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acquired property of their father in preference to the collaterals of the third degree. I would accordingly accept this appeal, set aside the judgment and decree of the learned District Judge and restore that of the Court of first instance decreeing the plaintiffs' suit with costs throughout.

SKEMP J.

SKEMP J.—I agree.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Tek Chand and Dalip Singh JJ.

CHELA RAM-SANT RAM (CREDITORS) Appellants

versus

OFFICIAL RECEIVER, RAWALPINDI— Respondent.

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June 26.

Civil Second Appeal No. 9 of 1936.

Indian Contract Act (IX of 1872) s. 25 (3) — Mention of a time-barred judgment-debt by insolvent in his Schedule of creditors — whether constitutes a fresh cause of action within the section in favour of the creditor.

In November 1924 the firm Chela Ram-Sant Ram got a decree against Nanak Chand. In 1933 Nanak Chand applied to be declared an insolvent and in the Schedule of his creditors he mentioned the judgment-debt of Chela Ram-Sant Ram, execution of which was by then admittedly barred by time. The Official Receiver and the lower Courts rejected the contention of Chela Ram-Sant Ram, that the entry in the Schedule, being an unconditional acknowledgment, implied a promise to pay and brought the case within section 25 (3) of the Indian Contract Act.

Held, that the mere mention of the debt in the Schedule of creditors did not constitute a fresh cause of action under section 25 (3) of the Contract Act. That section requires

that the agreement or promise to pay must be in writing. This means, not that the words 'I promise to pay' should occur in writing, but it does mean that the words, read as a whole, should by themselves express a promise to pay.

Case-law discussed.

Miscellaneous second appeal from the order of Mr. E. C. Marten, District Judge, Rawalpindi, dated 21st December 1935, affirming that of Khwaja Ghulam Muhammad, Insolvency Judge, Rawalpindi, dated 24th October 1935, rejecting the creditors claim as time-barred.

S. N. BALI, for Appellants.

NAWAL KISHORE, for Respondent.

DALIP SINGH J.—On the 3rd November 1924 the firm Chela Ram-Sant Ram got a decree against Nanak Chand. On the 21st March, 1933, Nanak Chand applied to be declared an insolvent. In the schedule of creditors attached to the plaint he mentioned the judgment-debt of Chela Ram-Sant Ram. It is conceded that at this time the said judgment debt could no longer be executed, as no proceedings had been taken within three years of the last step-in-aid of execution. Nanak Chand was adjudged an insolvent on the 28th December 1934 and the Official Receiver rejected the claim of Chela Ram-Sant Ram to figure as creditors on the 30th May, 1935, holding that the debt claimed by them was barred by limitation. The order was confirmed by the Insolvency Judge on the 24th October 1935, and the District Judge dismissed the appeal on the 21st December 1935. The appellant has come in appeal to this Court and his case was referred to a Division Bench by an order of a learned Single Bench dated the 24th instant.

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The question that really arises for decision in this appeal is: "Does the mention of the debt in the schedule of creditors filed on the 21st March 1933 constitute a fresh cause of action under section 25 (3) of the Contract Act?"

The learned counsel for the appellant, among other contentions, argues as follows:—

He contends that the mention of the debt in the list is clearly an acknowledgment in the hand-writing of the debtor and is signed by him, and that the Privy Council ruling, *Maniram Seth* v. *Seth Rup Chand* (1) supports the view, that an unconditional acknowledgment implies a promise to pay. He contends that there is nothing in section 25 (3) of the Contract Act which shows that the promise to pay must be in express words and hence he contends that the said acknowledgment constitutes a fresh cause of action. He has cited a number of rulings but so far as I have been able to see they do not support the proposition at all.

The learned counsel for the respondent has cited *Raj Narain Rao v. Ram Sarup* (2), *Abdul Rafiq v. Bhajan* (3), *Sashikanta Acharjya Chaudhri v. Sonaulla Munshi* (4), *Maganlal Harjibhai v. Amichand Gulabji* (5), *Deoraj Tewari v. Indarsan Tewari* (6), *Davindar Singh v. Lachhmi Devi* (7), *Mukhi Lal Chand v. Gul Muhammad* (8) and *Baru Mal v. Daulat Ram* (9) which support his contention that there should be an express promise to pay under the terms of section 25 (3) of the Contract Act.

(1) I. L. R. (1906) 33 Cal. 1047 (P. C.).
(2) I. L. R. (1930) 52 All. 480.
(3) I. L. R. (1931) 53 All. 963.
(4) I. L. R. (1930) 57 Cal. 394.
(5) I. L. R. (1928) 52 Bom. 521.
(6) I. L. R. (1929) 8 Pat. 706.
(7) I. L. R. (1931) 12 Lah. 239.
(8) 1933 A. I. R. (Lah.) 209.
(9) 1936 A. I. R. (Lah.) 164.

I do not think it is necessary to enter into any detailed analysis of these rulings. *Dacindar Singh v. Lachhmi Devi* (1) is a Division Bench ruling and the view stated by the learned counsel is supported by the remarks there, but the remarks themselves are *obiter dicta*. *Baru Mal v. Daulat Ram* (2) is a Single Bench ruling which supports the learned counsel, and so does *Mukhi Lal Chand v. Gul Muhammad* (3). To my mind, the matter is really quite simple. Some confusion has arisen by reason of the different meanings which might be attached to the word "express". There can be no doubt that under the Privy Council ruling, *Maniram Seth v. Seth Rup Chand* (4), every acknowledgment implies a promise to pay and, therefore, but for the Statute might form a cause of action. But the Statute has laid down that such an agreement is void, unless the agreement is a promise which is made in writing and signed by the debtor. Whatever might have been the reasons which induced the Legislature to make this distinction, it is clear to my mind that the distinction exists. Where a debt is not time-barred, an unconditional acknowledgment implying as it does a promise to pay, may both serve to extend limitation under section 19 of the Limitation Act or may be the basis for a suit as giving a fresh cause of action. But where a debt is already time-barred, then the Legislature lays down that the agreement or promise must be in writing. Now, as I understand the words of the section, this means not that the words "I promise to pay" should occur in writing but it does mean that the words read as a whole should by themselves express a promise to pay. When they do this, there is a fresh cause of action within section 25 (3) of the Contract Act. But

(1) I. L. R. (1931) 12 Lah. 239. (3) 1933 A. I. R. (Lah.) 209.
(2) 1936 A. I. R. (Lah.) 164. (4) I. L. R. (1906) 33 Cal. 1047 (P. C.).

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it cannot be held that a mere acknowledgment, however, unconditional, amounts to an express promise to pay. If the writing is merely an acknowledgment, *ex-hypothesi* it shows that the words by themselves do not amount to a promise to pay. The mere fact that the law implies a promise to pay in an unconditional ackowledgment is not the same thing as saying that the words by themselves amount to a promise to pay. Section 25 (3), in my opinion, clearly lays down that the promise must be in writing, not that some words which do not by themselves amount to a promise, but in which the law implies a promise, shall be sufficient to constitute a fresh cause of action.

In this case there can be no doubt that the mere mention of a debt in the schedule of creditors cannot amount to anything more than a mere acknowledgment. It cannot by any stretch of language be held to contain in itself a promise to pay. This being the case, I consider that the order of the learned District Judge was correct and I would dismiss the appeal with costs.

TEK CHAND J.

TEK CHAND J.—I agree.

A. N. C.

Appeal dismissed.