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as pointed out in *Ramanathan* v. *Ranganathan*[1]. And a similar view has also been taken in *Venkatesh Damodar* v. *Mallappa Bhimappa*[2].

The provisions of section 92, proviso (*4*), Indian Evidence Act, were also relied on; but it is not a mere case of setting up an oral agreement in modification of a registered instrument, and in *Mahomed Musa* v. *Aghore Kumar Ganguli*[3] a similar contention was unsuccessful (see at pp. 811 and 812).

I agree, therefore, that the appeal should be dismissed with costs.

Appeal dismissed.

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(1) (1917) 40 Mad. 1134 at pp. 1137, 1153. (2) (1921) 46 Bom. 722.
(3) (1914) 42 Cal. 801 ; L. R. 42 I. A. 1.

APPELLATE CIVIL.

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December 22.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.

GANESH NARHAR JOSHI (ORIGINAL PLAINTIFF), APPELLANT *v.* DATTATRAYA PANDURANG JOSHI (ORIGINAL DEFENDANT), RESPONDENT*.

Indian Limitation Act (IX of 1908), section 19—Acknowledgment—Endorsement on a promissory note.

An endorsement on a promissory note by the promisor is an acknowledgment of liability, which will start a fresh period of limitation from the date on which it was made, and it makes no difference that such endorsement is below an account showing what has already been paid on the promissory note.

Venkatakrishniah v. *Subbarayudu*(1), followed.

SECOND appeal against the decision of W. Baker, District Judge at Satara, reversing the decree passed by V. V. Bapat, Subordinate Judge at Karad.

*Second Appeal No. 111 of 1922.
(1) (1916) 40 Mad. 698.

Suit to recover money.

The suit was instituted on the 1st October 1919 to recover Rs. 1,425-11-0 as the balance of money due on two promissory notes, one dated the 12th November 1913 for Rs. 1,500 (Exhibit 29) and the other dated the 24th January 1917 for Rs. 500 (Exhibit 30) passed by Dattatraya, defendant No. 2. The plaintiff alleged that defendants Nos. 1 to 4 formed a joint family; that defendant No. 1 was the father and defendants Nos. 2 to 4 were the sons; that defendant No. 2, Dattatraya, passed the promissory note as the manager of the joint family; he attended to the family affairs as the father (defendant No. 1) was an old man and was not in good health.

The defendants Nos. 1, 3 and 4 contended that defendant No. 2 was liable for the payment and that the dealings were entered into by him on his own responsibility.

The defendant No. 2 pleaded limitation.

In the trial before the Subordinate Judge, the plaintiff's claim on the promissory note of 24th January 1917 (Exhibit 30) was held in time and a decree for Rs. 580-6-6 was passed to be recovered from defendant No. 2 and the estate of defendants Nos. 1, 3 and 4. To bring his claim on the promissory note of the 12th November 1913 (Exhibit 29) in time, the plaintiff relied on an endorsement of payment of Rs. 671-12-0 written and signed by defendant No. 2 on the 6th November 1916, which was a total of payments made by defendant No. 2 at different times, viz., Rs. 90 on the 3rd February 1913, Rs. 200 on the 11th January 1916, and Rs. 381 on the 21st April 1916. The Subordinate Judge held that the endorsement did not amount to an acknowledgment of debt as the balance due was not shown in the endorsement, dated the 6th November 1916, nor

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admitted by defendant No. 2 even impliedly. The Subordinate Judge, however, held that between 21st April 1916 and 6th January 1919, date of the suit, a notice was proved to have been sent to the plaintiff by the defendant in which the defendant No. 2 admitted the payment and as the notice was signed by him, it amounted to an acknowledgment. Relying upon the evidence of notice, the Subordinate Judge decreed that the plaintiff do recover Rs. 865-4-6 from defendant No. 2 on the promissory note of the 12th November 1916.

On appeal by defendant No. 2 the District Judge held that the Subordinate Judge's view that there was an acknowledgment in the notice was not supported by any evidence as the notice was not produced, and also held that the endorsement, dated the 6th November 1916, on the promissory note (Exhibit 29), did not amount to an acknowledgment, as the endorsement did not refer to any payment made that day: *Gora Charan Dutt* v. *Lokenath Dutt and others*, 8 W. R. 334. He therefore reversed the decree and dismissed the plaintiff's suit based on Exhibit 29.

Plaintiff appealed to the High Court.

A. G. Desai, for the appellant.

K. H. Kelkar, for the respondent.

MACLEOD, C. J.:—The plaintiff sued to recover Rs. 1,445-11-0 from the defendant being the balance on two promissory notes with future interest and costs. The lower Court passed a decree for Rs. 580-6-6 from the second defendant and the estate of defendants Nos. 1, 3 and 4 on the one note, and Rs. 865-4-6 from the second defendant on the other note. The chief contest was with regard to the liability on the note of November 12, 1913, on which it was said the balance due was Rs. 865-4-6. An issue was raised whether the claim on

the promissory note of 1913 was in time. The learned Judge held that the claim was in time as against the second defendant and not against defendants Nos. 1, 3 and 4. In appeal the claim on this note as against the second defendant was also rejected. Now it is admitted that the second defendant signed this promissory note on November 12, 1913, for Rs. 1,500 with interest at six per cent. Payments were made of Rs. 90 on February 2, 1913, Rs. 200 on January 11, 1916, and Rs. 381-12-0 on April 21, 1916. 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.

It is contended by the plaintiff that this was an acknowledgment of liability within the meaning of section 19 of the Indian Limitation Act. On the part of the second defendant it is contended that there was no sufficient acknowledgment. It may be admitted that the second defendant had not written in so many words that he admitted his liability for the balance due. But we must read the whole endorsement made by him, taken in conjunction with the words on the face of the note. 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".

We have been referred to the case of *Venkatakrishniah* v. *Subbarayudu*[1], where it was held that where a payment was made by a mortgagor, who was able to write, and was recorded on the back of the mortgage bond by a servant of the creditor and signed by the debtor, the endorsement amounted to an acknowledgment of liability within the meaning of section 19 of the Indian Limitation Act, though the

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payment was not good as a part payment within the meaning of section 20 of the Act. Mr. Justice Napier said:—

"I adhere to the opinion expressed by me in *Jagannadha Sahu* v. *Rama Sahu*[1] on the same words as are in this document. I have no doubt that there is in this endorsement an acknowledgment."

And Mr. Justice Srinivasa Ayyangar said (p. 700):—

"I have no doubt that the terms of the endorsement in this case, amount to an acknowledgment of liability. The debtor states in terms that he pays Rs. 378 towards the amount due on the bond and on the same day, made another payment of Rs. 22 and made another endorsement. I construe the endorsement as meaning that the debtor made a part payment of the amount due on the bond (on that day over Rs. 1,500 was due as shown on the face of the bond), which is certainly an acknowledgment that more money was due."

Following that decision, I think this is an endorsement by which the promissor recorded that he had paid Rs. 671-12-0 against the liability which stood against his name on the promissory note, and consequently he admitted his liability to pay the balance. It seems to me that as a matter of common law an endorsement on a promissory note by the promissor is an acknowledgment of liability, which will start a fresh period of limitation from the date on which it was made, and it makes no difference that such endorsement is below an account showing what has already been paid on the promissory note. I think, therefore, that this appeal must be allowed, the decree of the lower appellate Court set aside, and that of the Subordinate Judge restored with costs in this Court and the Court below.

Appeal allowed.

J. G. R.

[1] (1914) 17 M. L. T. 80.