Chand Nanabhai is a big Mahajan of Burhanput paying Rs. 106 as income-tax. For the last five years he had open and current accounts with the deceased. The alleged indebtedness does not affect his right to apply for probate."

Their Lordships say in page 1059:

"The first sentence shows that there were open accounts at the death of Motiram. If nothing further is alleged, the natural presumption is that they continued unsettled at the time the statement was made."

It is this latter sentence in the judgment that is made the basis of the argument. I can see no ground whatever for holding that their Lordships were considering anything but the circumstances of that case or intended to lay down any rule of legal inference. The presumption in that case was very strong. The defendant was dealing with an allegation that he owed money to the estate for administration of which he had been

(1) (1906) I.L.R., 33 Calc., 1047 (P.C.)

appointed trustee and should therefore be refused probate. He admitted that up to the time of the death of the testator there were open and current accounts between them; and added in effect, that even if the balance was against him this was no sufficient ground for refusing to allow him to administer the estate, seeing that he was himself a wealthy man. That is the meaning of the paragraph quoted taken as a whole. If defendant had been in a position to say that the account had been settled between 6th October 1898 and 20th September 1899, he would certainly have said so; for this would have been a much better answer to plaintiff's objection. As he did not say so, the inference that the accounts still remained unsettled is natural and obvious.

I cannot extract from this judgment any rule of law that an admission of past liability unaccompanied by an allegation of discharge should in all cases be interpreted as an admission of subsisting liability; and with all respect, I feel bound to differ from the view of MILLER, J. in *Ranganayakalu Aiya* v. *Subbayan*(1) that this was intended. No such view was taken as far as I can see by the learned Judges in *Subharama Aiyar* v. *Veerabadra Pillai*(2). They are at pains to set out the facts of the case before them. And NAPIER, J., distinctly says:

"It may not necessarily always be that deduction to be drawn."

In fact, as stated in *Andiappa Chetty* v. *Alasinga Naidu*(3),

"each case must be treated on its own merits."

From the language used and the circumstances in which the acknowledgment is made, it must be decided whether it amounts to an implied acknowledgment of subsisting liability. *Hingam Lal* v. *Mansa Ram*(4) may

(1) (1907) 5 M.L.T., 71.
(2) (1921) 41 M.L.J., 217.
(3) (1913) I.L.R., 36 Mad., 68.
(4) (1896) I.L.R., 18 All., 384.

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be referred to as a somewhat similar case in which the Court declined to draw the inference desired by the party wishing to save limitation.

We must therefore look to the facts before us. And here I think the District Munsif was right in holding that no acknowledgment of subsisting liability is to be implied. It is pointed out that the question of whether Exhibit A had or had not been discharged was entirely immaterial in Original Suit No. 1011 of 1912, which was a suit to enfore specific performance of a contract to sell. The execution of Exhibit A appears to have been mentioned simply for the purpose of explaining how the othi deeds came to be in the hands of the defendants in that case; and where the discharge of a document is entirely irrelevant to the purpose for which the statement is made, no adverse inference can be drawn from the failure to allege discharge. It may not be irrelevant to note that when examined as a witness in the same suit first defendant deposed that Exhibit A had been discharged.

We must therefore hold that Exhibit B is not an acknowledgment which will save limitation. We must therefore set aside the order of the Subordinate Judge and restore that of the District Munsif with costs in this and the lower Appellate Court.

VENKATA-SUBBA RAO, J.

VENKATASUBBA RAO, J.—I agree.

N.R.