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Aug. 15.

*Special Appeal No. 1025 of 1864.*

NARBADA'SHANKAR LAKSHMI'SHANKAR *et al.* . *Appellants.*
RUGHNA'TH I'SHVARJI ..... *Respondent.*

*Revival of right to sue—"Admitted the Justice of the Demand"—Written Acknowledgment—Reg. V. of 1827, Sec. VII., Cl. 1—Act XIV. of 1859—English Law.*

*Held* that an admission in writing of the making of a promissory note accompanied by a repudiation of liability in respect thereof, was not such an acknowledgment as would revive a barred claim.

THIS was a special appeal from the decision of A. R. Grant, Acting Senior Assistant Judge of the District of Ahmedábád, passed on the 30th of August 1864.

The appellants, in A.D. 1861, sued the respondent on a promissory note for Rs. 475, dated the 1st of A'shád Shuddha [30th June 1840], and payable on the 2nd of Shrávan Shuddha, Samvat 1896 [30th July 1840], the obligation of which was said to have been renewed by an acknowledgment made by him in a deposition, given on the 13th of February 1857, in the court of the Munsif of Nariad, as witness in an action brought by the appellants.

The defendant, Rughnáth, admitted the note; but contended that the claim upon it was barred by the law of limitation.

The Munsif held that the note being admitted by the defendant, he was legally, and in honour as a *sávqkár*, bound to make good his written promise. He, accordingly, decreed in favour of the plaintiffs for the principal amount; but refused to allow any interest.

Both parties appealed against this decision: the plaintiffs on the ground that interest ought to have been allowed, the defendant having long delayed fulfilling his engagement; and the defendant on the ground that the suit was barred, the statement by him in the deposition alluded to above not being such an acknowledgment as would revive a barred claim.

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In appeal, the Acting Senior Assistant Judge recorded the following judgment:—

"The Court has examined the deposition in question, and finds that the defendant admitted in it that the *chiṭṭhí* had been executed by him, but qualified that admission by denying that it was binding upon him.

"If such a statement had been made by him as defendant in a suit, it certainly would not have been considered a sufficient acknowledgment of the justice of the plaintiff's claim, and they would have had to prove his liability under the promissory note sued on; and it would have been competent to him to prove that he was not liable, owing to non-fulfilment of the conditions or otherwise.

"The statement in question cannot, therefore, be considered such an acknowledgment of the promissory note as would renew the obligation imposed upon the defendant by the latter; and the Court is, therefore, of opinion that the plaintiffs have only the *chiṭṭhí* itself to stand upon. It is clearly barred by time; nor have they any reason to complain, as the delay in suing the defendant was entirely their own fault."

A special appeal against this decision was admitted, on the grounds—(1) that the Senior Assistant Judge had erroneously held the claim barred, and (2) that he had misconstrued the defendant's admission, in holding that it was not sufficient to take the case out of the operation of the law of limitation.

The case was heard before COUCH and WARDEN, JJ.

*Shántárám Náráyaṇ* for the appellants.

*Nánábhái Haridás* for the respondent.

COUCH, J.:—It appears from the deposition of the defendant, relied upon by the plaintiff, in this case, that, although the defendant admitted the making of the note, he said he gave it as a security for money payable under a decree against Shivrám Mohanrám, and, the Court having ordered him not to pay the money, he did not pay it, and that there was a

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stipulation that the money was to be paid on the decree being brought to him.

It appears from the finding of the Senior Assistant Judge, that the plaintiffs had lost their remedy on that decree by lapse of time; and having failed in their suit against Shivrám upon it, then sought to make the defendant pay the note.

The decree of the Senior Assistant Judge is affirmed with costs.

*Decree affirmed.*

NOTE.—This case was decided under Reg. V. of 1827, Sec. VII., Cl. 1, which enacts: "If, however, a defence rested on any limitation of time heretofore specified in the chapter, and the claimant prove that the defendant, or person from whom he derives right, had admitted the justice of the demand, then the time of limitation shall be reckoned from the date of such admission: provided that if the demand be founded on a written acknowledgment of any sort, the admission, if it shall have been made subsequently to the date which shall be fixed for the commencement of the operation of this Regulation, must also be in writing."

Act XIV. of 1859 (which, as amended by Act XI. of 1861, does not apply to "suits instituted before the 1st day of January 1862) enacts as follows: Sec. 4:— If in respect of any legacy or debt, the person who but for the law of limitation, would be liable to pay the same, shall have admitted that such debt or legacy, or any part thereof, is due by an acknowledgment in writing signed by him, a new period of limitation, according to the nature of the original liability, shall be computed from the date of such admission; provided that, if more than one person be liable, none of them shall become chargeable by reason only of a written acknowledgment signed by another of them."

Under the Act, the acknowledgment reviving the right to sue must in every case be in writing; but under the Regulation, only "if the demand be founded on a written acknowledgment of any sort." The English law requires that the acknowledgment or promise shall be made by a writing signed by the party to be charged therewith (9 Geo. IV., c. 14, s. 1), or by his duly authorised agent (19 & 20 Vict., c. 97, s. 13); and the Courts now require "the acknowledgment to be such as to justify them in inferring therefrom a promise to pay." *Linley* v. *Bonsor*, 2 Sc. 404; *Smith* v. *Thorne*, 21 Law J., Q. B. 201; *Cornforth* v. *Smithard*, 29 Law J., Exch. 228.—ED.