Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maniram v. *Seth Rupchand, from the Court of the Judicial Commissioner, Central Provinces, India; delivered the 25th May 1906.*

Present at the Hearing:

LORD MACNAGHTEN.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.
SIR ALFRED WILLS.

[*Delivered by Sir Alfred Wills.*]

One Motiram, of whom the Appellant (the Plaintiff in the action) is the adopted son, and one Rupchand, the Respondent and the Defendant in the action, were mahajans or money dealers, both residents of Burhanpur in the Central Provinces. They had regular dealings with one another from 21st July 1895 to 12th May 1898, and at the close of these dealings the Respondent owed Motiram Rs. 5841. 9. 1 on account of principal, and Rs. 2801. 2. 0 on account of interest. No question has been raised as to the correctness of these amounts if the action be maintainable.

The present suit was brought on 5th September 1901 to recover these amounts. There is no question that they were due. The Respondent admitted in his pleading that they were so, and the only defence is that the action was barred by the lapse of time.

Motiram died on the 6th October 1898 leaving a will by which the Respondent and four other persons were appointed trustees to administer the estate. Three of them, of whom

the Respondent was one, applied for probate. The application was opposed by the other two and by Kisandas, the natural father of the Appellant. Their petition of objections is not in the record, but the reply, signed by the Respondent and others is set out, and from it there can be no doubt that amongst the objections was one on the ground that the Respondent owed money to the estate. Paragraph 3 is as follows: "The "applicant Rupchand Nanabhai is a big maha- "jan of Burhanpur paying Rs. 106 as income "tax. For the last five years he had open and "current accounts with the deceased. The "alleged indebtedness does not affect his right to "apply for probate." This document is dated 28th September 1899.

The application for probate failed on the ground that the applicants were not legally appointed executors.

There was no application for letters of administration, but in 1901 Kisandas applied for a certificate of guardianship, an application which was opposed by the widow, and in the result Ranchordas, one of Motiram's head agents, was appointed interim receiver of the estate until the question of a certificate of guardianship was disposed of.

Ranchordas as next friend of the infant Plaintiff instituted the present suit, and on the 4th December 1901 Kisandas, having obtained the certificate of guardianship, was substituted for him.

A question has been raised as to whether the dealings between the Respondent and Motiram were mutual as well as open and current, and involved reciprocal demands between the parties so as to make Article 85 of the Indian Limitation Act (No. XV. of 1877), Schedule II., applicable. The dealings were certainly not the ordinary ones of banker and customer, but rather in the nature of mutual accommodation, but the view

which their Lordships take makes it unnecessary to consider this question, and for the purposes of this case the controversy may be treated as if the sum due to Motiram was a simple debt or series of debts none of which were incurred before 28th September 1896, since as late as the 24th January 1897 Motiram, as appears by the summary of accounts appended to the Judgment of the Civil Judge (the Court of First Instance), had drawn against the Respondent for more than the Respondent had drawn against him.

The last item against the Respondent in account between them is dated 12th May 1898, and the indebtedness for principal must therefore have been incurred between 24th January 1897 and 12th May 1898, and the periods of limitation applicable to the several components of the total demand for principal would expire at various dates between 24th January 1900 and 12th May 1901. And in the absence of a sufficient acknowledgment before such periods had arrived, the debt or debts would be barred.

An acknowledgment according to the Indian Act must be signed by the party to be affected by it, and the only document which can be relied upon as an acknowledgment signed by the Respondent is the statement filed by the Respondent in the proceedings touching the application for probate, the material part of which has been already set out, but which it is convenient here to repeat. "For the last five "years he" (the Respondent) "had open and "current accounts with the deceased." There can be no doubt that the five years spoken of are the five years before the death of Motiram *i.e.*, before 6th October 1898. On that date the whole of the indebtedness other than interest had been incurred, there having been no dealings since 12th May 1898. There is therefore a clear admission that there were open and current accounts between the parties at the

death of Motiram. The legal consequence would be that at that date either of them had a right as against the other to an account. It follows equally that whoever on the account should be shown to be the debtor to the other, was bound to pay his debt to the other, and it appears to their Lordships that the inevitable deduction from this admission is that the Respondent acknowledged his liability to pay his debt to Motiram or his representative, if the balance should be ascertained to be against him.

The question is whether this is sufficient by the Indian law to take the case out of the statute.

It has been already pointed out that the acknowledgment was made before the statutory period had run out. Thus one requisite of Section 19 is complied with. The necessity of signature by the party to be charged is also complied with. The acknowledgment is not addressed to the person entitled, but according to the "explanation" given in Section 19 this is not necessary. We have therefore the bare question of whether an acknowledgment of liability, if the balance on investigation should turn out to be against the person making the acknowledgment, is sufficient.

Their Lordships can see no reason for drawing any distinction in this respect between the English and the Indian law. The question is whether a given state of circumstances falls within the natural meaning of a word which is not a word of art, but an ordinary word of the English language, and this question is clear of any extraneous complications imposed by the statute law of either England or India.

In a case of very great weight, the authority of which has never been called in question, Lord Justice Mellish laid it down that an acknowledgment to take the case out of the Statute of Limitations, must be either one from which an absolute promise to pay can be inferred, or,

secondly, an unconditional promise to pay the specific debt, or, thirdly, there must be a conditional promise to pay the debt, and evidence that the condition has been performed.* An unconditional acknowledgment has always been held to imply a promise to pay, because that is the natural inference if nothing is said to the contrary. It is what every honest man would mean to do. There can be no reason for giving a different meaning to an acknowledgment that there is a right to have the accounts settled, and no qualification of the natural inference that whoever is the creditor shall be paid when the condition is performed by the ascertainment of a balance in favour of the claimant. It is a case of the third proposition of Lord Justice Mellish, a conditional promise to pay and the condition performed.

* In *Re River Steamer Company; Mitchell's Claim*, 6 Ch. App. 822, 828.

There was therefore on the 28th September 1899 a sufficient acknowledgment to give a new period of limitation from the date of the acknowledgment, viz., 28th September 1899, and the present suit having been commenced on 5th September 1901 is within any period of limitation that can be applicable.

The acknowledgment to which attention has been directed is followed in the same paragraph by the following sentence: "The alleged in- "debtedness does not affect his" (the Respondent's) "right to apply for probate." Stress was laid by the Civil Judge upon the word "alleged." He was of opinion that the word "had" in the sentence "for the last five years "he had open and current accounts with the "deceased" and the word "alleged" were fatal to the validity of the acknowledgment. Their Lordships cannot share this opinion. The first sentence shows that there were open accounts at the death of Motiram. If nothing further is alleged the natural presumption is that they continued unsettled at the time the statement

was made. The sentence which follows is perfectly consistent with this admission. The meaning is "even if there is a balance against "the Respondent that does not disqualify him "from fulfilling the duties of an executor," and it has been pointed out that what is relied upon here is an acknowledgment subject to the condition that an adverse balance really exists, and the condition is fulfilled in fact.

The Judgment in the Divisional Judge's Court is also against the acknowledgment. The only reason given is that it would require a considerable stretch of the imagination to place upon it the meaning that there was a right to have the account taken, thereby implying a promise to pay. It has not, however, been argued that there was a promise to pay in any event, and the learned Judge does not seem to have considered the meaning, which appears to their Lordships to be the natural one, that the words import an admission of liability if the balance should prove to be against the Respondent coupled with the fulfilment of that condition—a state of things which in all reason and sound sense places the acknowledgment upon the same footing as an acknowledgment unconditional in the first instance, from which, in English law, a promise to pay has always been inferred. The Indian Limitation Act, Section 19, however, says nothing about a promise to pay and requires only a definite admission of liability, as to which there can be no reason for departing from the English principle that an unqualified admission and an admission qualified by a condition which is fulfilled stand upon precisely the same footing.

The view taken by the Judicial Commissioner is again one with which their Lordships are unable to agree.

He refers to a case of *Sitayya* v. *Rangareddi and others* (I.L.R. 10 Madr. 259) in which it

was held that an acknowledgment of the Plaintiff's right to have accounts taken and of the Defendant's liability to pay any balance (if such there should be) against him was held to satisfy Section 19 of the Limitation Act. But this decision appeared to him to be either erroneous or inapplicable because it is based upon two English cases *Prance* v. *Sympson* (1 Kay 678) and *Banner* v. *Berridge* (L.R. 18 Ch. D. 254) in which similar acknowledgments were held to satisfy the English law upon the subject, the acknowledgment in *Prance* v. *Sympson* being undistinguishable from that relied upon in the present case. He goes on to give as his reason for considering that the English cases do not apply in the present case the fact that the English law requires words from which a promise to pay may be inferred, whereas the Indian Act requires words from which an admission of liability may be inferred. But in English law it is the acknowledgment of liability which is the ground upon which a promise to pay is inferred, so that the requirements of English law are, if anything, more, and not less, stringent than those of Indian law, which seems to be a bad reason for holding that the English cases have no application to the present inquiry. The learned Judicial Commissioner further agrees with the Civil Judge in holding that the expression "alleged indebtedness" is a stumbling block in the way of the Appellant, a view upon which their Lordships have already expressed their opinion.

In the opinion of their Lordships therefore the acknowledgment of the 28th September 1899 is sufficient to prevent the claim of the Appellant from being barred by the Limitation Act. It is therefore unnecessary to discuss the other grounds upon which the Appellant has relied. Their Lordships would notice only one point in connection with them. The

Appellant contended that the Respondent, whether appointed executor by the will or not, had intermeddled with the property of the deceased, and was at all events executor *de son tort*, and therefore not entitled to the benefit of the Limitation Act. The Respondent has in this suit admitted in the most definite manner that he did so. In spite of this admission each of the three Courts below has held that he did not, and the Respondent's Counsel claimed that this was a decision of a matter of fact, and that however erroneous it might be, it would be contrary to the practice of the Judicial Committee to entertain the question of its reversal. A careful perusal of the Judgments, however, makes it perfectly clear that the only reason for the view taken by the Courts below was that they thought the Respondent had not been duly appointed executor, and therefore could not have intermeddled with the estate so as to make himself responsible as executor. Their decision was therefore really one of law, and not of fact, and is open to reconsideration.

Their Lordships will humbly advise His Majesty that the Judgments appealed against be reversed, and Judgment entered for the Appellant for the principal claimed, with interest at the rate of 7 annas 9 pie per cent. per mensem to date of suit, and thereafter at the rate of 6 per cent. per annum till payment, and that the Respondent be ordered to pay the costs of the Appellant in each of the Courts below. The Respondent will also pay the costs of this Appeal.