

1928

KAHAN CHAND-  
DULA RAM  
v.  
DAYA RAM-  
AMRIT LAL.

The only point remaining is that the defendant-respondent has urged that his minor son is not personally liable. This is conceded by the plaintiff. We accept the appeal and give the plaintiff a decree against the defendant-firm with costs throughout.

N. F. E.

*Appeal accepted.*

### APPELLATE CIVIL.

*Before Sir Shādi Lal, Chief Justice and Mr. Justice Skemp.*

FATEH CHAND AND ANOTHER (PLAINTIFFS)

Appellants

*versus*

GANGA SINGH (DEFENDANT) Respondent.

Civil Appeal No. 1869 of 1924.

*Indian Limitation Act, IX of 1908, section 19—Suit for recovery of money due on the basis of a balance—whether competent.*

*Held*, that an unconditional acknowledgment of a debt implies a promise to pay, and a suit on the basis of a balance is therefore competent.

*Mani Ram Seth v. Seth Rup Chand* (1), and *Chunilal Ratan Chandra Gujrathi v. Laxman Govind Dube* (2), followed.

*Pala Mal v. Tulla Ram* (3), *Ranchoddas Nathubhai v. Jeychand Khushal Chand* (4), and *Shankar v. Mukta* (5), not followed.

*Second appeal from the decree of Lt.-Col. B. O. Roe, District Judge, Jullundur, dated the 9th May 1924, affirming that of E. Lewis, Esquire, Subordinate Judge, 1st Class, Jullundur, dated the 30th November 1923, dismissing the plaintiffs' suit.*

(1) (1906) I. L. R. 33 Cal. 1047 (P. C.). (3) 119 P. R. 1908.

(2) (1922) I. L. R. 46 Bom. 24.

(4) (1884) I. L. R. 8 Bom. 405.

(5) (1898) I. L. R. 22 Bom. 513.

1929

Feb. 8.

BADRI DAS, for Appellants.

SHEO NARAIN, for Respondent.

1929

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The Judgment of the Court was delivered by—

SKEMP J.—In this case the plaintiffs sued on the basis of a balance and the lower Courts dismissed the suit relying on *Pala Mal v. Tulla Ram* (1), and holding that a mere balance does not imply a promise to pay and therefore does not support a suit.

The Privy Council ruling in *Mani Ram Seth v. Seth Rup Chand* (2), was not brought to the attention of the Courts below. Their Lordships were dealing with an expression which they held to be an acknowledgment under section 19 of the Limitation Act; but in the course of their judgment, at page 1058, it is said that the rule in India is the same as in England, and that an unconditional acknowledgment always implies a promise to pay as the natural inference and what every honest man would mean to do.

The learned Judges who decided the Punjab Chief Court case relied on earlier rulings of the Chief Court and also upon *Ranchoddas Nathubhai v. Jeychand Khushal Chand* (3). This Bombay case was followed in *Shankar v. Mukta* (4), but a later ruling of the Bombay High Court *Chunilal Ratan Chandra, Guirathi v. Laxman Govind Dube* (5), allowed the acknowledgment then in question to form the basis of a suit on the ground that the Privy Council judgment *Mani Ram Seth v. Seth Rup Chand* (2), virtually overruled *Shankar v. Mukta* (4). Similarly the decision in *Pala Mal v. Tulla Ram* (1), cannot now be regarded, as good law. We must now follow the

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1928  
 FATEH CHAND  
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rule laid down in *Mani Ram Seth v. Seth Rup Chand* (1), namely, that an unconditional acknowledgment implies a promise to pay.

The appeal must therefore be accepted and the suit remanded to the Court of the District Judge for a finding on the issue, whether the defendant is entitled to reduction of interest, which was left undecided. Stamp on appeal to be refunded, other costs to be costs in the litigation.

*N. F. E.*

*Appeal accepted.*

*Case remanded.*

### APPELLATE CIVIL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice Bhide.*

PANNA LAL (PLAINTIFF) Appellant

*versus*

RAM SINGH AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 671 of 1924.

*Indian Limitation Act, IX of 1908, section 20—Part payment without specifying towards which of several debts it is made—Appropriation of, by creditor, as part payment of the debt in suit—claim for balance of that debt—Limitation—whether extended by the part payment.*

The plaintiff sued for the recovery of Rs. 2,200, on the basis of a bond and sought to avoid the bar of limitation by pleading a payment of Rs. 200, made by the debtors without specifying the debt towards which the payment was made, and which plaintiff had appropriated as part payment of the amount due upon the bond (as he was entitled to do under section 60, Indian Contract Act) but which, it was found, might have been made by the debtors towards a different debt:—

*Held*, that in the absence of evidence to shew that the part payment was made by the debtors in respect of the debt