

cedure Code for determination of the following issues.  
[Certain issues were then set forth.]

It is true that in respect to one at least of these matters there is a finding of some sort or other by the court below but for a proper decision of this appeal we think it advisable, since the case has to be remanded, that all the above issues be more fully investigated and thrashed out. The parties will be at liberty to adduce such additional evidence as may be relevant to these issues, and the findings should be submitted within three months; and thereafter the usual ten days will be allowed for objections.

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### FULL BENCH

*Before Mr. Justice Bennet, Mr. Justice Rachhpal Singh  
and Mr. Justice Ganga Nath*

SHANKAR LAL AND ANOTHER (PLAINTIFFS) v. RANA LAL  
SINGH AND ANOTHER (DEFENDANTS)\*

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*Limitation Act (IX of 1908), sections 19, 29(2)—Acknowledgment—"Period prescribed"—Court of Wards Act (Local Act IV of 1912), section 52—Period excluded by special law in computing the period of limitation for the suit—Acknowledgment made after expiry of the prescribed period of limitation but within the period so excluded from computation—Limitation Act, section 19, explanation II—"Agent duly authorised"—Court of Wards—Collector acting under section 19 of Court of Wards Act.*

A promissory note payable on demand was executed on 29th July, 1927. In 1929 the estate of the debtor was taken under the Court of Wards, notice to claimants under section 17 of the Court of Wards Act was published on 3rd August, 1929, and the creditor's claim upon the promissory note was allowed by the Collector under section 19 on 13th October, 1930, and confirmed by the Board of Revenue; but somehow the claim remained unpaid when the estate was released on 21st December, 1931. The creditor sued on the promissory note on 3rd January, 1933, and relied on the admission of the claim by the Collector on 13th October, 1930, as an

\*Second Appeal No. 1685 of 1934, from a decree of Makhan Lal, Second Civil Judge of Saharanpur, dated the 5th of October, 1934, confirming a decree of Ilias Ahmad, City Munsif of Saharanpur, dated the 19th of April, 1934.

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acknowledgment saving limitation. Under section 52 of the Court of Wards Act the period between 3rd August, 1929, and 21st December, 1931, was to be excluded in computing the period of limitation applicable to the suit:

*Held* that the Collector in charge of the debtor's estate under the Court of Wards was a duly authorised agent of the debtor for the purpose of making an acknowledgment, within the meaning of section 19 of the Limitation Act.

Section 19 of the Limitation Act could not apply to the acknowledgment in question, which was made after the expiry of the period of limitation prescribed, though during the period excluded by section 52 of the Court of Wards Act.

Section 19 of the Limitation Act refers to "the period prescribed". What is referred to in section 52 of the Court of Wards Act and in various sections of the Limitation Act is the exclusion of certain periods of time in calculating the date on which a suit may be brought, and it can not be said that the period excluded is the period prescribed.

Section 52 of the Court of Wards Act does not "prescribe" any period of limitation and therefore an acknowledgment made within the period mentioned in it is not an acknowledgment within "the period prescribed", as required by section 19 of the Limitation Act. If the view were taken that section 52 prescribes a period, then section 29(2)(b) of the Limitation Act would make section 19 altogether inapplicable.

Dr. S. N. Sen and Mr. A. M. Gupta, for the appellants.

Messrs. S. K. Mukerji and R. C. Ghatak, for the respondents.

BENNET, J.:—This second appeal raises two questions of limitation, and the second appeal has been referred to a Full Bench for decision. The plaintiffs sued on January 3, 1933, on a promissory note executed in their favour by the defendants on July 29, 1927. The note was payable on demand and under article 73 of the first schedule of the Limitation Act, Act IX of 1908, the suit should be brought within three years from the date of the promissory note. Nothing was paid by the executants towards principal or interest.

The estate of the executants was taken under the Court of Wards by the Collector and a notice was published on August 3, 1929, under section 17 of the Court

of Wards Act (U. P. Act IV of 1912), calling on persons having claims against the estate to notify the claims to the Collector. The plaintiffs notified their claim and the Collector allowed the claim under section 19 on October 13, 1930, and the Board of Revenue confirmed this order on October 30, 1930. But the claim was not paid and the estate was released on December 21, 1931.

The plaintiffs appellants claim that the admission of their claim by the Collector on October 13, 1930, and by the Board of Revenue on October 30, 1930, are admissions under section 19 of the Limitation Act from which a fresh period of three years' limitation began to run. Both the courts below have held against this claim and have dismissed the suit on the ground of limitation.

The second ground of appeal contests a finding of the lower appellate court that "The powers of a Collector in regard to claims are limited by section 19 of the Court of Wards Act, where a Collector can only allow or reject a particular claim, but cannot acknowledge it as an agent or representative of his wards." The contrary has been held in *Kamla Kuar v. Har Sahai* (1) and in *Beti Maharani v. Collector of Etawah* (2). This is abundant authority for the proposition that the Collector in charge of the Court of Wards was the duly authorised agent of the defendants for the purpose of making such an acknowledgment.

Section 19 of the Limitation Act sets out its requirements in sub-section (1) as follows: "Where, 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, etc." The period prescribed for the suit expired on July 29, 1930, and the acknowledgment was not made until October 13, 1930. The defendants respondents therefore contend that the acknowledgment was made after expiry of the period prescribed and was therefore invalid under section 19.

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(1) Weekly Notes 1888, p. 187.

(2) (1894) I.L.R. 17 All. 198.

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and this contention has been accepted by the courts below. The appellants rely on section 52 of the Court of Wards Act which says: "When the Court of Wards, after assuming the superintendence of the property of a ward, releases the same without discharging the liabilities thereof in the manner provided in chapter IV, the time from the publication of notice under section 17 to the date of such release *shall be excluded* in computing the period of limitation applicable to suits or applications for the recovery of all claims outstanding against the ward at the date of such notice."

The question before us is, therefore, whether an acknowledgment made after the expiry of the prescribed period, but during an excluded period—excluded by a special and local Act—can form an acknowledgment to extend limitation under section 19 of the Limitation Act. Of the cases laid before us, a number refer to acknowledgments made in a period prescribed for bringing a suit, different from the period prescribed by the first schedule, but not in an excluded period.

In *Sheo Partab Singh v. Tajammul Husain* (1) and in *Harish Chandra v. Mst. Kastola Kunwar* (2) there were acknowledgments in the period of two years provided by section 31 of the new Limitation Act, Act IX of 1908, for certain suits on the passing of the Act, during which those suits might be brought. *Buta Singh v. Bhan Singh* (3) referred to an acknowledgment in the period of two years from the passing of the Repealing (Punjab Loans Limitation) Act of 1923 allowed by that Act for certain suits. These rulings are based on the dictum that "period prescribed" means period prescribed by any law and not merely by the first schedule. This view was taken by the Full Bench in *Dropadi v. Hira Lal* (4), where the question arose whether the period requisite for obtaining a copy allowed by section 12(2) of the Limitation Act could be excluded from the period of limitation

(1) (1926) I.L.R. 49 All. 67.

(2) A.I.R. 1925 All. 68.

(3) A.I.R. 1930 Lah. 978.

(4) (1912) I.L.R. 34 All. 496.

prescribed for an appeal by a special Act, the Provincial Insolvency Act, Act III of 1907, which provided a period of thirty days for an appeal against an order annulling a transfer (section 46). On page 503 it was held: "The general provisions of the Limitation Act are founded mainly upon equitable considerations which apply as much to periods of limitation prescribed by special Acts as to periods of limitation prescribed by the Limitation Act itself."

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The question before us is a different one, namely the effect of an acknowledgment made in a period which is excluded, after the prescribed period has expired. The rulings to which the appellants referred for the proposition that an acknowledgment after the prescribed period but during an excluded period would be a good acknowledgment under section 19 of the Limitation Act are:

*Abdul Ghani v. Chiranji Lal* (1), by MUKERJI, J., where limitation was to expire on October 17, 1923, but holidays intervened and the suit could be instituted on October 23, when the courts opened. It was during the holidays and after the prescribed period that the acknowledgment was made, and the learned single Judge held that the acknowledgment did form a fresh starting point of limitation under section 19. Section 4 provides that when the period prescribed expires when the court is closed, the suit may be instituted when the court re-opens. Reference was made to *Sheo Partab Singh v. Tajammul Husain* (2) for authority, but that ruling deals with an acknowledgment in a prescribed period and not in an excluded period.

*Visram Vasudeo v. Tabaji Balaji* (3) is a similar case where there was an acknowledgment after the prescribed period had expired but while the courts were closed, and it held the acknowledgment good. This was by a single Judge, BEAMAN, J.

(1) (1927) I.L.R. 49 All. 726.

(2) (1926) L.L.R. 49 All. 67.

(3) (1913) 15 Bom. L.R. 348.

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*Kishan Singh v. Sardar Ali* (1), by TEK CHAND, J., was a similar case of an acknowledgment during a period excluded by section 4 after the prescribed period had expired, and the acknowledgment was held good.

For the respondents the follownig rulings were *Bennet, J.* quoted :

*Bai Hemkore v. Masamalli* (2), a Bench ruling, a case of a similar acknowledgment given when the courts were closed, and after the prescribed period had expired. It was held not valid for section 19.

*Maganlal Harjibhai v. Amichand Gulabji* (3) was a case of an acknowledgment made by defendants while the plaintiffs were minors but after the prescribed period had expired. The period of the minority of the plaintiffs was excluded under section 6 when calculating the period within which the plaintiffs could sue. The cases were very fully reviewed and the Bench held that the acknowledgment was not good under section 19.

In *Debendra Nath Roy v. Kartic Prasad Das* (4) RANKIN, C.J., held that payment of interest on a simple money bond after the expiration of three years from the date limited for payment, when the court was closed, cannot save limitation under section 20 of the Limitation Act and if a suit on the bond is not brought on the day the court reopens the claim will be time barred. On page 1213 it is stated: "If one was to introduce into the wording of sections 19 and 20 the consideration that is brought into force by section 4, the limitation law would become extremely unworkable."

In *Anisuddin Ahmad v. Kalipada Ray* (5) it was again held by a single Judge that an acknowledgment on a day on which the court was closed, after expiry of the period prescribed, could not be a good acknowledgment under section 19.

(1) A.I.R. 1937 Lah. 162.

(2) (1902) I.L.R. 26 Bom. 782.

(3) (1928) I.L.R. 52 Bom. 521.

(4) (1928) I.L.R. 55 Cal. 1210.

(5) (1931) I.L.R. 58 Cal. 1148.

*Shanti Parkash v. Harnam Das* (1) was a similar case before SKEMP, J., and after a review of the rulings he held that the acknowledgment was not good.

Another recent ruling to the same effect by a single Judge is *Chidambaram Chettiar v. Venkatasubba Naik* (2)

There are, therefore, only three single Judge rulings for the view put forward by the appellants and six rulings, two by Benches, for the view of the respondents. The balance of authority is certainly on the side of the respondents. The view of the respondents appears to be the reasonable view. Section 19 refers to "the period prescribed". What is referred to in various sections of the Limitation Act and in section 52 of the Court of Wards Act is the exclusion of certain periods of time in calculating the date on which a suit may be brought, and it cannot be said that the period excluded is the period prescribed. Learned counsel for the appellants took this view that section 52 of the Court of Wards Act did not prescribe any period of limitation, but only excluded a period. And if learned counsel had admitted that section 52 of the Court of Wards Act did prescribe a period, then he would have been faced by the new addition made by Act IX of 1922 to section 29 of the Limitation Act, which now runs as follows: "(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only and in so far as and to the extent to which they are not expressly excluded by such special or local law; and (b) the remaining provisions of this Act shall not apply." If therefore it

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(1) A.I.R. 1937 Lah. 642

(2) A.I.R. 1937 Mad. 367.

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were argued that section 52 of the Court of Wards Act prescribed a period of limitation, then section 29(2)(b) states that certain sections, one of which is section 19, shall not apply. No acknowledgment made in the period prescribed under section 52 would provide a fresh start of limitation. The appellants are on the horns of a dilemma. Section 52 of the Court of Wards Act either prescribes a period of limitation, or it does not; if it prescribes a period, then under section 29(2)(b) section 19 will not apply; if it does not prescribe a period, then an acknowledgment made in its period cannot be within the "period prescribed" in section 19. It is not possible to draw any distinction between the words in section 19(1) "period prescribed for a suit" and the words in section 29(2) "prescribes for any suit a period". The same words must be given the same meaning in the two sections of the Limitation Act. The conclusion therefore is that section 19 cannot apply to an acknowledgment made after expiry of the period of limitation prescribed but during the period excluded by section 52 of the U. P. Court of Wards Act, Act IV of 1912. The appeal therefore should be dismissed as the suit of the plaintiffs was time barred.

RACHHIPAL SINGH, J.:—I agree.

GANGA NATH, J.:—I agree.

### APPELLATE CIVIL

*Before Mr. Justice Bennet and Mr. Justice Ganga Nath*

GOPAL DAS (DEFENDANT) v. JAGANNATH PRASAD AND ANOTHER (PLAINTIFFS)\*

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*Copyright Act, 1911 (1 and 2 Geo. V. ch. 46), sections 1(2), 2—Infringement of copyright—Compilation from original sources—Similar compilation, when an infringement of copyright—Copyright Act, 1911, section 7—Relief—Delivery of infringing copies yet unsold and sale price of the copies sold—Civil Procedure Code, section 75; order XXVI, rules 1, 8—Appointment of commissioner in a copyright case—*

\*First Appeal No. 444 of 1933, from a decree of W. Y. Madeley, Civil Judge of Benares, dated the 22nd of August, 1933.