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whatever may have been the correct view of the law as it was prior to the present Code of Civil Procedure, the point is covered by the clear language of order I, rule 3. Under that order it is clear that the plaintiff's suit was not bad for multifariousness and he was entitled to join all the defendants as parties to the suit so as to enable him to recover his share in the whole of the estate of Ram Jas. In this view the appeal must succeed. We allow the appeal, set aside the decree of the court below and remand the case to that court for decision according to law. The plaintiff will be allowed to amend his plaint as desired. The costs of this appeal will be costs in the cause and will abide the result.

*Appeal allowed.*

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April, 29.

*Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.*

BALESHAR AND ANOTHER (DEFENDANTS) v. RAM DEO (PLAINTIFF) AND  
BANARAJ AND OTHERS (DEFENDANTS).\*

Act No. XV of 1877 (*Indian Limitation Act*), section 19. Acknowledgment.  
*Suit for redemption—Admission in plaint that a certain person had a right to redeem as a co-mortgagor.*

Where in a suit for redemption of a mortgage the plaintiffs, who were purchasers of a portion of the mortgaged property, admitted in their plaint the right of a representative of one of the original mortgagors to redeem, it was held that this was a good acknowledgment within the meaning of section 19 of the Indian Limitation Act, 1877, and enured in favour of the representatives of the person so mentioned. *Sulhamoni Choudhrami v. Ishan Chunder Roy* (1) referred to.

THE material facts of this case were as follows :—

Mohan Singh, Naunid Singh and Zahar Singh were three brothers. Mohan Singh as managing member of the family mortgaged a 5 anna 4 pie zamindari share in four villages to one Ishri Singh for Rs. 601, on the 25th of July, 1823, and put the mortgagees in possession. Mohan Singh had two sons, *viz.*, Manni Singh and Naipal Singh. Manni Singh and the descendants of the other two brothers of Mohan Singh sold their equity of redemption in the said bond to two brothers, Bam Bharos and Ram Kumar, who sued for redemption of the mortgage of the 25th of July, 1823, against the heirs of Ishri Singh in 1884 and got a decree on the 22nd of November, 1884. In the plaint they set out the fact of the mortgage

\*First Appeal No. 218 of 1913 from an order of Guru Prasad Dube, Subordinate Judge of Allahabad, dated the 30th of June, 1913.

(1) (1898) J. L. B., 25 Calc., 844; L. R., 25 I. A., 95.

and alleged that the mortgage was a joint one, and as Parsidh Narain, son of Naipal Singh, had not joined in the suit, he was made a *pro forma* defendant. Under the decree Ram Bharos and Ram Kumar obtained possession over the entire mortgaged property. The legal representatives of Parsidh Narain, son of Naipal Singh, brought this suit for redemption of the mortgage, so far as the share of Naipal was concerned, against the heirs and representatives of Ram Bharos and Ram Kumar in the year 1912. The court of first instance dismissed the suit on the ground that it was barred by limitation. The lower appellate court, relying on the plaint of the suit of 1884 as an acknowledgment under section 19 of the Indian Limitation Act of the right of Parsidh Narain to redeem the mortgage, reversed the decree and remanded the case. The defendants appeal.

Babu *Piari Lal Banerji*, for the appellants :—

Ram Bharos and Ram Kumar acquired the position of a mortgagees *quâ* the share of Naipal, and the period of limitation for a suit for redemption by the heirs of Naipal was sixty years from the date of the mortgage or the date fixed for payment; *Ashfaq Ahmad v. Wazir Ali* (1). When Ram Bharos and Ram Kumar filed their suit in 1884 they did not admit the liability which the plaintiffs now seek to enforce. A mere admission of any liability is not enough; *Gopal Rao Manohar Tambekar v. Hari Lal Subari Sevak* (2). *Jugal Kishore v. Fakhr-ud-din* (3), relied on by the court below, is distinguishable, inasmuch as the person making the acknowledgment in that case was acknowledging his own liability, but in the present case Ram Bharos and Ram Kumar were acknowledging the liability of the representatives of the original mortgagee and not a liability of their own. It was an acknowledgment of the liability of a person, who was a mortgagee before Ram Bharos and Ram Kumar became mortgagees. All that was stated in the plaint was that one Janki Prasad was a mortgagee. There was no admission that they themselves were liable to be redeemed and there could not have been any such admission, as till then they had not acquired the mortgagee rights *quâ* the share of

(1) (1889) I. L. R., 14 All., 1. (2) (1907) 9 B. L. R., 715.

(3) (1906) I. L. R., 29 All., 90.

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Naipal; *Ramkhel Mahton v. Nanhoo Singh* (1). Whatever rights Ram Bharos and Ram Kumar might have acquired under the decree, it is certain that they never became the representatives of the mortgagee and they never acknowledged their liability to be redeemed, but they shifted the liability to a third person, *i. e.*, to the representatives of Ishri Prasad. The case of *Sukhamoni Chowdhurani v. Ishan Chunder Roy* (2) does not help the plaintiffs. The question was whether there was a joint liability to pay a certain debt. That joint liability was admitted and the suit was to enforce the same liability, it being a suit for contribution by one debtor against the other.

Munshi *Parmeshwar Dayal*, for the respondents, was not called upon.

**MUHAMMAD RAFIQ and PIGGOTT, JJ.**—The facts of this case are as follows:—On the 25th of July, 1823, Mohan Singh, the eldest of three brothers, executed a deed of mortgage in favour of Ishri Prasad Singh in lieu of Rs. 601 in respect of the 5 anna 4 pie share of all the three brothers. Mohan Singh died leaving two sons Muni Singh and Naipal Singh. The descendants of Mohan Singh and his two brothers, with the exception of his second son, namely, Naipal Singh, executed a deed of sale on the 3rd of May, 1883, in respect of their shares in the equity of redemption in the 5 anna 4 pie share in favour of Ram Bharos and Ram Kumar. Ram Bharos and Ram Kumar instituted a suit for redemption in April, 1884, against the heirs of Ishri Prasad Singh in respect of the entire 5 anna 4 pie share mortgaged on the 25th of July, 1823. They stated in their plaint that they were transferees to the extent of 2 anna 8 pie share only. But as the mortgage sought to be redeemed was one transaction and could not be split up, and as the other persons interested in the redemption of the mortgage had not joined in the suit, the plaintiffs were seeking to redeem the entire mortgage and had made the other persons entitled to redeem *pro forma* defendants in the case. Among the persons mentioned in the plaint as entitled to redeem was Parsidh Narain, son of Naipal Singh, who figured as defendant No. 9 in the case. The claim of Ram Bharos and Ram Kumar was decreed on the

(1) (1907) 6 C L J., 544.

(2) (1898) I. L. R., 25 Calc., 844; L. R., 25 I. A., 95.

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22nd of September, 1884. The present suit is brought by the representatives of Naipal Singh for the redemption of his share as against the legal representatives of Ram Bharos and Ram Kumar and some others. The contesting defendants in the case are the representatives of Ram Kumar. They resisted the suit on the ground, among others, of limitation. It was said that the mortgage sought to be redeemed was dated the 25th of July, 1823, and had become barred long prior to the institution of the suit. The rejoinder for the plaintiff was that there was an acknowledgment in April, 1884, which saved the limitation. The court of first instance held that the claim was barred by limitation and dismissed it.

On appeal the learned Subordinate Judge, disagreeing with the first court, found that the claim was not barred by limitation. He accordingly set aside the decree of the first court and remanded the case under order XLI, rule 23, of the Code of Civil Procedure for trial on the merits. The defendants appellants have come up in appeal to this Court and contend that the claim of the plaintiffs respondents is barred by time. The point raised in this appeal depends upon the interpretation of section 19 of the Indian Limitation Act. The provisions of that section are as follows:—"If before the expiration of the period prescribed for a suit or application in respect of any property or right an acknowledgment of liability in respect of such property or right has been made in writing and signed by the party against whom such property or right is claimed or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed." It is contended on behalf of the appellants that the allegation in the plaint of 1884 that Naipal Singh's son was one of the mortgagors and had a right of redemption did not amount to an acknowledgment of liability on behalf of Ram Bharos and Ram Kumar to be redeemed themselves in case of success of their suit. We think that this contention is not sound. The statement in the plaint of 1884 by Ram Bharos and Ram Kumar that Naipal Singh's son had a right to redeem was an admission in respect of his right with regard to the property in suit. This view is supported by the ruling in

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*Sukhamoni Chowdhurani v. Ishan Chunder Roy* (1). In that case one of the co-debtors admitted the debt in an application to the manager of the state. Another debtor paid off the debt and then sued for contribution. His claim was met with a plea of limitation; but it was rejected on the ground that the admission made in the petition to the manager amounted to an acknowledgment and saved limitation. We, therefore, think that the claim of the plaintiffs respondents is not barred by limitation and that the order of the court below was correct. The appeal fails and is dismissed with costs.

*Appeal dismissed.*

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April, 29.

*Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.*

CHANGA MAL (DEFENDANT) v. THE PROVINCIAL BANK, LD (PLAINTIFF)  
DURGA PRASAD (DEFENDANT) v. THE PROVINCIAL BANK, LD.  
(PLAINTIFF) and JAGMANDAR DAS (DEFENDANT) v THE PROVINCIAL  
BANK, LD. (PLAINTIFF).\*

*Company—Board of Directors—Allotment of shares by an irregularly constituted board—Notice of allotment not given to applicant—Liquidation—Contributory.*

*Held* that an allotment of shares in a joint stock company made by an irregularly constituted board of directors is *prima facie* invalid *British Empire Match Company, Ltd. Ex parte Ross* (2) referred to. But this defect may sometimes be cured if the articles of association of the company provide for the validation of an act done by a *de facto* director in a *bona fide* manner.

*Held also* that if no notice of allotment of shares in a company is given to an applicant before the company goes into liquidation, such applicant is not liable to be placed on the list of contributories. *In re Scottish Petroleum Company* (3), *Dawson v. African Consolidated Land and Trading Company* (4) and *British Asbestos Company v. Boyd* (5) referred to.

THESE were three appeals arising out of the proceedings in liquidation of the Provincial Bank, Limited, Meerut. It appears that the official liquidator called upon the three appellants to contribute the balance of the price of shares which had been allotted to them at different times by the board of directors of the bank. The appellants objected to be put on the list of contributories and supported their objections on several technical

\*First Appeal Nos. 196, 197 and 198 of 1913 from orders of Muhammad Shaif, Additional Judge of Meerut, dated the 28th of June, 1913.

(1) (1898) L. R., 25 L. A., 95.

(3) (1883) 23 Ch. D., 413.

(2) 49 Law Times, 291.

(4) (1898) 1 Ch. D., 6.

(5) (1903) 2 Ch. D., 439.