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the right to be substituted for the vendee as he stood at the moment of sale, shows that it cannot be allowed to be defeated in this manner. Under Muhammadan Law also a subsequent disposition of the property by the vendee is voidable at the option of the pre-emptor *(vide* Ameer Ali's *Muhammadan Law)*. We therefore allow this appeal, set aside the judgment and decree of this Court and reinstate that of the court of first appeal.

Appellants will have their costs in all courts.

Appeal decreed.

Before Mr. Justice Richards and Mr. Justice Tudball.

1909 *October* 26.

LALTA PRASAD AND ANOTHER (PLAINTIFFS) *v.* BABU PRASAD AND OTHERS (DEFENDANTS).*

Act No. XV of 1877 *(Indian Limitation Act), section* 19—*Limitation—Acknowledgment—Authority of managing partner to acknowledge a debt as due by the firm—Receiver.*

Held that the manager of a firm who has power to borrow and repay money on behalf of the firm has power also to acknowledge a debt by either immediately giving a promissory note, or subsequently, upon an adjustment of accounts or in any other way in the course of business, making *bonâ fide* admissions in writing.

Held also that where in the course of a suit for dissolution of partnership a receiver has been appointed to discharge the debts and liabilities of the firm, the mere fact that a claim which was within time when made is not adjudicated upon by the court until after the expiration of more than three years, does not render the claim a bad claim against the partnership assets.

THE facts of this case were as follows :—

The plaintiffs claimed to be partners to the extent of an eighth share in a rice mill company which was started and managed by Babu Prasad, defendant No. 1. The suit was filed on the 27th June, 1903. A preliminary decree for dissolution was made and a receiver appointed on the 15th March, 1906. The plaintiffs, on the 22nd June following, applied to the receiver for payment to them of a sum of Rs. 8,009-14-6, with interest, which they claimed to have advanced as a loan to the company from time to time. Babu Prasad as the managing proprietor of the firm had, on the 2nd February, 1903, given a *sarkhat* to the plaintiffs for Rs. 7,509-14-6, exclusive of interest, and in the written statement filed in another suit on the 8th January, 1904, and in his deposition in the present suit, recorded on the 17th February, 1904,

* First Appeal No. 216 of 1907, from a decree of Giraj Kishor Datt, Subordinate Judge of Bareilly, dated the 3rd of June 1907.

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had stated that he had received the money on account of the mill. The receiver disallowed the amount, and the Subordinate Judge on the 30th May, 1907, held that the claim was barred by time. A final decree was made for distribution of the assets realised by the receiver among the share holders.

The plaintiffs appealed.

Dr. *Satish Chandra Banerji* (with him the Hon'ble Pandit *Sundar Lal*), for the appellants, submitted that the claim was not barred by time, because the loan had been advanced for the firm to the managing member who had acknowledged a subsisting liability well within three years of the date of the application to the receiver. The receiver was an officer of the court and no creditor could sue him without the leave of the court. The partnership assets were *in custodiâ legis*, and the proper course for a creditor was to apply to the court or the receiver. The assets available for distribution among the shareholders could not be ascertained till the liabilities of the firm had been discharged. In taking accounts, the debit and credit entries had to be tested and adjusted; Woodroffe, *Receivers*, pp. 86, 132.

Babu *Surendra Nath Sen* (with him Munshi *Govind Prasad* and Babu *Binode Behari*), for the respondents, contended that the manager of the firm was not an agent "duly authorized in this behalf" within the meaning of section 19 of the Limitation Act. The law contemplated an express authority given for the purpose of making an acknowledgment, and this had not been shown by the plaintiffs in the present case. The words "duly authorized in this behalf" are words of limitation and must be construed to mean a specially authorized agent. They should not be treated as though they were a surplusage; *Vittalshah* v. *Sheodin* (1) (cited in Sanjiva Row's "Lawyers' Companion," 635.)

RICHARDS and TUDBALL, JJ.:—This appeal arises out of a suit brought for the dissolution of a partnership alleged to have existed between the plaintiffs and the defendants 1 to 4. It was subsequently held that a number of other persons were also partners and they were made parties accordingly. The plaintiffs suggested in their plaint that they were entitled not only to a dissolution of partnership but also to the repayment of the

(1) 2 C. P. L. R., 40.

sum of Rs. 8,000 on the ground that they had been misled by the defendants or some one or more of them. This sum of Rs. 8,000 is not to be confounded with the item of Rs. 7,509-14-6 which we shall deal with later on. It represented the capital of the plaintiffs in the firm. The Court made a decree for the dissolution of the partnership, but it gave no relief to the plaintiffs in respect of the sum of Rs. 8,000 to which we have already referred. After the primary decree for dissolution had been made the plaintiffs on the 22nd June, 1906, put forward a claim to the Receiver that they were entitled to the sum of Rs. 8,077-9-9, with interest, not as partners, but as creditors of the firm. The Receiver disallowed this claim on the ground that it was barred by limitation and the Court confirmed the view taken by the Receiver.

The question whether or not the plaintiffs are entitled to recover this item out of the assets is the question, and the only question, which has been argued in the present appeal. We are satisfied on the evidence that the defendant No. 1 Lala Babu Prasad was the managing partner of the firm. This matter has not been disputed, and we have been referred to no evidence to the contrary. The plaintiffs in a suit which was instituted almost if not quite simultaneously with the present suit, claimed to recover this amount from Lala Babu Prasad personally. In his written statement Lala Babu Prasad, whilst he admitted receiving from the plaintiffs another sum of Rs. 500, alleged that he had received the amount now in dispute, not in his personal capacity, but as the manager of the firm, and that the money had been duly spent for its purposes. Several letters, and in particular the one dated the 5th of August, 1906, which have been given in evidence, contain clear admissions that Lala Babu Prasad received the money from the plaintiffs, who are bankers, as manager for the firm. No evidence to the contrary was given. In our judgment these documents are clear admissions by Lala Babu Prasad that he received the amount. The answering respondents, namely, respondents Nos. 18, 20, 23, 26, 28, 30, 38 and 39, allege that Lala Babu Prasad was not an agent within the meaning of section 19, explanation 2, of the Limitation Act of 1877, and further, that assuming that Lala Babu Prasad could give a valid acknowledgment, the claim was barred

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at the time the court made its decree. On the first point it was argued that the agent must have express authority to give the acknowledgment, and that it is not enough that the Court should be satisfied that Lala Babu Prasad had authority to borrow and repay money, but that the Court must also be satisfied that each one of the partners gave express authority to Lala Babu Prasad to acknowledge the debt. We think that this would be placing a very narrow construction on section 19 and would open the door to very serious fraud. It seems to us that if it is admitted that the agent had a power to borrow, it follows of necessity that he had power to acknowledge the debt by either immediately giving a promissory note, or subsequently upon an adjustment of accounts, or in any other way in the course of business making *bonâ fide* admissions in writing. We are quite satisfied on the evidence that Lala Babu Prasad was the manager of the firm with full power to borrow and repay money.

As to the next point, namely, that the debt was barred at the date of the judgment of the learned Subordinate Judge, we find that the claim was put forward on the 22nd of June, 1906, the Receiver having been appointed on the 14th of March in the same year. It is quite clear, therefore, that from the date of the appointment of the Receiver and the putting forward of the claim the debt was not barred. It was a part of the duty of the Court in the course of the suit to discharge the debts and liabilities of the firm, and in our judgment the mere fact that the Court did not adjudicate on the claim until after the expiration of more than three years, did not render the claim a bad claim against the assets of a firm which were being administered by the Court, and we think the learned Judge was wrong in dismissing the claim.

It has not been ascertained what is the amount due to the plaintiffs in respect of the item we have been dealing with. We therefore allow the appeal to this extent that we hold that the Court below was wrong in dismissing the plaintiffs' claim on the ground of limitation as to the item of Rs. 7,509-14-6. The case will go back to the Court below with directions to ascertain what sum is due to the plaintiffs in respect of the said item. Having ascertained the amount due, the Court will allow the same to the plaintiffs as creditors, and the balance of the assets

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will then be distributed amongst the several partners as already directed. The appellants will have their costs in this appeal as against respondents Nos. 18, 20, 23, 26, 28, 30, 38 and 39. The objection by the respondents is not pressed. It is therefore dismissed, but we make no order as to costs.

Appeal allowed and cause remanded.

REVISIONAL CRIMINAL.

1909
October 28.

Before Mr. Justice Tudball.

EMPEROR *v.* RAJ KARAN AND OTHERS.*

Criminal Procedure Code, section 110—*Security for good behaviour— Order for security passed upon failure of charge of a substantive offence against the persons bound over.*

Eight persons were sent up for trial on a charge of dacoity and were acquitted, and an attempt to prove a case against them under section 400 of the Indian Penal Code was also unsuccessful. *Held* that these circumstances were not in themselves a bar to proceedings being shortly afterwards initiated against the person acquitted under section 110 of the Code of Criminal Procedure. *Alep Pramanik* v. *King-Emperor* (1) distinguished.

IN this case eight persons were sent up for trial on a charge of dacoity, but, the evidence against them being insufficient, were discharged. An attempt was made to obtain evidence against them sufficient for a conviction under section 400 of the Indian Penal Code, but that evidence was not forthcoming. Thereupon, as the police information in the case gave the District Magistrate reason to believe that it was necessary to bind over some of these persons to be of good behaviour, he took proceedings against five out of the eight, and after the usual procedure made an order binding them over. The Sessions Judge referred the case to the High Court, being of opinion that the action of the Magistrate of the District was illegal in view of the ruling of the High Court at Calcutta in the case of *Alep Pramanik* v *King-Emperor* (1).

Mr. *W. K. Porter* (Assistant Government Advocate), for the Crown.

No one appeared in support of the reference.

* Criminal Reference No. 584 of 1909.

(1) (1906) 11 C. W. N., 413.