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management of the defendant have been found against the plaintiff, the suit cannot be said to have been for the benefit of the minor. The proper person liable for the costs of the defendant is Musammat Parbati, the next friend herself.

Our answer to the questions referred to us are therefore as follows:—

- (1) The learned Commissioner was not right in holding that in this case the deceased father had no power to appoint a guardian to the property by will and in decreeing the suit on this ground.
- (2) The costs of litigation including the costs of this reference should be borne by Musammat Parbati, the next friend of the minor.

*Reference answered.*

## APPELLATE CIVIL.

*Before Mr. Justice Piggott and Mr. Justice Gokul Prasad.*

A. CURLENDER AND OTHERS (DEFENDANTS) v. ABDUL HAMID AND OTHERS (PLAINTIFFS)\*

*Act IX of 1908 (Indian Limitation Act), sections 19 and 20—Acknowledgment of liability—Part payment of principal.*

It is not necessary that the writing referred to in section 20 of the Indian Limitation Act, 1908, must itself show that the payment made is made as part payment of the principal sum due. It may, for example, be obvious from the fact that no interest was due at the time of making the payment that it could only have been made in part payment of the principal. *In the matter of Ambrose Summers* (1) followed. *Sakharam Manchand v. Keval Padamsi* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Mr. M. L. Agarwala and Babu Harendra Krishna Mukerji, for the appellants.

Mr. Nihal Chand, for the respondents.

PIGGOTT and GOKUL PRASAD, J J.:—The circumstances under which the present appeal has arisen are as follows:—

The plaintiff is the proprietor of a firm of bone dealers in Benares, called Abdul Hamid and Sons. The defendants

\*Second Appeal No. 1347 of 1917, from a decree of D. Dewar, District Judge of Benares, dated the 16th of July, 1917, reversing a decree of Udit Narain Singh, Subordinate Judge of Benares, dated the 23rd of August, 1916.

(1) (1896) I. L. R., 23 Cal., 592. (2) (1919) I. L. R., 44 Bom., 892.

carry on a business in bones which goes by the name of "The Bengal Bone Mills" in Calcutta. It appears that there had been dealings between the parties for some years, and in January, 1913, according to the plaintiff, Rs. 1,654 were due to the plaintiff from the defendants' firm. The defendants had also dealings in bones with the Muslim Bone Company, Limited, of Benares. The plaintiff's father was the manager of this company and, after his death, the plaintiff was elected the manager of the company. The plaintiff's allegation is that his firm, Abdul Hamid and Sons, had nothing whatever to do with the Muslim Bone Company, Limited, yet the defendants debited the plaintiff with a sum of Rs. 1,497-7-6 alleged to have been due to the defendants from the aforesaid company and, deducting the amount from Rs. 1,654, due to the plaintiff, sent him Rs. 156-8-6 in payment of his claim on the 17th of January, 1913. The defendants had no justification for doing so, and hence the plaintiff's claim for Rs. 1,497-7-6, with interest by way of damages. The present suit was instituted on the 14th of January, 1916. The only pleas in defence with which we are concerned in this appeal are (1), that the plaintiff was only an agent of the Muslim Bone Company and supplied their goods to the appellants and therefore nothing was due to him, and (2), that the suit was barred by limitation. The first court came to the conclusion that the bones were really sent by the plaintiff as the manager of the Muslim Bone Company and not as a representative of a distinct firm known by the name of Abdul Hamid and Sons, and consequently the defendants very rightly debited the plaintiff with the amount due to them from the company. On the second plea it came to the conclusion that the items claimed are up to the 13th of January, 1913, that, "no payment had been made by the defendants acknowledging their liability to the plaintiff within the period of three years under section 19 of Act No. IX of 1908, the suit is barred by the three years' limitation.

It further held that the payment of Rs. 156-8-6 did not amount to an acknowledgment under section 19 of Act No. IX of 1908 and therefore the suit was barred by time. It accordingly dismissed the suit. On appeal by the plaintiff the learned Judge of the lower appellate court came to the conclusion that

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the two firms Abdul Hamid and Sons and the Muslim Bone Company, Limited, were separate and "the defendants had no power to dictate to Abdul Hamid and Sons and tell them that they were the same thing as Muslim Bone Company, Limited." He does not seem to have considered the question of limitation of any importance. In the result he decreed the plaintiff's claim. The defendants come here in second appeal. The question of agency was not seriously pressed and in fact could not be so pressed having regard to the distinct finding of the lower appellate court mentioned above. The point of limitation, however, has been strenuously argued by the learned counsel and the learned vakil, respectively, who appeared on behalf of the parties. It was contended that the letter of the 17th of January, 1913, forwarding Rs. 156-8-6 to the plaintiff, in full satisfaction of the amount due to them did not amount either to an acknowledgment of a right under section 19 of the Limitation Act, nor did it amount to a part payment of the principal within the meaning of section 20 of the said Act and could not therefore operate to give a fresh start to the period of limitation which had, at the latest, commenced to run on the 13th of January, 1913, when the last item was received. If this contention of the defendants is correct, it is quite clear that the present suit is barred by limitation.

We have examined the letter sent by the defendants to the plaintiff and the memorandum of account enclosed therein, and we find that the account clearly shows that on the 17th of January, 1913, Rs. 1,654 were as a matter of fact due to the plaintiff on that date, and the defendants squared the account on that date by debiting the plaintiff's account with the sum of Rs. 1,497-7-6 due to the defendants from the Muslim Bone Company, Limited, and remitting the balance of Rs. 156-8-6 to the defendants. It is not disputed that the letter and the accounts were signed by the defendants and sent to the plaintiff. It is true that the defendants do not in express terms admit that they are liable to pay any further amount to the plaintiff, but nonetheless the account clearly shows that on that particular date, namely, the 17th of January, 1913, Rs. 1,654 were due to the plaintiff. The mere fact that the defendants in the same account say that

they have on that day appropriated a part of the amount due towards satisfaction of a claim due to them from a third party and have remitted the balance to the plaintiff, does not alter the fact that on that day Rs. 1,654 were as a matter of fact due to the plaintiff before the alleged appropriation was made. This is in our opinion an acknowledgment of right within the meaning of section 19 of the Limitation Act. From another point of view also this suit is clearly within time. Rs. 156-8-6 were sent to the plaintiff by the defendants on that day under the covering letter mentioned above. No interest was payable to the plaintiff from the defendants on that day, so that no question of any payment of interest arises in this connection. The payment of Rs. 156-8-6 aforesaid could be and was as a matter of fact in payment of the principal sum due. It has, however, been contended on behalf of the defendants appellants that the endorsement of part payment of principal must appear in the handwriting of the debtor under section 20 of the Limitation Act, that is to say, that the writing must show that the payment is made in part payment of the principal, or to put it in other words, the same conditions attach to the part payment of principal which have been expressly laid down in case of payment of interest. To put it in short, the words "as such" should be read into the latter portion of subsection (1) of the section. In our opinion this contention is not sound. What the section provides is that "in the case of part payment of the principal of a debt the fact of the payment appears in the handwriting of the person making the same." The law does not require that the words "part payment of the principal" should appear in the entry. It is "the fact of the payment" which should appear in the handwriting of the person making the same. This is so in the present case, as a reference to the letter, dated the 17th of January, 1913, and the account sent along with it would show. This view of ours is supported by the case of *In the matter of Ambrose Summers* (1) with which we are in full accord. See also the case of *Sakharam Manchand v. Keval Padamsi* (2). We are, therefore, of opinion that from no point of view the present suit is barred by time. The result is that the appeal fails and is dismissed with costs. Nothing has been said to us on any of the

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remaining grounds taken in appeal nor have the respondents addressed any arguments to us in support of their cross objection. We, therefore, dismiss it with costs.

*Appeal dismissed.*

## MISCELLANEOUS CIVIL.

*Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Gokul Prasad.*

BHAGWAN SINGH (DEFENDANT) v. THE ALLAHABAD BANK,  
LIMITED (PLAINTIFF)\*

1920  
August, 12.

*Civil Procedure Code, 1908, section 110—Appeal to His Majesty in Council—Decree which modifies the decree of the lower court not a decree affirming the decision of that court.*

Held on a construction of section 110 of the Code of Civil Procedure, 1908, that a decree which modifies the decree of the lower court (except perhaps in the matter of costs only) cannot be said to be a decree of affirmance. *Raja Sree Nath Roy Bahadur v. The Secretary of State for India in Council* (1) dissented from. *Narpat Singh v. Kalka Buz Singh* (2) and *Thakur Baldeo Singh v. Thakur Lalji Singh* (3) approved.

THIS was an application for leave to appeal to His Majesty in Council. The valuation of the suit was Rs. 61,000 and the valuation of the proposed appeal was above Rs. 10,000. The court of first instance decreed the plaintiff's claim for about Rs. 41,000. On appeal the High Court allowed a deduction of Rs. 6,000 in favour of the applicant because of an admitted mistake in the decree of the lower court, but saddled him with a liability for interest in excess of what the court below had awarded. The net result was that the decree of the court below was modified to the prejudice of the applicant by nearly Rs. 8,000. The application for leave to appeal to His Majesty in Council was opposed upon the ground that the decree of the High Court was in reality a decree affirming that of the court below and therefore no appeal lay as a matter of right.

The Hon'ble Munshi *Narain Prasad Ashihana*, for the applicant.

\* Application No. 8 of 1920, under order XLV, rule 2, of the Code of Civil Procedure, for leave to appeal to His Majesty in Council.

(1) (1904) 8 C.W.N., 294.

(2) (1911) 9 Indian Cases, 1040.

(3) (1906) 10 Oudh Cases, 65.