REVISIONAL CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge and Mr. Justice M. Ziaul Hasan

1939 *January*, 17

RAM CHARAN (DEFENDANT-APPLICANT) *v.* NANHEY (PLAINTIFF-OPPOSITE-PARTY)*

Limitation Act (IX of 1908), article 64—Account stated—Money dealings between parties—Defendant going through account and putting down on plaintiff's bahi *that certain sum was due—Entry whether amounts to account stated or mere acknowledgment of debt.*

Where the defendant had money dealings with the plaintiff and on a certain date he went through the account and signed an acknowledgment of his liability to the extent of a particular sum in the plaintiff's *bahi*, *held*, that the account was an account stated within the meaning of article 64 of the Indian Limitation Act and the entry in question was not a mere acknowledgment of debt. *Siqueira* v. *Naronha* (1), and *Bishun Chand through Lala Sri Ram* v. *Girdhari Lal* (2), relied on.

Mr. *K. P. Misra*, for the applicant.

Mr. *Radha Krishna Srivastava*, for the opposite-party.

THOMAS, C.J. and ZIAUL HASAN, J.:—This is an application for revision of a decree of the learned Judge, Small Cause Court, Unao.

The suit of the plaintiff-opposite-party was for recovery of Rs.246 based on what is said to be an account stated between the parties on Aghan Sudi 15, 1990 Sambat corresponding to 1st December, 1933. It was alleged that the defendant used to have money dealings with the plaintiff and that on the date mentioned he went through the account and signed an acknowledgment of his liability to the extent of Rs.200 in the plaintiff's *lekha bahi* and affixed a one anna stamp to the entry. It was also said that the defendant agreed to pay interest on the

*Section 25 Application No. 51 of 1936, for revision of the order of Pundit Dwarka Prasad Shukla, Additional Sub-Judge (as Judge of Small Cause Court), Unao, dated the 30th April, 1936.

(1) (1934) 11 O.W.N., 997 (2) (1934) 11 O.W.N., 1099

debt at Re.1 per cent. per mensem, hence the claim for Rs.246.

The defendant applicant denied his signature under the entry in question and further pleaded that a mere acknowledgment of a debt did not give a fresh start to limitation. As the alleged stated account was beyond three years of the original debt, the plaintiff tried to prove two later payments of interest but the learned Judge of the court below did not believe the alleged payments of interest and held that the signatures of the defendant under the endorsements of those payments were not genuine. He, however, held that the acknowledgment in question was signed by the defendant and amounted to an account stated and that therefore the plaintiff was entitled to sue on the basis of that acknowledgment. He, therefore, decreed the claim.

The learned counsel for the applicant contends that the entry in question is a mere acknowledgment of a debt and as that acknowledgment was made more than three years after the original debt, it does not save limitation under sections 19 and 20 of the Indian Limitation Act. On behalf of the opposite-party on the other hand it is contended that the entry in question is an account stated within the meaning of article 64 of the Indian Limitation Act and that therefore it could validly be made the basis of a suit.

The generally accepted view of what constituted an account stated used to be that the account must be mutual and for it to be mutual there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. The law on the point has however been settled by their Lordships of the Judicial Committee in two cases reported in 11 O. W. N. One is *Siqueira* v. *Naronha* (1) and the other is *Bishun Chand through Lala Sri Ram*

(1) (1934) 11 O.W.N., 997.

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v. *Girdhari Lal* (1). In the former their Lordships at page 1000 say:

> "An account stated may only take the form of a mere acknowledgment of debt, and in those circumstances, though it is quite true it amounts to a promise and the existence of a debt may be inferred, that can be rebutted, and it may very well turn out that there is no real debt at all, and in those circumstances there would be no consideration and no binding promise."
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> "But on the other hand, there is another form of account stated which is a very usual form as between merchants in business in which the account stated is an account which contains entries on both sides, and in which the parties who have stated the account between them have agreed that the items on one side should be set against the items upon the other side and the balance only should be paid; the items on the smaller side are set off and deemed to be paid by the items on the larger side, and there is a promise for good consideration to pay the balance arising from the fact that the items have been so set off and paid in the way described."

In this case the plaintiff had been employed by the defendant from about 1913 up to 1928. In the books of the business there were accounts of the plaintiff's drawings from time to time but there was no account on the other side in respect of salary which had not been fixed. In 1928 the account was drawn up and signed by the defendant's manager showing credits for salary and debits for drawings and ending in a balance in the plaintiff's favour. The account had throughout been in the plaintiff's favour and Lord ATKIN held that it was an account stated involving a promise to pay the balance for good consideration.

The facts of the other case were similar to those before us in the present case. In that cases the suit was brought as on an account stated evidenced by entries in the plaintiff's ledger. In the ledger on the debit side there was the following entry:

> "Balance due to be received after adjusting the account up to Kunwar Sudi 9, Sambat 1982, Rs.16,043-8-9."

(1) (1934) 11 O.W.N., 1003.

Below this entry was written by one of the defendants—

> "Balance due to be paid after adjusting the account up to Kunwar Sudi 9, Rs.16,043-8-9."

The latter entry was signed by both the defendants. Their Lordships of the Judicial Committee held that the entries constituted an account stated. At page 1008 they observed:

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> "Indeed the essence of an account stated is not the character of the items on one side or the other, but the fact that there are cross items of account and that the parties mutually agree the several amounts of each and, by treating the items so agreed on the one side as discharging the items on the other side *pro tanto*, go on to agree that the balance only is payable. Such a transaction is in truth bilateral and creates a new debt and a new cause of action. There are mutual promises, the one side agreeing to accept the amount of the balance of the debt as true (because there must in such cases be, at least in the end, a creditor to whom the balance is due) and to pay it, the other side agreeing the entire debt as at a certain figure and then agreeing that it has been discharged to such and such an extent, so that there will be complete satisfaction on payment of the agreed balance. Hence, there is a mutual consideration to support the promises on either side and to constitute the new cause of action."

At another place their Lordships say—

> "Nor can it be material, as it seems, in determining whether there can be an account stated, whether the balance of indebtedness is throughout, as it must be at the end, in favour of one side. Equally it seems irrelevant whether the debt in favour of the final creditor was created at the outset by one large payment or consisted of several sums of principal and several sums of interest; nor can it matter, in this connection, whether the only payments made on the other side were simply payments in reduction of such indebtedness or were payments in respect of other dealings. In any event, items must in the same way be ascertained and agreed on each side before the balance can be struck and settled."

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Further on it is said—

> "It is clearly involved in these observations that there can in law be a settlement of account as between banker and customer, and that this is the law, is constantly assumed and acted upon in practice, but in such cases the dealings are purely financial on each side and consist of money credits and debits in the course of which one side may never be able to sue the other for a demand or claim because he is always in debt to the other, though, if sued for the whole debt, he could avail himself of payments he has made in partial reduction of the debt on running account, though merely by way of set off or counter-claim. The customer in such cases may have had a continuous overdraft and be in this respect in the same position as the respondents (in the case before their Lordships) on the account in question. But it would be an unfortunate restraint on legitimate and ordinary business relations if the law were to say that an account could not be mutually stated and agreed between parties in such relationship."

In view of the above exposition of the law by their Lordships of the Privy Council, there can be no doubt that the account in question is an account stated within the meaning of article 64 of the Indian Limitation Act, since the original debt being of Rs.200 only and the balance struck being of the same amount, there must have been intermediate payments by the defendant-applicant.

We are therefore of opinion that the suit was rightly decided by the learned Judge of the court below and dismiss this application with costs.

Application dismissed.