Mahal, that lady herself having made no complaint against Pearay during her lifetime in respect of the transactions in question, but having released him from all liability in respect of them, can now ask for an account as against Pearay of the transactions antecedent to that release. It has been admitted that there were no transactions subsequent to the release, and the plaintiff's case throughout has been that all the money was obtained from the lady before the release, and that all the transactions complained of were before the release. As regards the claim from an inquiry as to the property alleged to have been taken by Pearay after the death of the lady, the Court below has said nothing about that, and we have not been troubled with any argument upon that part of the case. The result, therefore, is that the appeal must be allowed with costs and the suit dismissed with costs.

GEIDT, J. I concur.

Appeal allowed.

31 C. 195.

[195] APPEAL FROM ORIGINAL CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Hill and Mr. Justice Stevens.

JOGESHWAR ROY *v.* RAJ NARAIN MITTER;

AND

BENODE BEHARY MOOKERJEE *v.* RAJ NARAIN MITTER.*

[3rd December, 1903.]

Acknowledgment of liability—Limitation—Limitation Act (XV of 1877), s. 19—Exception from Limitation—Civil Procedure Code (Act XIV of 1882), s. 50.

In reply to a letter enclosing a bill for work done the defendant wrote: "the bill glanced over is incorrect; large amounts have been wrongly introduced. I will first have the work examined, although I know that the whole of the work is not yet finished; then I will examine the estimates and after deducting what has to be deducted I will see what is due":—

Held, that the writing was not an acknowledgment of liability within the meaning of s. 19 of the Limitation Act (XV of 1877).

Green v. *Humphreys* (1), referred to.

Under s. 50 of the Civil Procedure Code the plaintiff cannot take advantage of any ground of exemption from the law of limitation which has not been set up in the plaint.

[**Ref.** 17 M. L. J. 281; 26 I. C. 441; 14 C. W. N. 128; 17 N. L. R. 209; 36 Mad. 68; 33 Cal. 1047 P. C.; 12 C. L. J. 423=8 I. C. 788; 53 I. C. 898=23 C. W. N. 921. **Dist.** 7 C. L. J. 560; 3 Lah. L. J. 22. **Diss.** 10 Bom. L. R. 346. **Foll.** 21 M. L. J. 1024=12 I. C. 878.]

APPEAL by the plaintiff.

One Jogeshwar Roy, a builder and contractor, had entered into an agreement on the 26th August 1895 with the defendant, Raj Narain Mitter, to do some building works for the settled sum of Rs. 29,500 and to finish the same by the 16th November 1895, and to pay, in the event of his not so finishing in due time, Rs. 30 per day as compensation from the due date until actual completion. The work was done under the supervision of one Hari Charan Pal, [196] an engineer employed by the defendant, who on the 12th July 1898 gave a certificate by which he certified that the work had been satisfactorily completed.

* Appeals from Original Civil, Nos. 10 and 14 of 1903, in Suits No. 447 of 1899 and No. 446 of 1901.

(1) (1884) 26 Ch. D. 474.

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On the 25th October 1895 the said Jogeshwar Roy, in consideration of the sum of Rs. 3,000, executed a promissory note in favour of one Girdhari Lall, and as security for the amount hypothecated the debt due and owing to him (Jogeshwar Roy) by the defendant under the said agreement of 26th August 1895. The said Girdhari Lall instituted a suit in this Court, being suit, No. 377 of 1897, against the said Jogeshwar Roy for the amount due under the promissory note, and this Court by its decree dated the 5th May 1898 ordered the said Jogeshwar Roy to pay the amount claimed to the said Girdhari Lall, and further ordered that the amount claimed and decreed should form a charge on the debt due under the agreement mentioned in the plaint therein. Girdhari Lall then proceeded to execute the decree by attaching the money in the hands of the defendant, Raj Narain Mitter, but through some mistake made in the office of the attorneys of Girdhari Lall the money was wrongly described in the Tabular Statement as money due under the agreement of the 25th October 1895, whereas it should have been described as money due under the agreement of the 26th August 1895.

In the Tabular Statement, the mode in which the assistance of the Court is sought was described in this manner :—

"By attachment of the moneys in the hands of R. Mitter, Barrister-at-Law, belonging to the defendant Jogeshwar Roy for work done and materials supplied under an agreement made between the said Mr. Mitter and the defendant Jogeshwar Roy, and dated the 25th day of October 1895, upon which the decretal amount forms a charge under the decree in this suit."

Acting upon this representation, on the 1st September 1898, this Court by its order of that date prohibited and restrained the said Jogeshwar Roy from receiving from the defendant the moneys due under "an agreement dated the 25th October 1895," and the defendant from making payment of the said moneys or any portion thereof to any person whomsoever. This prohibitory order was followed by an order of the 8th March 1899 in the said suit No. 377 of 1897, which gave liberty to the defendant under s. 268 of the Civil Procedure Code to pay into Court the amount due from him and, in default of payment, appointed one Benode [197] Behari Mookerjee as Receiver to realize the said moneys with power to institute a suit in his own name.

On the 14th July 1899, Benode Behary as such Receiver instituted the suit No. 447 of 1899, for an account of what was due by the defendant to the said Jogeshwar Roy in respect of the agreement dated the 26th August 1895; and in order to establish that the cause of action was within the period prescribed by the Statute of Limitation, he relied upon an alleged acknowledgment in writing by the defendant of 18th June 1898. The terms of the writing are given in the judgment.

The said Jogeshwar Roy himself instituted another suit, No. 446 of 1901, on the 10th June 1901, alleging that in addition to the work covered by the said agreement he had at the defendant's request done various other works in connection with the said premises No. 15-3, Gopal Lal Tagore's Road, and claiming the sum of Rs. 8,866 for the said additional work. In the plaint he stated that more than three years have elapsed since the completion of the work, but his claim was not barred by limitation inasmuch as the defendant had on the 18th of June 1898 made an acknowledgment of his liability in writing signed by him, which writing has been referred to above. During the trial he also relied upon a certificate dated the 12th of July 1898 given by the engineer, Hari Charan Pal, who had been employed as aforesaid by the defendant for super-

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vising the work, but who was not acting for the defendant at the time the certificate was given, as an acknowledgment of the defendant's liability through his agent, the said Hari Charan Pal.

In defence it was urged that there never was any acknowledgment by the defendant, that the engineer was not his agent and had no authority at the date of the certificate to act for him and that this suit was not maintainable having regard to the provisions of s. 43 of the Civil Procedure Code.

The Lower Court dismissed both the suits holding that they were barred by the law of limitation, the reasons stated in the judgment in the first suit on the point of limitation governing that in the second.

The judgment in the original suit by Benode Behary Mookerjee, was reported in I. L. R. 30 Cal. Series. p. 699.

[198] Both the plaintiffs now appealed ; the two appeals were heard one after the other ; that by Jogeshwar Roy, appeal No 10 of 1903, was heard first, and appeal No. 14 of 1903 by Benode Behary Mookerjee, next.

In appeal No. 10 :

Mr. *Dunne* (Mr. *Robinson* with him) for the appellant, Jogeshwar Roy. The letter of the defendant dated the 18th June 1898 is a sufficient acknowledgment, under s. 19 of the Limitation Act. As to what is sufficient acknowledgment, see Darby and Bosanquet (second edition), p. 69, and the following pages. It is not necessary to have an acknowledgement that a debt was actually due ; it is sufficient if it is acknowledged that an account is pending ; and from that a promise to pay the balance should be inferred ; *Prance* v. *Sympson* (1), *Quincey* v. *Sharpe* (2), *Banner* v. *Berrdige* (3), *Green* v. *Humphreys* (4), and *Fink* v. *Buldeo Das* (5), section 19 of the Limitation Act is not so strict against the person claiming exemption from limitation as the English law.

Mr. *Garth* (*The Advocate-General* and Mr. *Pugh* with him) for the respondent. The letter of 18th June 1898 is no acknowledgment at all. S. 19 of the Limitation Act requires a distinct acknowledgment of an existing liability to serve as a re-creation of it at the time of such acknowledgment : *Dharma Vithal* v. *Govind Sadvalkar* (6).

The cases cited by Mr. Dunne have no application to this case. This is a suit for the recovery of money due for work done and goods supplied ; there is no question of account here.

The letter of so-called acknowledgment in order to be admissible in evidence should have been stamped : *Mulji Lala* v. *Lingu Makaji* (7).

In appeal No. 14 :

Mr. *Avetoon* (Mr. *Gregory* with him) for the appellant, Benode Behary Mookerjee. I adopt the arguments of Mr. Dunne, **[199]** and also rely upon a certificate given by the defendant's engineer, dated 12th July 1898 as an acknowledgment by his agent.

The Advocate-General (*The Hon'ble* Mr. *J. T. Woodroffe*) (Mr. *Pugh* and Mr. *Garth* with him) for the respondent. The only acknowledgment pleaded is the letter of the 18th June 1898. The plaintiff cannot take advantage of any ground of exemption from the ordinary law of limitation which he has not pleaded : see s. 50, Civil Procedure Code. Moreover, it is in evidence that the engineer was not in defendant's

(1) (1854) Kay 678.
(2) (1876) 1 Ex. D. 72.
(3) (1881) 18 Ch. D. 254.
(4) (1884) 26 Ch. D. 474.
(5) (1899) I. L. R. 26 Cal. 715.
(6) (1883) I. L. R. 8 Bom. 99.
(7) (1896) I. L. R. 21 Bom. 201.

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service at the date of the certificate, and there is nothing to show that he was authorized in that behalf, *i.e.*, to sign the acknowledgment.

MACLEAN, C. J. (*In Appeal No.* 10.) This is a suit by a builder and contractor, and the object of it is to recover the balance of a bill, which he says is due to him for the work done in relation to certain repairs and building on the defendant's premises No. 15-3, Gopal Lall Tagore's Road in Baranagar. The defence is that the suit is barred by the statute of limitation, to which the plaintiff replies—I will quote his own pleading from paragraph 10—"More than three years have elapsed since the additional works were completed, but the plaintiff's claim for the said balance or sum of Rs. 8,866-2-9 due to him, as in the last preceding paragraph hereof stated is not barred by limitation, inasmuch as the defendant, on the 18th June 1898, made an acknowledgment of his liability in writing signed by him." The only question on this appeal argued before us is whether the document in question is an acknowledgment of liability within the meaning of section 19 of the Indian Limitation Act of 1877, so as to enable the plaintiff to recover. In reply to a letter from the plaintiff which is dated the 9th of June and, which is in these terms, omitting the formal parts,—"The works of new building and repairs of your garden house, &c, &c., were finished to the approval of Babu Hari Charan Pal, Engineer. Some work of the one-storied building was damaged by the last earthquake. The repairs of all the damages caused by the said earthquake, and other extra works besides, have been finished. The bill of all the **[200]** aforesaid works and the account of balance due to me for works done in your dwelling-house at No. 34, Shampukur Street, are sent with this letter." In reply to that, the defendant sent a receipt which comprised the document to which I have referred, and is in these terms:—"Received from Babu Jogeshwar Roy a letter and bill for the works and repairs done in the garden house situated at No. 15-3, Gopal Lall Tagore's Road, Baranagar. The bill glanced over is incorrect; large amounts have been wrongly introduced. I will first have the work examined, although I know that the whole of the work is not yet finished. Then I will examine the estimates, and after deducting what has to be deducted, I will see what is due." That, it is said for the plaintiff, amounts to an acknowledgment of liability within the meaning of the statute. The question we have to decide is, upon the construction of that document, whether that is so or not.

It will be noticed that in the letter in reply whereto the alleged acknowledgment was sent, the builder said that the works were finished, which is challenged by the defendant, who says that the whole of the work was not yet finished. Does the socalled acknowledgment, if paraphrased, amount to anything more than this:—"I have received your bill; I think it is incorrect; there are many errors in it; the work is not finished. I will look at the estimates and have the work examined, and I will see if anything is due;" or it might be put: "I have received your bill. I do not think it is correct. I will look into the matters and see if anything is due." I do not see how we can say that if a man says he will see if anything is due, that is an acknowledgment of liability that anything is due.

We have been referred to several cases in the English Court of

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which there are very many. But I do not know that they will assist us materially, for, unless the language of the document be identically the same, a decision upon the construction of one document is not of much assistance to the Court in construing another. The only case I will refer to is the case of *Green* v. *Humphreys* (1), in which, dealing with the English law, Lord Justice Cotton says:—" The rule seems to be this, that if there is an absolute unconditional acknowledgment, not controlled **[201]** by any other language in the letter, then the Court comes to the conclusion that by that acknowledgment the party intends a promise to pay that which he acknowledges to be due." Assuming for the moment that the English law applies, could we say that this is an absolute unconditional ackowledgment? I do not think we could. But as I have already pointed out what we have to consider is whether it is an acknowledgment of liability within the meaning of section 19 of the Limitation Act, which is the law applicable in this country. For the reasons I have stated, I do not think that we can properly hold that it was such an acknowledgment. I, therefore, agree with the Court below and hold that this appeal must be dismissed with costs.

I will now deal with appeal No. 14 of 1903. As regards the point of limitation which I have just discussed and which applies equally to this case, I do not propose to add anything to what I have already said. But two other points are raised in this case: one being whether it was competent for the plaintiff to maintain the suit. It is unnecessary to go into this, as the plea of limitation is a bar. But in this case it is said that, apart from the acknowledgment of the 18th of June 1898, there was another acknowledgment, that is to say, an acknowledgment given by a certificate of the 12th of July 1898 by Hari Charan Pal, who was the Engineer of the defendant, and who is mentioned in the contract between the parties. This is not set up in the plaint, and in that respect section 50 of the Code of Civil Procedure has not been complied with. The plaintiff pleads: "The plaintiff's cause of action arose within the jurisdiction of this Honourable Court and is within the period provided by the statute of limitation, as the defendant acknowledged in writing the debt on the 18th day of June 1898" (paragraph 12 of the plaint). Pausing there for a moment, the only acknowledgment pleaded is that with which I have already dealt. Section 50 of the Code of Civil Procedure is therefore a bar to this other alleged acknowledgment being now set up. But assuming for the moment that the plaintiff might get over that difficulty by obtaining leave to amend the plaint, was there in fact any such acknowledgment. This matter was gone into by the learned Judge in the Court below. He did not believe the evidence of Hari Charan Pal or of the builder **[202]** Jogeshwar Roy, and it is far from satisfactory. It looks as if they were colluding to the detriment of the defendant. The Court below held that there was no such further acknowledgment as is now set up. The further acknowledgment is said to be by a certificate given by Hari Charan Pal to the builder. But that cannot bind the defendant, as Hari Charan Pal had left the defendant's service some twelve months before this certificate was given, and Hari Charan Pal had no authority from the defendant to bind him. He was not then the agent of the defendant. I therefore think that this point, even if it could properly be gone into, entirely fails.

(1) (1884) 26 Ch. D., 474.

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This appeal, therefore, must also be dismissed with costs.

HILL, J. I agree.

STEVENS, J. I also agree.

Appeals dismissed.

Attorney for the appellant, Jogeshwar Roy: *W. J. Simmons.*

Attorneys for the appellant, Benode Behary Mookerjee: *Leslie & Hinds.*

Attorney for the respondent: *U. C. Dutt.*

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31 C. 203.

[203] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pratt.

NARSINGH DAS *v.* AJODHYA PROSAD SUKUL*

[27th August, 1903].

Award—Arbitration—Civil Procedure Code (Act XIV of 1882), s. 525—"The matter to which the award relates"—Jurisdiction.

The words "the matter to which the award relates" in s. 525 of the Civil Procedure Code were not intended by the Legislature to refer to the precise amount or the precise matter awarded to one party or the other by the arbitrator; they refer to the subject matter of the arbitration, and not the matter actually awarded by the arbitrator.

[**Ref.** 29 Mad. 44; 19 C. L. J. 260=18 C. W. N. 857=22 I. C. 792.]

SECOND APPEAL by the plaintiffs, Narsing Das and another.

The plaintiffs, and the defendant had monetary dealings, and the matter of account between them was by a deed of agreement dated the 19th November 1899, referred to the arbitration of one Parameshwar Narain Mahta. The plaintiffs claimed a sum of Rs. 2,047-12-9 from the defendant who on the other hand claimed Rs. 4,774-15-6 from the plaintiffs. The arbitrator after examining the accounts produced before him found that the sum of Rs. 2,094-13-3 was due to the plaintiffs, but that there was a sum of Rs. 265-2 due to the defendant's wife by the plaintiffs which amount he determined should be set off against the claim of the plaintiffs, being of opinion that the account of the defendant and that of his wife were one and the same. He accordingly awarded the plaintiffs the sum of Rs. 1,829-11-3.

The plaintiffs applied to the Munsif of Mozafferpore that under the provisions of s. 225 of the Code of Civil Procedure the award of the arbitrator might be directed to be filed in Court and that a decree might in terms of the award be passed in their favour. The defendant objected to the jurisdiction of the Court on the **[204]** ground that his claim exceeded the sum of Rs. 4,000, and that of the plaintiffs exceeded the sum of Rs. 2,000 and raised other objections. The Munsif held he had jurisdiction, which, according to him, was in such cases to be determined by the matter to which the award related, and not the matter referred to arbitration; the award related not to the claim of the plaintiffs, but to what the arbitrator awarded, and that amount was less than Rs. 2,000 which was the pecuniary limit of his jurisdiction.

* Appeal from Appellate Decree, No. 2052 of 1900, against the decree of Arthur Goodeve, Offg. District Judge of Tirhoot, dated July 31, 1900, reversing the decree of Bimala Charar Majumdar, Munsif of Mozafferpore, dated April 3, 1900.