

1867.
November 22.
S. A. No. 356
of 1867.

include in his first suit cannot be considered an omission from such suit within the meaning of Section 7.

The decree of the Lower Appellate Court must be reversed and the suit remanded for trial and determination of the plaintiff's claim on its merits.

The respondents have resisted the appeal, and must pay the appellants' costs.

Appeal allowed.

ORIGINAL JURISDICTION. (a)

Original Suit No. 391 of 1867.

SUBBARÁMA v. EASTULU MUTTUSÁMI.

A mere verbal admission of the correctness of an account, the items of which are barred by the Statute of Limitations, does not furnish a new starting point for the operation of the Statute.

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THE suit was brought for Rupees 3,310-3-0 on an account stated with the defendant's uncle in respect of dealings carried on with the defendant's uncle from the 24th February 1861 to 23rd October 1862, and on an account stated with the defendant himself in respect of the same dealings on the 3rd January 1866.

Mayne for plaintiff.

Sanjiva Rau for defendant.

The evidence showed that the uncle died on the 14th November 1863. On the 3rd January 1866, plaintiff sent his gumastah to the defendant with his accounts, and the defendant compared them with his own and admitted their correctness. Interest was then calculated, and a balance struck in writing but not signed by the defendant. The dealings consisted entirely of sums of money advanced by the plaintiff to the defendant or to others at his request. There was only one credit which consisted of a sum of Rupees 200 credited to defendant's uncle as paid by him in reduction of his debt.

Defendant called no evidence.

At the conclusion of plaintiff's case—

(a) Present : Bittleston, J.

BITTLESTON, J. treating the settlement of accounts as made out, asked whether the suit was not barred by Act XIV of 1859, (sec. 1, clause 9) and referred to *Ashby v. James*, 11 Mee. and Wel. 542.

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Mayne contended that the allowance of the item of Rupees 200 brought the present case within the ruling in *Ashby v. James*.

BITTLESTON, J. now delivered judgment for the defendant. He referred to the decision of the High Court in Special Case No. 48 referred from the Madras Small Cause Court, being Suit No. 7861 of 1864 of the Madras Small Cause Court. (b) There it was held that where a settlement of account amounted to a new contract, it gave a period of three years from the settlement within which an action might be maintained, and where the settlement amounted to an acknowledgment of the debt, the same period of limitation was given from the time when the debt, became due. He also referred to *Ashby v. James* and *Clark v. Alexander* 8 Scott, N. R. 147 (8 Jurist 496). The High Court has held that part payment does not bar the effect of Act XIV of 1859, and therefore the principle of cases in which the operation of the Statute was prevented by

(b) NOTE.—Special Case No. 48 was a case referred for the opinion of the High Court by the 1st Judge of the Madras Small Cause Court on the 23rd July 1864, and was as follows :—

The plaintiff sued the defendants to recover Rupees 311-1-10 upon an account stated and settled on the 26th April 1860.

The settlement took place in reference to goods previously sold and delivered.

Among other pleas the defendant pleaded the Statute of Limitation, relying upon sec. 1, clause 9 of Act XIV of 1859.

The evidence upon this point shewed that a settlement took place on the day stated (26th April 1860.) and the sum found due was the amount the plaintiff sought to recover in the present action, less a small sum for interest which was claimed for a period subsequent to the settlement.

I gave judgment for the plaintiff, finding against the plea, contingent upon the opinion of the Honorable the Judges of the High Court upon the following question :—

Whether three years is the period of limitation in this case.

OPINION OF THE HIGH COURT.—Assuming that upon the settlement of account on the 26th April 1860, there was a new contract by the defendant for payment of Rupees 311-1-10, we are of opinion that clause 9 of Section 1 of the Limitation Act applies to this suit, and consequently that three years is the period of limitation. If the settlement amounted only to an acknowledgment by the defendant of the amount of the debt, still the same clause would apply, and a suit could only be brought within three years from the time of the delivery of the goods sold.

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treating the admission of the set-off as equivalent to a payment does not apply. In the present case the evidence was this :—the plaintiff made up his account, and sent a gumastah to the defendant, who then produced his books, compared his accounts with those of the plaintiff and found them to agree. A calculation of interest was made up to date. This was added to the account and a balance was then struck. There was no mutual account; there was nothing in the nature of a set-off on the defendant's side. There was merely a credit given for a sum of Rupées 200 which the defendant's uncle had paid in reduction of his debt. All that was done was that the defendant looked into the account and admitted verbally that it was correct. All the items are barred by the Statute. Therefore the Statute must be held to be a bar to this suit unless a mere verbal admission of the correctness of an account is held to be sufficient for that purpose. The transaction was based on no new consideration, and was not such a settlement of account as would constitute a new cause of action from which a new period of limitation would begin to run. On the plea of the Statute therefore, there must be a finding for the defendant with costs.

Suit dismissed.

APPELLATE JURISDICTION (a)

Special Appeal No. 120 of 1867.

KEYAKE-ILATA KOTEL KANNI, alias GRANI the late ADITRI- PAD, NOW CHOMATRIPAD.	} <i>Special Appellant.</i>
YADATTIL VELLAYANGOT ACHUDA PISHARODI and an- other.....	

The vendee of a Karaima right cannot compel the trustees of a pagoda to admit him to the office and give him the emoluments.

1868.
February 21.
S. A. No. 120
of 1867.

THIS was a special appeal against the decree of F. P. Pereira, the Principal Sadr Amin of Tellicherry, in Regular Appeal Suit No. 114 of 1865, confirming the decree of the Court of the District Munsif of Cavay in Original Suit No. 2 of 1862.

(a) Present : Scotland, C. J. and Ellis, J.