APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri.
On a Reference under section 98(2), Civil Procedure Code, owing to a difference of opinion between Mr. Justice Krishnan and Mr. Justice Odgers.

P. RAMA PATTAR (PLAINTIFF), APPELLANT,

1921 October 13.

v.

VISWANATHA PATTAR AND THREE OTHERS (DEFENDANTS), RESPONDENTS.*

Indian Contract Act (IX of 1872), sec. 25 (3) — "Debt" contracted by a Hindu father for joint family—Son's promise to pay it after period of limitation—Liability of son—Meaning of "debt" in section 25 (3).

A debt contracted by a Hindu father for the benefit of the joint family is none the less a "debt" within section 25 (3) of the Indian Contract Act, binding on the son, because his liability to pay his father's debt is not personal but limited to the extent of the family assets. The son promising to pay such debt of the father after it is barred is personally liable to pay the whole of it.

SECOND APPEAL against the decree of V. P. RAO, District Judge of South Malabar, in Appeal Suit No. 473 of 1919, filed against the decree of V. KUNHIRAMAN NAYAR, Additional District Munsif of Palghat, in Original Suit No. 27 of 1919.

The facts are stated in the judgment of KUMARASWAMI SASTRI, J.

Plaintiff who got a decree in the Court of first instance but whose suit was dismissed by the Appellate Court filed this Second Appeal.

The case originally came before KRISHNAN and ODGERS, JJ., who delivered the following differing judgments :

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* Second Appeal No. 1464 of 1920

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KRISHNAN, J.

KRISHNAN, J.—The two acknowledgments made by defendants 1 and 2 in the account book, Exhibit B, are of no avail to save limitation against the joint family or against defendants 3 and 4, who were no parties to those acknowledgments. The District Judge has found on the evidence in this case that defendant 3, the father and managing member of the family, never ceased to be the manager, and never authorized any one else to act for him to manage and never held out any one as acting for him. This is a finding of fact which I think we must accept in Second Appeal. It was, however, contended that, even apart from any authority given by the third defendant, his son, the first defendant, was entitled under the Hindu Law to act as the manager of the family in the absence of his father in Burma and elsewhere. For this position, reliance was placed on *Mudit Narayan Singh* v. *Ranglal Singh*(1), and on the texts cited therein, particularly on that of Harita. The ruling itself is not applicable, as in that case it was found that the younger member had been put forward by his elders as the managing member. The text of Harita so far as it is relevant here (as translated by Setlur), says that if he (the manager) is remotely absent, the eldest son may manage the affairs of the family: see Setlur, page 217. The words "remotely absent" are vague in their import, and I think they cannot be construed so as to bring within their scope the case of a manager who, though absent from his home, was in correspondence with the junior members and was controlling the management, as the District Judge finds was the case here. No reliance was placed on this text in the lower Courts, and, therefore, the question has not been properly threshed out

(1) (1902) I.L.R., 29 Calc., 797.

on facts; it is, therefore, sufficient to say that plaintiff has not proved that the first defendant, the eldest son, had authority under the Hindu Law to bind the family by his acknowledgments.

The question still remains how far defendants 1 and 2 are liable on their promise to pay the amount due on 14th September 1913. I think they are liable. It is conceded that the words used therein clearly amount to a promissory note, for they say "we have hereby promised on signing this to give on demand Rs. 1,577–4–5, the balance amount, with interest at Re. 1 per cent from this day" and so on. Viewing this document as a promissory note, the executants of it must be held to be liable on it unless they prove that there was no consideration for it. This question should not be confused with the other question how far it was a valid acknowledgment against the family; I have already held that it was not, as the signatories were not authorized agents of the family to acknowledge. Taking it as a promissory note, does the evidence here establish that there was no consideration for it? The amount mentioned in it no doubt includes the sum of Rs. 1,084–5–6 and interest due by the father to the plaintiff on account of his dealings on behalf of the family and acknowledged by him to be correct in Exhibit A on 16th September 1907, or as much of it as has not been paid off. The dealings were subsequently carried on by defendants 1 and 2, professedly, no doubt, on behalf of the family and for themselves, for the account was changed into the names of defendants 1, 2 and 3 in the plaintiff's books. It is the result of these dealings taken with previous debts that amounted to Rs. 1,577 and odd included in the promissory note. Out of that sum, it is clear that both the defendants were personally liable for the items on the debit side in the account after the 16th September 1907

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when the father ceased to have dealings and they began the dealings; the credit items would be taken towards the old debt. The amount of it has not been ascertained, but it is apparently not very large. Though defendants 1 and 2 acted on behalf of the family in entering into those dealings, they would become personally liable for the amount on the finding that the family was not liable, as they had no power to act on its behalf. The bulk of the amount included in the promissory note was no doubt the old debt that the father incurred, with interest added to it as appears from the account. For that portion of the note amount, though first defendant was not originally personally liable and second defendant was not liable at all, the whole of it was admittedly binding on the family property including the first defendant's share in it; in other words, it was a debt realizable from first defendant's joint property. The note being executed thus for a sum partly realizable from his property and partly from his person, it seems to me there is full consideration for it so far as the first defendant is concerned. Even if we suppose the original family debt was not saved from limitation even as against defendants 1 and 2, by their acknowledgment of September 1910, the note would still be saved from being void against him under section 25 of the Contract Act, both because his personal liability for his own dealings, as to which there is proper consideration, remains unaffected by limitation and also because under section 25, clause (3), an agreement to pay a time-barred debt is sufficient to constitute a contract. It was argued that the liability of a member of a joint family to have his joint property sold for a debt contracted by the manager for a joint family purpose and binding on the joint family property is not an obligation that can be described as a "debt" within the meaning of section 25. No authority has been cited to

support this argument. No doubt it was ruled in *Narayanan* v. *Veerappa*(1), that a son was not "jointly bound" with his father within the meaning of the Bankruptcy Law of Singapore; but that is not the question here at all. The question here is whether a liability to have one's joint property sold for a sum due is not a "debt" within the meaning of section 25, clause (3). I am inclined to think it is. The word "debt" does not necessarily imply an obligation created by the debtor himself as argued by Mr. Venkatarama Sastri; we have decree debts imposed by Courts, for example. "Debt" is defined as "a sum payable in respect of a liquidated money demand, recoverable by action;" see Stroud's Judicial Dictionary on page 471, second Edition, and the cases cited there. On this view there is no doubt that there was consideration for the promissory note, and it is enforceable against the first defendant. It is then equally enforceable against the second defendant, the other executant of it, as it is not necessary in law that consideration should move to each executant separately to make the note binding on him or her. It is sufficient if there was consideration for the instrument as a whole for it to be enforceable against all executants. Furthermore, in this case there was some consideration moving to the second defendant herself for the note, viz., the amount due by her on the joint dealings of herself and her son after 1907; and inadequacy of consideration is not a ground for avoiding a contract; vide Explanation 2 of section 25 of the Contract Act.

I would therefore confirm the decree of the lower Appellate Court and dismiss the Second Appeal with costs as regards defendants 3 and 4 but allow the Appeal

(1) (1917) I.L.R., 40 Mad., 581.

and restore the Munsif's decree as regards defendants 1 and 2 with costs in this and the lower Appellate Courts.

ODGERS, J.—This is a suit to recover money due on an account. The third defendant is the father of first and fourth defendants, and the manager of a Mitakshara oint Hindu family consisting of first and fourth defendnts and himself. The second defendant is his wife, and nother of first and fourth defendants. The father (third lefendant) had incurred debts for family necessity to plaintiff. He served a period of over three years imprisonment from 1903 or 1904. The dealings began in 1901. On 16th September 1907, while third defendant was in jail, accounts were adjusted and a balance struck by third lefendant and plaintiff and acknowledged by the former (Exhibit A). Subsequently third defendant was released from jail, but did not return to his family; it appears that he was living in Rangoon. On 16th September 1910, second defendant and her son, first defendant, who had just then attained majority, signed the following statement: "Since the bar of limitation is approaching, etc."

Subsequently on 14th September 1913, the same two persons executed a promissory note to plaintiff in the following terms: "We have hereby, etc."

Two questions have been argued: (1) Do the above operate as valid acknowledgments in order to save limitation against defendant 3 as manager of the family? (2) Do the above operate in any event against defendant 2 and defendant 1 personally?

As to (1), reliance is first placed on a text of Harita (Setlur, page 217), where it is said:

> "But if he (eldest member) be decayed, remotely absent or afflicted with disease, let the eldest son manage the affairs as he pleases."

also on *Mudit Narayan Singh* v. *Ranglal Singh*(1), where it was decided

"that a younger member of a Mitakshara family may deal with family property for family necessity whenever he is put forward to the outside world by the elder members as the managing member."

The finding of the lower Appellate Court is that defendant 3 never ceased at any time to be manager, and this finding is based on a voluminous correspondence carried on between the defendants with regard to family affairs while defendant 3 was absent. It is difficult to see how third defendant's absence in Rangoon can justly be said to make him "remotely absent" in modern days with all the conveniences of modern communication. It is equally difficult to see how defendant 1 was ever put forward to the outside world as managing member. I agree with the District Judge that mere payment of rents by defendants 1 and 2 is insufficient to show this.

Further, in *Patil Hari Premji* v. *Hakamchand*(2), it is laid down that temporary absence of the father conferred no legal authority on the son, if not authorized by the father, but assuming to act for him. The words in Exhibit B, "as per the instructions of the said Anantarama Pattar (defendant 3) and ourselves," are insufficient to import either of these elements, as they refer to the "amount expended by you (i.e., plaintiff) for our family necessities." It is further clear that under no circumstances could the wife, defendant 2, have any authority or power to act as manager so as to bind the joint family after her son, defendant 1, had attained his majority.

I am, therefore, of opinion that neither defendant 1 nor defendant 2 had any power or authority from

(1) (1902) I.L.R., 29 Calc., 797. (2) (1886) I.L.R., 10 Bom., 363.

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defendant 3 to act as managers of the family, nor did defendant 3 ever cease to be the manager.

As to their personal liability, I must differ with reluctance from my learned brother. Reliance is placed on the fact that some new items of credit and debit appear in the accounts signed by defendants 1 and 2. The accounts settled by defendant 3 in 1907 was admittedly an account binding on the family for supplies for family purposes. In the absence of evidence to the contrary, it must be assumed that the new items of debit were of the same nature. In my opinion there was no extinction of the old debt and a novatio by which the plaintiff undertook to look to the credit of defendant 2 and defendant 1 alone. The account stood in the name of defendant 3 alone up to 1911, and plaintiff's case has always been that the debt is binding on the family. Defendant 2 was, as stated, not authorized either in law or in fact to bind the family; it seems, therefore, that there was no consideration for her signature in Exhibit B, and the fact that the second signature was to a promissory note would make no difference, considering the nature of the debt (which was not hers) and for which she was in no way personally liable, nor could she make herself so liable. As to defendant 1, is he a debtor within the meaning of sections 19—21 of the Limitation Act? If he had no authority to act as manager for his father, as I found above, he cannot be a duly authorized agent to sign for him as such [Cf. *Laksmi Narain* v. *Daya Shankar*(1)]. Further, according to *Narayanan* v. *Veerappa*(2), a Hindu son is not jointly bound with his father to pay debts contracted by the father. For the reasons stated, the debts which defendant 1 bound himself to pay were the debts of the father contracted by the father.

(1) (1918) 47 I.C., 655. (2) (1917) I.L.R., 40 Mad., 581.

The debts were not the debts of defendant 1. Further, the case does not fall within section 25 (3) Contract Act, as the son was not generally or specially authorized to sign for his father. For these reasons, I am of opinion that neither defendant 2 nor defendant 1 is personally liable.

On both the grounds raised in this Second Appeal, in my opinion, the Appeal must be dismissed with costs.

BY COURT.—As we have differed in our opinion on the questions whether there was consideration in law for the promissory note of date 14th September 1913 and executed by defendants 1 and 2 and whether it is binding on those defendants, we refer those questions under section 98, Civil Procedure Code, clause (2), proviso, for the opinion of a third Judge. The case will thereafter be posted again before us.

ON THIS REFERENCE—

C. V. Anantakrishna Ayyar for appellant.—A debt contracted by a Hindu father for family purposes is binding on his son; hence it is a debt payable by him also, although he may not be personally liable on it but is liable only to the extent of the family assets. Hence it is a "debt" within the meaning of section 25(3) of the Contract Act. Reference was made to Stroud's Judicial Dictionary for the definition of "debt" and to *The Official Assignee of Madras* v. *Palaniappa Chetty*(1) and *Chalamayya* v. *Varadayya*(2).

T. R. Venkatarama Sastri, with *C. V. Mahadeva Ayyar*, for the respondent.—"Debt" in section 25(3) means one contracted by one's self and not one arising under a pious obligation under Hindu Law. Son is not jointly liable for his father's debt: see *Narayanan* v. *Veerappa*(3).

(1) (1918) I.L.R., 41 Mad., 824. (2) (1899) I.L.R., 22 Mad., 167.
(3) (1917) I.L.R., 40 Mad., 581.

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KUMARASWAMI SASTRI, J.—This Second Appeal comes before me owing to a difference of opinion between KRISHNAN and ODGERS, JJ., as to whether there was consideration in law for the promissory note dated the 14th of September 1913 executed by the first and second defendants and whether it is binding on those defendants.

The plaintiff is the brother of the second defendant. The second defendant is the mother of the first defendant. The third defendant is the father and the fourth defendant is another brother, who is a minor. It is admitted that defendants 1 to 4 are members of a joint Hindu family. There were dealings originally between the plaintiff and the third defendant. On September 16, 1907, when third defendant was in jail, there was a settlement of accounts at which a sum of Rs. 1,084–5–6 was found due by third defendant, and the third defendant affixed his signature to the duly stamped settlement, acknowledging the amount to be due. Dealings went on subsequently, the heading of the account being "C.V. Anantarama Pattar's (third defendant's) credit and debit account." In 1910, as the claim was about to be barred, the following entry was made in the account book on September 16, 1910:

> "Since the bar of limitation is approaching, the said amount which was expended by you as per the instructions of the said Anantarama Pattar and ourselves for our family necessities and since the said Anantarama Pattar is absent from here, we hereby admit the said amount which we owe you as per this account."

This is signed by the first and second defendants. The dealings continued. They were mostly entries of receipts of paddy from the land, and small sums were also entered on the debit side. On September 14, 1913 accounts were settled and a sum of Rs. 1,577–4–5 was found due and the following entry was signed in the plaintiff's account books by the first and second defendants:

"We have hereby promised, on signing this, to give on demand Rs. 1,577-4-5, the balance amount, with interest thereon at Rupee one per cent from this date, due to you from us after adjusting the credit and debit account as per account executed by us on 16th September 1910, together with interest from 1st Kanni 1086 till date for the amount expended by you as per the instructions of my father Anantarama Pattar and ourselves for our necessities."

In the account book, Exhibit C, the heading is "Accounts concerning Anantarama Pattar, son of Venkatarama Pattar, wife Lakshmi *alias* Ammu Ammal, and son Visvanatha Pattar."

Both the learned Judges who heard the Second Appeal are of opinion that, so far as the second acknowledgment of liability of September 16, 1910 is concerned, it does not save limitation as it was not proved that the first and second defendants had any authority to acknowledge the debt as the father was the managing member of the family. The question, however, remains as to the liability on the promissory note dated September 14, 1913. KRISHNAN, J., was of opinion that it was open to the first defendant to promise to pay a barred debt and that there was consideration for the note. ODGERS, J., was of opinion that the debt was not a debt of the first defendant but that of the father which had become barred and that there was no consideration for the note.

It is clear from the facts of the case that the defendants are members of an undivided family of which the father was the managing member. So far as the transactions are concerned, it is equally clear—and it is not disputed before me—that the debts were contracted for the benefit of the joint family and would be binding on the joint family properties. The first question is whether in the case of a joint family, the debts contracted by the managing member for the joint family can be said to be

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debts due by the other members of the family within the meaning of section 25 of the Indian Contract Act, which runs as follows:

"An agreement made without consideration is void, unless ....it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits."

So far as the liability of the members of a joint family for the debts contracted by the managing member is concerned, I think it is clear that the debt is binding on them although in the enforcing of that debt they would not be personally liable, but only liable to the extent of the joint family properties in which they are interested. In *Chalamayya* v. *Varadayya*(1), SUBRAHMANYA AYYAR, J., after referring to cases where the other co-parceners were parties to the contract or had agreed to be bound by it or had ratified it, observed:

"When however such is not the case, but the contract is of a character such as, under the law, to entitle the manager to enter into independently of the consent of the other members of the family, so as to bind them thereby, then it is clear that the scope of the manager's power is restricted to, and does not extend beyond, the family property."

I may also refer to *The Official Assignee of Madras* v. *Palaniappa Chetty*(2), as to the liability of the members of a joint family. In such cases it is open to the creditor to sue all the co-parceners, and each of the co-parceners will be liable to pay the debt subject to the limitation that payment can be enforced only by having recourse to the joint family properties. A debt is none the less a debt because the remedies open to the creditor are circumscribed by the joint family assets. I can find no authority for the view that the debt contemplated by

(1) (1899) I.L.R., 22 Mad., 167. (2) (1918) I.L.R., 41 Mad., 824.

section 25 of the Contract Act is a debt which can be enforced against the person and properties of the debtor. The test is whether at the time the promise to pay is made the person making the promise could have been sued for the recovery of the debt but for the law of limitation, however circumscribed the remedies for the recovery of the debt in execution may be owing to the personal law governing the debtor.

Reliance was placed by Mr. Venkatarama Sastri on *Narayanan* v. *Veerappa*(1), where it was held that a son was not "jointly bound" with his father to pay his debts within the meaning of clause (4), section 30, of the Straits Settlements Bankruptcy Ordinance. The question turned on the pious duty of the son to discharge his father's debts not illegal or immoral, and the learned Judges observed :

"This liability as now developed is certainly not a joint liability, nor a joint and several liability as ordinarily understood in English law; in fact it is difficult to bring it under any particular legal category of the English law."

The facts of the present case are different. The debts were contracted for family necessity and benefit, and the claim is based not merely on the pious duty of the son to pay his father's debts not illegal or immoral, but on family necessity and benefit enjoyed by the members of the family.

So far as the first defendant is concerned, I am of opinion that the note is binding on him. As regards the second defendant, her mother, it is argued that when she signed the promissory note the whole of the sum of Rs. 1,230 found due at the settlement of 1910 was barred by limitation, and that as regards the subsequent items they consist of a few items of debit and mostly of items of credit from the income of the second defendant's

(1) (1917) I.L.R., 40 Mad., 581.

lands; and that the credits are far in excess of the debits. This leaves her indebtedness practically the same as that of the previous settlement, the increase being due to interest. I have already given my reasons for holding that the first defendant is liable, and it appears both from the settlement of 1910 and 1913 that the second defendant was aware of the dealings and requested plaintiff to make the advances. The extent of the debits and credits subsequent to the settlement of 1910 is immaterial. It is not necessary that each of the executants of a promissory note should receive the consideration. When a promissory note is executed in respect of transactions which have gone on for some years and the items consist of advances which would be barred, and of subsequent dealings, I do not think the settlement can be impeached as to the items which would but for the settlement be barred, so long as there is no fraud or mistake. The statement in the promissory note is that the loans were made at the request of the second defendant, and she has not ventured to give evidence. Having regard to the fact that she owns lands which were managed by the plaintiff, the probabilities are that her signature to the pro-note and settlement was not taken as a mere matter of form, but that the plaintiff would not have made the advances but for her joining in the settlement. I am of opinion that the note is binding on her.

In the result, I agree with the conclusion arrived at by KRISHNAN, J., that the note is binding on the first and second defendants.

N.R.