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it that the descendants of the original donors have no right in the property so long as there is any female or male descendant of the donee's line in existence.

There is no force in the appeal which we dismiss with costs.

*A. N. C.*

*Appeal dismissed.*

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## APPELLATE CIVIL.

*Before Bhide and Din Mohammad JJ.*

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*June 1.*

NIHALU RAM-CHELA RAM (PLAINTIFF)
Appellant
*versus*
RADHU RAM-HUKMI RAM, ETC. (DEFENDANTS)
Respondents.

**Civil Appeal No. 653 of 1928.**

*Indian Limitation Act, IX of 1908, Section 19, Explanation I and Article 120: Acknowledgment—what amounts to and whether amounts to a 'promise to pay' under Section 25 of the Indian Contract Act, IX of 1872—Indian Evidence Act, I of 1872, Sections 93, 96: Acknowledgment silent as to the identity of debt referred to—whether oral evidence admissible—Practice—whether the evidence of the plaintiff can be recorded after the opposite party has been put into the witness box.*

An account commenced between the parties on 13th July 1906. Certain acknowledgments were said to have been made by the defendant firm on the basis of which a suit for the recovery of the amount due was brought on 12th April 1926. One of the acknowledgments, dated 19th October, 1914, contained the words " Rs. 4,049-11-6 *lekhe bagi dewne kite*." Of this sum only Rs. 1,600 had been advanced within six years of the date of acknowledgment. Three other acknowledgments, dated 9th January, 1919, 14th October, 1921, and 15th April, 1923, were letters addressed by the defendant to the plaintiff without any indication as to which

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account they referred to. A partner of the defendant's firm as plaintiff's witness professed ignorance as to whether they referred to the account in dispute, whereupon C. B., a partner of the plaintiff's firm, wanted to go into the witness box to explain those letters, but the trial Court refused to allow him to do so as it considered that he was merely trying to fill up the gap in the evidence.

*Held*, that the words '*dewne kite*' in an acknowledgment can be reasonably construed as a promise to pay within the meaning of Section 25 of the Indian Contract Act, and can form the basis of a fresh cause of action.

*Fateh Chand* v. *Ganga Singh* (1), and *Kanshi Ram-Banshi Ram* v. *Arjan Das* (2), relied upon.

*Pala Mal* v. *Tulla Ram* (3), dissented from.

*Held further*, that according to Explanation I to Section 19 of the Indian Limitation Act it is not necessary that the writing itself should specify the exact nature of the property or right in respect of which liability is acknowledged, and that there is no bar to extrinsic evidence being admitted for the purpose.

*Mani Ram Seth* v. *Seth Rup Chand* (4), *Beti Maharani* v. *Collector of Etawah* (5), and *Narayana Ayyar* v. *Venkataramana Ayyar* (6), relied upon.

*Held also*, that the trial Court was not justified in law in *refusing* to record the evidence of C. B. after putting the defendant into the witness box. It ought to have recorded the evidence and then drawn any adverse inference, if it thought fit to do so, from the circumstances in which the evidence was given.

*Second Appeal from the decree of* K. B. Sheikh *Din Mohammad, District Judge, Dera Ghazi Khan, dated the 12th December, 1927, affirming that of* Lala *Ram Rang, Subordinate Judge, 2nd Class, Dera Ghazi Khan, dated the 12th July, 1927, dismissing the plaintiff's suit.*

(1) (1929) I. L. R. 10 Lah. 748. (4) (1906) I. L. R. 33 Cal. 1047 (P. C.).
(2) 1932 A. I. R. (Lah.) 470. (5) (1894) I. L. R. 17 All. 198 (P. C.).
(3) 119 P. R. 1908. (6) (1902) I. L. R. 25 Mad. 220 (F. B.).

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J. N. AGGARWAL and J. L. KAPUR, for Appellant.

NAWAL KISHORE, for Respondents.

BHIDE J.—This Second Appeal arises out of a suit for recovery of Rs. 2,596 based on an account between the parties commencing from 13th July, 1906. The suit has been dismissed by the Courts below as time-barred and from this decision plaintiff has appealed.

The suit was instituted on 12th April, 1926, and was *prima facie* barred by time, but the plaintiff relied on certain acknowledgments to bring the suit within time under Section 19 of the Indian Limitation Act. The acknowledgments thus relied on in their chronological order were as follows:—

Exhibit P/4, dated 3rd *Kattak* 1971 (=19th October, 1914).

Exhibit P/5, dated 15th *Kattak*, 1972 (=31st October, 1915).

Exhibit P/1, dated 26th *Poh*, 1975 (=9th January, 1919).

Exhibit P/3, dated 29th *Asuj*, 1978 (=14th October, 1921).

Exhibit P/2, dated 3rd *Baisakh*, 1980 (=15th April, 1923).

The first acknowledgment is alleged to have been made on 19th October, 1914, *i.e.* more than 8 years after the dealings commenced and it is conceded that this would not serve as a valid acknowledgment for the purposes of Section 19, except as regards two items of Rs. 600 and Rs. 1,000 which are said to have been advanced within six years of that date, *i.e.* on 20th *Maghar*, 1965 (=4th December, 1908) and 18th *Jeth*, 1969 (=20th May, 1912), respectively. It is, how-

ever, urged that this acknowledgment of 1914 (Exhibit P/4) in itself, constituted a promise to pay within the meaning of Section 25 of the Indian Contract Act and could, therefore, furnish a fresh cause of action. The learned District Judge has refused to accept this contention on the authority of *Pala Mal* v. *Tulla Ram* (1), but that ruling has been lately dissented from in *Fateh Chand* v. *Ganga Singh* (2). In *Kanshi Ram-Banshi Ram* v. *Arjan Das* (3), it was held by a Division Bench of this Court, that the words '*3,000 rupaya babat nuqsan deyne*' expressed a definite promise to pay. The wording of Exhibit P/4 is as follows :—

"*4,049-11-6 Lekhe baqi dewne kite, miti Katak 3 Sambat, 1971 agat war karoni Akhar Lekhu Chodelikhe, Rupayea 4,069-11-6.*"

The words '*Dewne Kite*' in the above acknowledgment appear to be equally strong if not stronger and in my opinion these words can be reasonably construed as a promise to pay. I, therefore, hold that the entry of 1914 (Exhibit P/4) can form the basis of a fresh cause of action.

However, even if Exhibit P. 4 can support a fresh cause of action, the plaintiff cannot get over the bar of limitation unless the subsequent acknowledgments which have been relied on, by the plaintiff, *viz.* Exhibits P. 1 to P. 3 and P. 5 can serve the purpose. Now Exhibit P. 5 is an acknowledgment of the same balance as in Exhibit P. 4 with some interest. This acknowledgment was held inadmissible by the trial Court for want of proper stamp duty. This, however, would not matter; for the other three documents (Ex-

(1) 119 P. R. 1908. (2) (1929) I. L. R. 10 Lah. 748.
(3) 1932 A. I. R. (Lah.) 470.

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hibits P. 1 to P. 3), will suffice to bring the suit within time, if they amount to valid acknowledgments within the meaning of section 19 of the Indian Limitation Act. These documents are letters alleged to have been addressed by the defendants to the plaintiffs. But Piara Ram (P. W. 6), partner of the defendant firm, when questioned about them professed ignorance as to whether these letters referred to the accounts now in dispute. Chandar Bhan, partner of the plaintiff firm, wanted to go into the witness box after Piara Ram's evidence was over (apparently to explain these letters), but the trial Court refused to allow him to do so, with the result that there is nothing on the record to show to which accounts the letters, Exhibits P. 1 to P. 3, relate, and whether they were in fact acknowledgments of any subsisting liability with respect to the amount now claimed. The plaintiffs urged in the grounds of appeal before the learned District Judge that the trial Court had erred in law in refusing to record the statement of Chandar Bhan, but the learned District Judge did not apparently consider it necessary to go into this question as Exhibits P. 1 to P. 3 do not themselves show that they are acknowledgments of any subsisting liability in respect of the account now in dispute, and he was of opinion that no evidence *aliunde* was admissible to explain the letters.

The main points which now require decision in this appeal, therefore, are whether (*i*) extrinsic evidence is admissible to prove that the letters Exhibits P. 1 to P. 3 were acknowledgments of a subsisting liability in respect of the amount now claimed by the plaintiff, and (*ii*) if so, whether the learned Judge of the trial Court was right in refusing to allow Chandar Bhan to go into the witness box. As regards the first

point the learned District Judge has referred to *Venkata* v. *Parthasaradhi* (1), *Ittappan Kuthiravattat Nayer* v. *Nanu Sastri* (2), and *Alayil Kalathil Kambil Achuthan* v. *Kunnambrath Abdu* (3), but all that these authorities show is that the writing relied on should itself amount to an acknowledgment of liability. The learned counsel for the appellant strongly relied on *Maniram* Seth v. Seth *Rupchand* (4), in which their Lordships of the Privy Council held that even an admission that there was a mutual, open and current account at a particular time, amounted to a conditional acknowledgment of liability and implied a promise to pay in case the balance on that account was found to be in favour of the other party. In the present instance Exhibit P. 1 contains a statement as follows :—

' We have come to know of the amount due to you with reference to the letter received by post. You have charged interest therein. We have now shown the amount to your account.' Exhibit P. 2 says ' We have understood the account tendered by you. It is correct.' Exhibit P. 3 says ' Your item was found to be correct.' If the plaintiff can produce satisfactory evidence to show that the accounts which were sent to the defendants, with regard to which the above statements were made, referred to the amount now in dispute, these documents would amount to valid acknowledgments under section 19 of the Indian Limitation Act. According to explanation I to section 19 it is not necessary that the writing itself should specify the exact nature of the property or right in respect of which liability is acknowledged and there seems to be

(1) (1893) I. L. R. 16 Mad. 220. (3) 1925 A. I. R. (Mad.) 675.
(2) (1903) I. L. R. 26 Mad. 34. (4) (1906) I. L. R. 33 Cal. 1047 (P. C.).

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no bar to extrinsic evidence being admitted for the purpose (cf. *Beti Maharani* v. *Collector of Etawah* (1) and *Narayana Ayyar* v. *Venkataramana Ayyar* (2); also section 96 of the Indian Evidence Act).

As regards the next point for decision, *viz.* whether the learned Judge of the trial Court was right in refusing to allow the plaintiff to go into the witness box, the only ground on which the refusal was based was apparently the fact, that the plaintiff first put the defendants into the witness box and then wanted to go into the witness box himself. The learned Judge thought that he was only trying to fill up the gaps in the evidence and he therefore refused to record his evidence. Though, it would have been undoubtedly more satisfactory if the plaintiff Chandar Bhan had first gone into the witness box and put forward his case in a straightforward manner, I do not think the learned Judge of the trial Court was justified in law in *refusing* to record the evidence of Chandar Bhan. The learned counsel for the Respondents has not been able to cite any authority in support of the procedure adopted by the learned Judge and the order passed by him cannot, I think, be sustained. In my opinion, the learned Judge should have recorded the evidence and then drawn any adverse inference, if he thought fit to do so, from the circumstances in which the evidence was given.

As the trial Court has illegally refused to record evidence, which seems to be material for the decision of this appeal, there is no option but to remand the case for this evidence being now recorded. I would accordingly remand the case under Order 41, Rule 27,

(1) (1894) I. L. R. 17 All. 198 (P. C.).
(2) (1902) I. L. R. 25 Mad. 220 (F. B.).

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Civil Procedure Code (read with Order 42, Civil Procedure Code), for the evidence of Chandar Bhan being recorded with reference to the documents, Exhibits P. 1, P. 2 and P. 3. The defendants will also be entitled to produce evidence in rebuttal.

The parties should appear before the trial Court on the 18th June for a date being fixed for recording the evidence, and the Defendants should file their lists of witnesses (if any) on that date. The report should be submitted to this Court before the 31st August, and the case should be put up for hearing early in October.

DIN MOHAMMAD J.—I agree.

DIN MOHAMMAD J.

*P. S.*

*Appeal accepted;*
*Case remanded.*