ORIGINAL CIVIL.

Before Mr. Justice Ba U.

1937

May 6.

M.K. KASIVISWANATHAN CHETTYAR

v.

R.M.S.L. LAKSHMANAN CHETTYAR.*

Acknowledgment, express or implied—Part payment of principal—Endorsement of payment on promissory note—Inference of acknowledgment of liability—Limitation Act, s. 19.

Where a debtor pays a certain sum in reduction of the principal sum due by him on a promissory note and endorses on the promissory note itself the fact of payment of the sum from which it could be inferred that the debtor acknowledges his liability to pay the balance due on the note, it is an acknowledgment within s. 19 of the Limitation Act.

The defendant endorsed on his promissory note the words, "on the 3rd August 1933 and on the 23rd May 1932 paid towards this Rs. 410 . . ." and signed the same. He had paid this sum towards the principal amount in May 1932 and made the endorsement in August 1933. *Held*, that this was an acknowledgment, and the suit filed on the 1st August 1936 was in time.

Ganesh Joshi v. *Dattatraya Joshi*, I.L.R. 47 Bom. 632; *Maniram* v. *Seth Rupchand*, I.L.R. 33 Cal. 1047; *Prasanna Kumar Roy* v. *Niranjan Roy*, I.L.R. 48 Cal. 1046, referred to.

Ram Prasad v. *Binaek Shukul*, I.L.R. 55 All. 632, distinguished.

Doctor (with him *Venkatram*) for the plaintiff.

Hay (with him *Bhattacharya*) for the defendant.

BA U, J.—This is a suit for recovery of Rs. 12,000 alleged to be due on a promissory note dated the 20th August 1930. The suit was filed on the 1st August 1936 and it is *prima facie* barred by time. The plaintiff claims exemption from limitation on the following grounds:

"That the defendant on the 19th *Adi Sreemukha* corresponding to 3rd August 1933 made an endorsement of payment of Rs. 410 towards the said promissory note on the back of the promissory note under his signature. The plaintiff claims exemption from limitation by reason of the said endorsement."

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The defendant admits having executed the promissory note in suit for consideration but pleads that it is barred by time. Leaving out the unnecessary details, what the defendant avers as to how the suit is barred is that the payment of Rs. 410 was made on the 23rd May 1932 but the fact of the payment was noted on the back of the promissory note only on the 3rd August 1933. He therefore contends that time for the purpose of limitation should be reckoned not from the date of the endorsement but from the date of the actual payment, namely, the 23rd May 1932.

The plaintiff by his reply admits that the payment of Rs. 410 was made on the 23rd May 1932 and the endorsement was made only on the 3rd August 1933 as alleged by the defendant.

On these pleadings only one issue was framed and that issue is—

Whether the suit is barred by lapse of time.

No evidence has been led in the case, counsel having agreed to address the Court on the pleadings as they stand. The decision of the case thus turns upon the endorsement on the suit promissory note. The endorsement is in Tamil but the official translation of it is in the following terms :

"On the 19th *Adi* of *Sreemukha* year (3-8-33) and on 10th *Vaigasi* of *Aungirasa* year (23-5-32) paid towards this Rs. 410, this sum of rupees four hundred and ten only, through the account of Ko Pan of Ywabathalliywa.

(Sd.) R.M.S.L. LETCHUMANAN CHETTYAR."

The submission made by Mr. F. S. Doctor on behalf of the plaintiff is that this endorsement amounts to an acknowledgment by the defendant of his liability to pay the amount remaining due on the promissory note within the meaning of section 19 of the Limitation Act and

that, therefore, time should be computed from the date of the endorsement.

If this endorsement amounts to an acknowledgment within the meaning of the aforesaid section the suit is of course well within time.

Mr. Hay on behalf of the defendant, however, contends that the word "acknowledgment" as used in section 19 of the Limitation Act means "a definite admission of one's liability" and as the endorsement as it stands does not connote the admission of his liability by the defendant, time should be computed from the date of the payment of Rs. 410 as laid down in section 20 of the Limitation Act. In support of his contention Mr. Hay relies on the case of *Ram Prasad* v. *Binaek Shukul* (1). The facts of that case are entirely different from the facts of the present case. In that case the plaintiff sued for the recovery of a certain sum of money alleged to be due as the balance of the price of goods sold and delivered to the defendant. The defence of the defendant was that the suit was barred by time. In order to escape the bar of limitation the plaintiff relied on a number of payments made by the defendant as noted in his peon book. On these facts Niamat-ullah and Rachhpal Singh JJ. made the following observations :

"Where a debtor pays a certain sum of money to his creditor there may be 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 be deemed to have also been acknowledged."

The learned Judges accordingly dismissed the appeal. I entirely agree with the learned Judges in their observations on the facts as presented in that case. The mere endorsement of payments of certain sums of

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

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money in a peon book cannot be treated as being tantamount to an acknowledgment by a debtor of his remaining liability. If such an endorsement were made on the back of a promissory note or a bond different considerations would then arise. If the learned Judges in the aforesaid case, however, meant to hold, as contended by Mr. Hay, that whatever the circumstances and the nature of the case may be, "if 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, but it cannot be said that the remaining liability should be deemed to have been also acknowledged," then I would respectfully say that I do not agree. That would mean that the word "acknowledgment" as used in section 19 of the Limitation Act means "express" acknowledgment. There is no warrant for restricting the use of the word "acknowledgment" in this way. It may be either express or implied. Each case must in my opinion be decided on its merits. In connection therewith I may refer to the observations of Mookerjee J. in *Prasanna Kumar Roy* v. *Niranjan Roy* (1) wherein the learned Judge said :

> "Whether a particular endorsement does or does not constitute an acknowledgment of the right claimed by the plaintiff must obviously depend upon its terms, and no useful purpose can be served by a meticulous examination of other endorsements made under different circumstances and expressed in different phraseology."

In support thereof the learned Judge quoted the following observations made by their Lordships of the Privy Council in *Maniram* v. *Seth Rupchand* (2) :

> "In a case of very great weight, the authority of which has never been called in question, Mellish L.J. laid it down that an

(1) (1921) I.L.R. 48 Cal. 1046, 1049.
(2) (1906) I.L.R. 33 Cal. 1047 ; S.C. 33 I.A. 165.

acknowledgment to take the case out of the statute of limitation must be either one from which an absolute promise to pay can be inferred or, *secondly*, an unconditional promise to pay the specific debt, or, *thirdly*, there must be a conditional promise to pay the debt and evidence that the condition has been performed."

Now, if the present case is examined in the light of these observations what do we find ? There is a promissory note for Rs. 12,500 admittedly executed by the defendant and on the back of which there is an endorsement to the effect that a sum of Rs. 410 has been paid and the defendant has signed thereunder. What inference can be drawn from this ? The only reasonable inference that can be drawn from this is that the defendant has acknowledged his liability to pay the balance due on the promissory note. This is not without support : see the case of *Ganesh Narhar Joshi* v. *Dattatraya Pandurang Joshi* (1) the facts of which are almost similar to the facts of the present case. In that case the plaintiff sued for recovery of certain sums of money due on two promissory notes. The suit was contested in respect of one promissory note on the ground of limitation. The second defendant in that case made three payments of three different sums on three different dates, namely, Rs. 90 on February 2, 1913, Rs. 200 on January 11, 1916, and Rs. 381-12-0 on April 21, 1916. Then on November 6, 1916, the second defendant endorsed on the note the three payments which had been made on the previous dates, added up the total, and signed underneath. On these facts Macleod C.J. observed :

"It is difficult to say that that endorsement can mean anything else than this, 'I have paid so much on account of my liability on the note, and in consequence I am only liable for the balance remaining due.'"

(1) (1922) I.L.R. 47 Bom. 632, 635.

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This is exactly what has happened in this case, and for all the reasons given above I hold that the endorsement on the suit promissory note is an acknowledgment within the meaning of section 19 of the Limitation Act and the suit is consequently not barred by time. I grant a decree in the terms prayed for with costs.

APPELLATE CIVIL.

Before Mr. Justice Baguley, and Mr. Justice Mosely.

1937

May 6.

KO PE KYAI
v.
MA THEIN KHA AND OTHERS. *

Burmese customary law—Inheritance—Apatittha *child living apart from parents*—Manugye, *Vol. X, paragraph 25*—Keittima *child living apart from adoptive parents—Intention of adoptive parents.*

An *apatittha* child who lives apart from his parents is not entitled to inherit from them. According to *Manugye*, Vol. X, paragraph 25, if the adopted child be not living with the parents, and their own children are, he has no right to share, and when there are other relations, if the adopted child be living separate, the property shall descend to the relatives of the deceased. The only exception is when the adopted child is not a stranger but within the six degrees which entitle him to a share.

The rule that a *keittima* child must live with his adoptive parents in order to inherit has been abrogated by recent decisions of the Courts, but that is because a *keittima* child gets his right of inheritance from the intention of the adoptive parents that he shall inherit, whereas such intention is absent in the case of an *apatittha* child.

Ma Than Nyun v. *Daw Shwe Thit*, I.L.R. 3 Ran. 557, referred to.

Tha Kin for the appellant.

Kyaw Myint for the respondents.

BAGULEY, J.—This appeal arises out of a suit filed in the District Court of Bassein to recover the estate of U Tha Kho and Ma Eik. The plaint is a peculiar one. is headed "Suit for Administration," and it begins

* Civil First Appeal No. 111 of 1936 from the judgment of the District Court of Bassein in Civil Regular Suit No. 19 of 1935.