

*Special Appeal No. 527 of 1869.*1870.
Sept. 13.NA'RA'YANA'PPA' bin A'PPA' HEGDE*Appellant.*BHA'SKAR PARMAYA'*Respondent.**Limitation—Instalments—Acknowledgment of Debt—Act XIV. of 1859,
Sec. I., cl. 10.*

When a debt is by a bond made payable by instalments, subject to a condition that in default of payment of any one instalment the whole debt shall become payable, the period of limitation commences to run as to the whole debt from the date of default being made in the payment of an instalment.

Where, a default having been made in payment of an instalment, the debtor subsequently filed a suit to compel his creditor to receive his debt by instalments as they should become due, and in his plaint set out the provisions of the bond, and stated that he had tendered the instalments as they became due to his creditor, which the latter had refused to receive, and that thereupon the debtor had deposited the amount with a third person :

It was held that the plaint did not contain such an acknowledgment of the whole debt being due as to give a new starting-point from which the limitation commenced to run.

THIS was a special appeal from the decision of A. L. Spens, District Judge at Cánará, in Appeal Suit No. 62 of 1869, affirming the decree of the First Class Subordinate Judge of Sircy.

The plaintiff, Náráyanáppá Hegde, sued to recover Rs. 2,736, principal and interest due on a bond, dated the 21st of February 1864, for Rs. 1,900, which the defendant, by the said bond, agreed to pay in nineteen instalments of Rs. 100 each, subject to a condition that if any one instalment should not be paid when due, the whole amount should be payable at once. The first instalment fell due on the 28th of December 1864, and the defendant then made default in payment. The plaintiff brought the present suit, on the 13th of August 1868, for the whole sum due, with interest.

The defendant admitted the execution of the bond, but pleaded that the claim was barred.

The Subordinate Judge of Sircy held that the claim was barred, under cl. 10 of Sec. I. of Act XIV. of 1859. He said:

1870.
 NA'RA'YAN-
 A'PPA'
 v.
 BHA'SKAR
 PARMAYA'.

“The first instalment was due on the 28th of December 1864, and on failure to pay it on that day the cause of action to recover the whole amount accrued on the very next day. The plaintiff was not filed till long after three years from this date, and the claim is, therefore, clearly barred. The plaintiff's *vakil* contends that the claim is saved by an admission made by the defendant in a certain deposition (exhibit No. 4) given by him in another suit, in which he sued to compel the present plaintiff to receive an instalment after date. I am of opinion that Sec. 4 of the Limitation Act does not apply to such an admission, because it is not an acknowledgment within the words of that section ; it is not made to the plaintiff ; and, lastly, because the so-called admission is only an admission of the genuineness of the written contract, but not of any particular sum being due.” (Bourko's Limitation, p. 251.)

“I, therefore, reject the plaintiff's claim.”

The plaintiff appealed from this decree to the District Court, and A. L. Spens, the District Judge, in affirming the decree appealed from, recorded the following judgment:—

“Exhibit No. 11 is a judgment passed by the Principal Şadr Amín in a suit brought by the present defendant to compel the plaintiff to receive instalments as provided for in this bond. The Principal Şadr Amín in that suit decreed for the present plaintiff, holding that the present defendant had not acted up to the terms of the bond, and declined to make any order as to future instalments. This decree was upheld in appeal. In this former suit the present defendant admitted the genuineness of the bond on the 1st of June 1868, and the present plaintiff urges that this admission brings his claim within time. The admission was made in a deposition in a suit in which the present defendant was plaintiff, and the plaintiff in this suit was defendant. His admission must be, therefore, considered in relation with the subject-matter inquired into, about which he gave his deposition. The defendant must, therefore, be held only to have admitted the bond in relation to the fact that he had, in terms of the bond

offered to pay a certain instalment, which the plaintiff refused to receive. I do not think this admission was according to the nature of the original liability; there was no new promise from which a fresh cause of action arose. Sec. 4 appears only to apply to written acknowledgments given in express terms, or in such terms as can reasonably be construed to mean recognition of a debt by the defendant to the plaintiff, according to the nature of the original liability, and renewing that liability from the date of acknowledgment. The defendant's admission was not an unqualified admission; for, while admitting the bond, he urged that he had complied with its conditions, and that it was the plaintiff who would not accept instalments, as provided for therein. I am, therefore, of opinion that the plaintiff's cause of action accrued on the defendant's failure to pay the first instalment, and that there was nothing in the conduct of the parties subsequently which altered the terms of the bond originally entered into. The admission was not made by the defendant to the plaintiff, and there is no admission of a particular sum being due.

1870.
 NA'RA'YAN-
 A'PPA'
 v.
 BHA'SKAR
 PARMAYA'.

“I, therefore, affirm the decree appealed from with costs.”

The plaintiff appealed from this decision, and on the first hearing of the case, before WARDEN and SARGENT, JJ., the further hearing was adjourned, to allow time for the plaintiff referred to in exhibit 11 to be certified.

The alleged admission made in the plaint in Suit No. 260 of 1866 of the Sircy Court, brought by Bháskar Parmayá against Náráyaṅappa Hegde, was as follows :—

“I owed the defendant Rs. 2,000, out of which he received from me Rs. 100, and obtained a bond for the balance of Rs. 1,900, stipulating that the said sum should be paid by nineteen instalments, extending over nineteen years, the amount of each instalment being Rs. 100, and payable on the 30th of Márgshirsha of each year, and that in case of default the amount of such instalment should be paid with interest. Accordingly, I tendered the amount of the first instalment, and asked for a receipt, but the plaintiff having refused to

1870.
 NA' RA'YAN-
 A'PPA'
 v.
 BHA'SKAR
 PARMAYA'.

comply, I have deposited the amount with a third party. I made a similar request for the instalment due for the current year, but he refuses to receive it and give a receipt, and I have kept in deposit the amount as above described.

"I, therefore, pray for a decree directing the defendant to accept the two instalments due up to this time, and receive from me hereafter for seventeen years Rs. 100 a year, and pass a receipt."

29th Aug. The appeal came on for hearing this day before GIBBS and MELVILL, JJ.

Dhirajlál Mathurádás, for the appellant :—If the debtor admits that he is indebted, or admits a portion of his liability, the plaintiff can show by evidence what amount was due. Acknowledgment of debt need not be made to a creditor; any admission suffices, though made to a third person : *Kristna Row v. Hachapa Sugapa (a)*; *Huro Chunder Roy v. Monee Mohinee Dossee (b)*. The acknowledgment need not even contain a direct admission that the whole or a part is due; it is sufficient if the Court can collect such admission from the written instrument. [GIBBS, J. :—The District Judge was clearly in error in holding that the admission, under Sec. 4 of the Act, should be made to the creditor himself.]

Nánábhái Haridás, for the respondent :—The so-called admission does not contain any acknowledgment of the present claim. It is only an admission that Rs. 200 were due, and as to the rest, that there was nothing due. The admission must, I contend, be of an existing debt, and not of a debt to become due.

Cur. adv. vult.

13th Sept. MELVILL, J. :—This is a suit on a bond payable by nineteen instalments of Rs. 100 each, a condition being superadded, that on failure to pay any one instalment the whole amount should be recoverable with interest.

(a) 2 Mad. H. C. Rep. 307. (b) 3 Calc. W. Rep., S. C. C. Ref. 6.

The first instalment was not paid on the day fixed, and the plaintiff has not, by subsequently accepting payment, waived his right to enforce the penalty: *Rámkrishṇa Mahádev v. Bayáji (c)*.

1870.
NÁ'RA'YAN-
A'PPA'
v.
BHÁ'SKAR
PARMAYÁ'.

The cause of action accrued upon the first default: *Hemp v. Garland (d)*; *i.e.*, on the 25th of December 1864, and the suit is barred, unless there has been such an acknowledgment of liability by the defendant as will bring the case within the provisions of Sec. 4 of Act XIV. of 1859.

It is contended that exhibit No. 4 contains such an acknowledgment. That exhibit is a plaint filed by the present defendant against the present plaintiff, to compel the latter to take payment of the first two instalments due on the bond, which the former alleged to have been tendered in time.

It seems clear that this cannot be construed into an admission that the debt now sued for, or any portion thereof, is due. On the contrary, it is a distinct repudiation of the particular liability which the plaintiff seeks to enforce. The plaintiff, alleging a default, claims the penalty, and treats the agreement to pay by instalments as at an end. The defendant denies that there has been any default, or that the penalty is due, and only admits that he owes two instalments. The liability which the defendant acknowledges is not only not involved in the liability which the plaintiff seeks to enforce, but is inconsistent with it. If the debt which the defendant admits be due, the plaintiff has no cause of action. The acknowledgment contemplated in Sec. 4 of Act XIV. of 1859 must be an acknowledgment of the existence of a liability arising out of the particular cause of action on which the creditor afterwards brings his suit. We, therefore, confirm the decree of the court below with costs.

(c) 5 Bom. H. C. Rep., A. C. J. 35. (d) 4 Q. B. 519.