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directs the court to hold an inquiry which would be similar to the inquiry under order XXXIV, rule 7, only a formal preliminary decree need not be drawn up. We do not think that the fact that the language in section 16 and section 12 refers to the money deposited by the applicant rules out the case of an applicant who makes no deposit as he states that no sum is due, any more than order XXXIV, rule 7, which uses similar language ("that, if the plaintiff pays into court the amount so found or declared due" etc.) rules out a similar case, which in fact comes under rule 9.

We think that the legislature intended section 12 to be a residuary section to section 11 and to embrace all mortgages by an agriculturist not dealt with in section 11. We think, in view of section 27 which applies the Civil Procedure Code and the provisions of order XXXIV, rules 7 and 9, that a reasonable interpretation of sections 12 and 16 covers the present application.

For these reasons we allow the first appeal from order with costs and we remand the application for disposal by the lower court. Costs hitherto incurred in the court below will abide the result.

Before Mr. Justice Collister and Mr. Justice Hunter

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ISRI PRASAD TEWARI (PLAINTIFF) *v.* CHANDRABHAN PRASAD TEWARI (DEFENDANT)*

Limitation Act (IX of 1908), section 19—Acknowledgment—Payment of a sum "in respect to" or "relating to" a promissory note—Whether acknowledgment of any further liability—Question to be decided upon wording of the endorsement—Extrinsic circumstances irrelevant.

An endorsement on a promissory note that Rs.25 were paid in respect to, or relating to, (*"babat pro-note haza ke"*) that promissory note does not amount to an acknowledgment, within the meaning of section 19 of the Limitation Act, of liability for any further sum. The case would be different if

*Second Appeal No. 768 of 1936, from a decree of S. B. Chandiramani, District Judge of Gorakhpur, dated the 31st of January, 1936, reversing a decree of Niyaz Ahmad, First Additional Civil Judge of Gorakhpur, dated the 11th of January, 1935.

the wording were "*pro-note men*", i.e. towards the payment of the promissory note.

The question whether a particular endorsement amounts to an acknowledgment or not within the meaning of section 19 must depend on the actual words which have been employed; any extrinsic circumstances, e.g. the pleadings in the case, cannot be looked at for this purpose.

Mr. *N. Upadhiya*, for the appellant.

Messrs. *A. P. Pandey* and *D. Sanyal*, for the respondent.

COLLISTER and HUNTER, JJ.:—This is a plaintiff's second appeal. The suit was for recovery of Rs.4,096-9-9 on the foot of a promissory note dated 29th December, 1930, which was alleged to have been executed by the defendant in favour of the plaintiff, who is his brother, in renewal of an earlier promissory note dated 27th December, 1929.

The defendant admitted execution but pleaded *inter alia* that the suit was barred by limitation. The plea of limitation was based upon a payment of Rs.25 which was endorsed on the promissory note under the date 2nd May, 1931. The trial court held that this sum of money had not been paid towards interest as such and therefore limitation was not saved under section 20 of the Limitation Act, but the learned court found that the endorsement amounted to an acknowledgment of payment by the defendant within the meaning of section 19 of the Act and that the suit was therefore within time. The suit was accordingly decreed.

The lower appellate court disagreed with the finding of the trial court as regards section 19 of the Limitation Act. The learned Judge held that the endorsement of 2nd May, 1931, on the promissory note in suit did not amount to acknowledgment within the meaning of the aforesaid section and the decree of the trial court was accordingly set aside and the suit was dismissed.

The point which is taken before us by learned counsel for the plaintiff appellant is that the view taken by

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the learned Judge of the lower appellate court is erroneous and that the endorsement amounted to an acknowledgment under section 19 of the Limitation Act. The actual words of this endorsement are as follows: *"Dastkhat Chandrabhan Prasad Tiwari babat pronote haza ke mahajan ko mubligh* 25 *rupiya diya. Tarikh* 2*nd May,* 1931, *baqalam khas."*

It is for us to determine whether these words can be interpreted as implying an acknowledgment of liability in respect to the balance due under the promissory note. We have been referred to various authorities by learned counsel, some of which have been mentioned by the learned Judge of the lower appellate court. The first case is that of *Ram Prasad* v. *Binaek Shukul* (1), decided by NIAMAT-ULLAH and RACHHPAL SINGH, JJ. It was alleged there that limitation was saved by payment of a sum of Rs.40 on the 7th of February, 1918, and by subsequent payments. At page 635 NIAMAT-ULLAH, J., who delivered the judgment, after dealing with section 20 of the Limitation Act observed: "It was also contended that each payment amounted to an acknowledgment of liability within the meaning of section 19. It is said that payments were noted by the defendant on each occasion on a certain copy book which the plaintiff's peon used to take round to the debtors. This copy book was produced in the lower courts. It has not come up with the record of the case. We declined to adjourn the case as the entries on that copy book were not relied on in either of the two courts below as containing acknowledgments under section 19 of the Indian Limitation Act. The fact of payment which is not disputed was also relied on as acknowledgment under section 19. Where a debtor pays a certain sum of money to his creditor, there may be an implied acknowledgment of the liability to the extent of the amount paid. It cannot, however, be said that the remaining liability shown by evidence *aliunde* should

(1) (1933) I.L.R. 55 All. 632.

be deemed to have also been acknowledged. In this view the payment of Rs.40 on the 7th of February, 1918, cannot amount to an acknowledgment under section 19 of the Limitation Act."

The next case is that of *Kirpa Ram* v. *Balak Ram* (1). It is a single Judge case decided by NIAMAT-ULLAH, J., who referred to and followed the decision in *Ram Prasad* v. *Binaek Shukul* (2). A suit had been instituted more than three years from the date of execution of a bond, but it was contended that limitation was saved by reason of a payment by the defendant of Rs.20 on the 15th of December, 1931, which was said to have been endorsed on the bond in the handwriting of the defendant. The learned Judge first considered section 20 of the Limitation Act and then at page 26 he observed: "Lastly, the learned advocate relied upon the endorsement in respect of the payment of Rs.20 said to be in the handwriting of the defendant as acknowledgment. It is in these terms: 'Received Rs.20 in respect of this bond'. These words do not imply any subsisting liability in respect of any debt remaining due after the payment of Rs.20. They are consistent with Rs.20 being the only sum due under the bond which was paid in final satisfaction thereof. In my opinion the endorsement is not such acknowledgment as would save limitation."

The question as regards the proper interpretation of section 20 of the Limitation Act came before a Full Bench of five Judges in *Udaypal Singh* v. *Lakhmi Chand* (3). The Court also considered the question of acknowledgment and at page 271 SULAIMAN, C.J., observed: "It is equally obvious that where a payment is made without any specification and the debtor does not signify whether he is making the payment of interest as such or of part payment of the principal, there is really no admission on his part that any further sum is

(1) [1935] A.L.J. 23. (2) (1933) I.L.R. 55 All. 632.
(3) (1935) I.L.R. 58 All. 961

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still due from him, and there is therefore no acknowledgment of liability on his part. He merely pays a lump sum of money and by no means admits that the debt is not fully discharged. There is an admission no doubt that there was a liability on him to the extent of the amount so paid, but there is no acknowledgment of any further liability." At page 283 THOM, J., (as he then was) said: "It was contended by the applicant that the endorsement of the payment on the bond by the debtor amounted to an acknowledgment of liability within the meaning of section 19 of the Limitation Act. For the reasons given by the learned CHIEF JUSTICE, I agree that this contention is unsound." BAJPAI, J., similarly said: "I agree with the learned CHIEF JUSTICE, for the reasons given by him, that the writing on the back of the bond does not operate as an acknowledgment under section 19 of the Limitation Act." NIAMATULLAH, J., by necessary implication took the same view, adhering to the previous decisions in *Ram Prasad* v. *Binaek Shukul* (1) and *Kirpa Ram* v. *Balak Ram* (2).

In the Full Bench case there was an endorsement on the bond in suit to the effect that Rs.50 had been deposited on the 17th of August, 1930.

In an unreported case of this Court, *Chandrabali Singh* v. *Raghunandan Singh* (3), there was an endorsement under the defendants' signature on the bond in these terms: "*Is dastawez men* 10 *rupiya wasul dekar dastawez par likh dihal ki joon par kam awe.*" SULAIMAN, C.J., translated these words as follows: "Having paid Rs.10 towards the amount due on the document I have made this endorsement." He thus interpreted the words "*dastawez men*" as "towards payment" or "in part payment". He says: "In my opinion the words used in this case clearly contained an acknowledgment that Rs.10 were being paid as part payment

(1) (1933) I.L.R. 55 All. 632. (2) [1935] A.L.J. 23.
(3) Civil Revision No. 26 of 1935, decided on 18th September, 1935.

of the amount due on the bond, which necessarily implied that something more remained over. This would therefore be an acknowledgment in writing of the liability under this bond."

In the case before us, as we have already shown, the words used are *"babat pronote haza ke"* and not *"pronote men"*.

We are next referred by learned counsel for the plaintiff appellant to a Madras case in *Venkatakrishniah* v. *Subbarayudu* (1). In that case there was an endorsement signed by the debtor in the following words: "Rs.378—13th July, 1905. Rs.378 only have been paid towards this document by Subbarayudu." It was held by a Bench of the Madras High Court that this endorsement amounted to an acknowledgment of liability within the meaning of section 19 of the Limitation Act. It will be observed that in that case the words used were "towards this document."

Finally we are referred to a decision of the Bombay High Court in *Ganesh Narhar* v. *Dattatraya Pandurang* (2). In that case the plaintiff sued upon a promissory note for Rs.1,500 dated the 12th November, 1913. Payments were made of Rs.90 on the 2nd February, 1915, Rs.200 on the 11th January, 1916, and Rs.381-12-0 on the 21st April, 1916. On the 6th of November, 1916, the defendant endorsed the three previous payments on the promissory note and added them up and signed the total; and it was held by a Bench that this was an endorsement whereby the defendant admitted his liability to pay the balance. The learned Judges relied upon a previous decision and we observe that in that earlier case the words used were "towards the amount due on the bond". It also appears that the learned Judges in this case of *Ganesh Narhar* were guided, to some extent at least, by the Common Law of England.

(1) (1916) I.L.R. 40 Mad. 698 (2) A.I.R. 1923 Bom. 239.

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Learned counsel for the plaintiff appellant pleads that the endorsement on the promissory note in suit amounts to a clear acknowledgment of liability for the balance and that limitation is therefore saved under section 19 of the Limitation Act. He also contends that we should take into consideration the fact that in his written statement the defendant admitted execution of this promissory note and that he has not anywhere pleaded payment of any other sum of money in satisfaction thereof—inasmuch as in his written statement he pleaded that the debt had been remitted by his mother who was the real owner of the promissory note. Now, the literal translation of the endorsement is as follows: "Signature of Chandrabhan Prasad Tewari, Rs.25 paid to the Mahajan in respect to (or relating to) this promissory note. Date 2nd May, 1931, by his own pen."

It seems to us that the question whether any particular endorsement amounts to an acknowledgment or not within the meaning of section 19 of the Act must depend on the actual words which have been employed; we cannot go beyond those words for the purposes of this section. The section requires that in order that limitation may be saved there must be an acknowledgment of liability in writing and signed by the party against whom the right is claimed. The endorsement itself must contain the acknowledgment, either express or implied. The endorsement on the promissory note in suit can only mean that Rs.25 were being paid in respect to or relating to the promissory note in suit; it neither imports nor implies any acknowledgment whatsoever in respect to anything beyond the amount which was then being paid. The plaintiff will only be entitled to an extension of time if he can show that there has been an acknowledgment in writing by the defendant of his liability and we think it is obvious in the present case that the endorsement carries with it no such acknowledgment. We do not think that the

pleadings or any extrinsic circumstances can be looked at, as requested by learned counsel for the plaintiff appellant, in order to explain the endorsement and in order to ascertain whether the defendant can be held to have acknowledged anything more than the endorsement itself purported to acknowledge. Learned counsel's request really means that we should ascertain that the liability existed and so infer that the defendant acknowledged it by his endorsement. For reasons already given we are of opinion that the determination of the question depends on the inference to be drawn from the endorsement itself.

In the result we dismiss this appeal with costs.

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

LAKHMI CHAND AND OTHERS (JUDGMENT-DEBTORS) *v.* BIBI KULSUM-UN-NISSA (DECREE-HOLDER)*

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Limitation Act (IX of 1908), section 15—Execution of decree not specifically stayed by order or injunction—Although subsequent decree inconsistent with the decree which was to be executed—Principle of the section can not be extended—Suspension of limitation, only in accordance with specific provisions—"General principle of suspension of limitation" not recognized.

In applying the law of limitation the courts in India are bound by the specific provisions of the Limitation Act and are not permitted to travel outside the ambit of those provisions or to discover in those provisions general principles and to apply these principles, on grounds of equity, to cases which are not specifically provided for by the Act itself. There is no place in the law of limitation in India for a "general principle of suspension of limitation" apart from the specific provisions of the Act which expressly allow such suspension in specific cases.

Section 15 of the Limitation Act, in so far as execution proceedings are concerned, contemplates the case only of execution proceedings being held up by a stay order or injunction of court. There is no reference in it to the case of the

*Appeal No. 20 of 1937, under section 10 of the Letters Patent.