REVISIONAL CIVIL.

Before Syed Wazir Hasan, Chief Judge and Mr. Justice Bisheshwar Nath Srivastava.

1931 *September*, 21.

JANAKA, MUSAMMAT (PLAINTIFF-APPLICANT) *v.* KALI CHARAN AND ANOTHER (DEFENDANT-OPPOSITE PARTY).*

Limitation Act (IX of 1908), section 19—Acknowledgment of liability under section 19, if creates a new right of action—Contract, essentials of—Promise to pay, without consideration, if enforceable at law—Original debt forming the consideration of a promise not proved—Contract, if enforceable—Contract Act (IX of 1872), section 25(3)—Promise to pay a barred debt under section 25(3), whether should be express.

Held, that an acknowledgment satisfying the requirements of section 19 of the Limitation Act does not create any new right of action but only enlarges the time and has the effect of making a new period run from the time of the acknowledgment. In other words according to the Indian law such acknowledgment does not operate as a new contract but only keeps alive the original cause of action.

Held further, that a bare promise to pay is not a contract enforceable at law unless it is supported by consideration. Where, therefore, the only consideration on which the promise can rest is the liability for the original debt and that debt is not proved the contract is not enforceable at law.

A promise such as is referred to in section 25, clause 3 of the Contract Act must be an express promise to pay a debt after the period of limitation in respect of it has expired and that an implied promise is not sufficient. *Govind Das* v. *Sarju Das* (1), *Ram Bahadur Singh* v. *Damodar Prasad Singh* (2), and *Deoraj Tewari* v. *Indrasan Tewari* (3), relied on. *Govind Singh* v. *Bijay Bahadur Singh* (4), distinguished.

*Section 25 Application No. 74 of 1930, against the decree of M. Humayun Mirza, Subordinate Judge of Bara Banki, sitting as Judge of the Court of Small Causes, dated the 16th of July, 1930.

(1) (1908) I.L.R., 30 All., 268. (2) (1921) 6 Pat., L.J., 121.
(3) (1929) I.L.R., 8 Pat., 706. (4) (1929) 27 A.L.J., 1279.

1931

JANAKA, MUSAMMAT v. KALI CHARAN.

THE case was originally heard by SRIVASTAVA, J., who referred an important question involved in it to a Bench. His order of reference is as follows:—

SRIVASTAVA, J.:—One of the points raised on behalf of the applicant is that the acknowledgment of liability contained in the receipt, dated the 12th of April, 1927, carries with it a promise to pay and is sufficient to constitute the foundation for a claim even though the pro-note be inadmissible in evidence and there be no evidence of the previous liability.

Reliance has been placed upon a decision of a Bench of the Allahabad High Court in *Govind Singh* v. *Bijay Bahadur Singh* (1), in support of this contention. It is met by the learned Counsel for the defendant opposite party by reference to the decision of a Bench of the late Court of the Judicial Commissioner of Oudh in *Jawahir Singh* v. *Lachman Das* (2), in which it was held that a mere acknowledgment did not give the plaintiff a free and independent cause of action. These two decisions seem to be in conflict and I think it is desirable that the question which is one of general importance should be decided by a Bench of two Judges.

I accordingly certify this case as a fit one under section 14(2) of the Oudh Courts Act for being heard and decided by a Bench.

Messrs. *Ramapat Ram* and *Ram Nath*, for the applicant.

Mr. *Ghulam Imam*, holding brief of Mr. *Ali Zahir*, for the opposite party.

HASAN, C.J. and SRIVASTAVA, J.:—This is an application for revision of a decision of the Subordinate Judge of Bara Banki in the exercise of his Small Cause Court jurisdiction.

(1) (1929) 27 A.L.J., 1279. (2) (1899) 3 O.C., 195.

1931

JANAKA, MUSAMMAT v. KALI CHARAN.

Hasan, C. J. and Srivastava, J.

The plaintiff came to court on the allegation that on the 12th of April, 1927, the defendant borrowed from her Rs. 254 bearing interest at Re. 1-8-0 per cent. per mensem promising to repay the money on demand and that he executed a pro-note and a receipt in respect of it in the plaintiff's favour. The defendant denied the pro-note. The plaintiff examined one attesting witness of the receipt. It transpired from his evidence that only one stamp of one anna had been affixed to the pro-note at the time of its execution. His evidence also showed that no money was paid when the pro-note was executed and that the entire consideration of the pro-note was credited for some previous debt.

The learned Subordinate Judge came to the conclusion that the other stamp of one anna appearing on the pro-note had been affixed subsequent to its execution. He therefore held that the pro-note was not sufficiently stamped and impounded it. Thus the pro-note having gone out of evidence, the plaintiff tried to fall back on the previous debt. As there was no evidence of the original transaction and the receipt purported to be for ready money, the learned Subordinate Judge held that no decree could be passed on the basis of the original liability. He also observed that even if the receipt were regarded as an acknowledgment of the previous liability, the suit could not be decreed on a bare acknowledgment divorced from the original transaction, and dismissed the suit.

It is admitted on behalf of the plaintiff that there is no evidence on the record in respect of the previous debt. We do not know the amount of that debt or the date on which it was incurred. There is nothing to show whether the debt was subsisting on the 12th of April, 1927, when the pro-note was executed or had become time-barred. The learned Counsel for the plaintiff has however contended that the transaction

1931

JANAKA, MUSAMMAT v. KALI CHARAN.

Hasan, C. J. and Srivastava, J.

of the 12th of April, 1927, constitutes a novation of the contract and that the receipt given in acknowledgment of the consideration of the pro-note should be deemed to carry with it a promise to pay which can form the foundation of an action. He claims that he is entitled to a decree on the basis of the acknowledgment contained in the receipt. In support of the contention reliance is placed upon two decisions of their Lordships of the Judicial Committee in *Kalka Singh* v. *Paras Ram* (1) and *Mani Ram* v. *Seth Rupchand* (2), and also upon a decision of a Bench of the High Court at Allahabad in *Govind Singh* v. *Bijay Bahadur Singh* (3). Section 19 of the Indian Limitation Act allows extension of limitation when an acknowledgment of liability is made before the expiration of the period prescribed. An acknowledgment satisfying the requirements of that section does not create any new right of action but only enlarges the time and has the effect of making a new period run from the time of the acknowledgment. In other words according to the Indian law such acknowledgment does not operate as a new contract but only keeps alive the original cause of action.

In *Kalka Singh* v. *Paras Ram* (1), occurs the following observation:—"In the next place, although an unqualified admission of a debt no doubt implies a promise to pay it, their Lordships are not prepared to hold that that is necessarily so where there is an express promise to pay in a particular manner. It must depend on the construction of the instrument in each case." In this case the existence of the amount of the old debt was admitted in the bond on which the suit was founded and therefore no question arose as to the consideration for the implied promise as a new contract. All the elements of a legally enforceable contract are present in the case. The suit however

(1) (1894) L.R., 22 I.A., 68. (2) (1906) L.R., 33 I.A., 165.
(3) (1929) 27 A.L.J., 1279.

failed on the ground that the promise to pay the old debt was conditional and the obliger could be compelled to pay it only in the stipulated manner and not otherwise.

Hasan, C. J. and Srivastava, J.

In *Maniram* v. *Seth Rupchand* (1) the question was one of the interpretation of an acknowledgment for the purpose of saving limitation under section 19 of the Indian Limitation Act. It was pointed out that the acknowledgment was made before the statutory period had run out and it was held that every requisite of the provisions of section 19 was admittedly complied with. In the circumstances the only question which remained for decision was as to whether the acknowledgment in question was an acknowledgment of "*liability*". In deciding this question their Lordships referred to the observation of MELLISH, L.J., in *In re River Steamer Co., Mitchell's Claim* (2) and said :—"An unconditional acknowledgment has always been held to imply a promise to pay, because that is the natural inference if nothing is said to the contrary." It will thus be seen that in neither of these cases the question arose as to whether the implied promise constituted a legally enforceable contract on which a cause of action could be founded. Obviously a bare promise to pay is not a contract enforceable at law unless it is supported by consideration. The only consideration on which the promise can rest in this case would be the liability for the original debt. That debt however is not proved.

Section 62 of the Indian Contract Act deals with the novation of contracts. In the case of novation a new contract is substituted in place of the original contract which ceases to be operative. The transaction which took place on the 12th of April, 1927, could be treated as novation of the original contract. The new contract, however, in the present case is not

(1) (1906) L.R., 33 I.A., 165. (2) L.R., 6 Ch., Ap. 822.

1931

JANAKA, MUSAMMAT v. KALI CHARAN.

capable of being enforced by reason of the pro-note being insufficiently stamped. It is therefore very doubtful whether the attempted novation having failed to produce a new enforceable contract, the original contract could be regarded as having come to an end. But whether it has come to an end or it has not, in either case the plaintiff's position is beset with difficulties. If the original contract has ceased to be operative she cannot enforce the novated contract by reason of the formal defect in the pro-note obtained by her. If, on the other hand, the original contract still subsists she cannot get a decree on its basis for the simple reason that there is no evidence in proof of it.

Hasan, C. J. and Srivastava, J.

The same argument was put by the learned Advocate for the applicant in another form also. It was contended with reference to the provisions of section 25(3) of the Indian Contract Act, 1872, that a promise to pay a barred debt is a sufficient consideration for a new contract and this contract should be implied in the terms of the receipt executed by the debtor. The argument may be answered in two ways. First, it clearly assumes that there was an old debt. We have already said that there is no proof of such a debt. Secondly, we are of opinion that a promise such as is referred to in section 25, clause (3), of the Contract Act must be an express promise to pay a debt after the period of limitation in respect of it has expired. We are supported in this view by the decisions of the Allahabad and Patna High Courts in *Gobind Das* v. *Sarju Das* (1), *Ram Bahadur Singh* v. *Damodar Prasad Singh* (2), and *Deoraj Tewari* v. *Indrasan Tewari* (3). If the contention of the plaintiff is to be accepted in the wide form in which it has been put, it would lead to startling results. As we have stated above, an acknowledgment in order to be

(1) (1908) L.R., 30 All., 268. (2) (1921) 6 Pat., L.J., 121.
(3) (1929) I.L.R., 8 Pat., 706.

effective under section 19 of the Limitation Act must be made before the expiration of the statutory period; yet in every case in which an acknowledgment fails under section 19 by reason of its having been made after the debt had become barred by time, a decree could be claimed on the basis of the same acknowledgment on the ground of its containing an implied promise to pay. Such a view would result in nullifying almost completely the provisions of section 19 of the Limitation Act.

Hasan, C. J. and Srivastava, J.

As to the decision of the Allahabad High Court in *Govind Singh* v. *Bijay Bahadur Singh* (1), all that need be said is that the trial court in that case had found that the defendant's previous indebtedness had been established and that the plaintiff's claim in respect of the original debt was within time when a fresh pro-note was executed. As we have pointed out before, there is no evidence to prove these facts in the present case. The Allahabad case is therefore not in point.

For the above reasons, we dismiss the application with costs.

Appeal dismissed.

(1) (1929) 27 A.L.J., 1279.