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EMPRESS  
v.  
MAGANLAL.

a subject of Her Majesty, and that no evidence had been offered on the point. But, in the first place, when called upon to plead to the charge, the appellant took no objection to the jurisdiction, the question having been raised for him for the first time in arguing the case; and, secondly, assuming that the question had been properly raised, we think, looking to the evidence that Ahmedabad was the home of his parents, that he himself was born and educated there, and that he only went 1½ years ago to Kharedi in Rajputana for purpose of trade, living, during that time, sometimes in Ahmedabad and sometimes in Kharedi; that there was a legal presumption in favour of appellant being a native Indian subject of Her Majesty, and, therefore, amenable to the jurisdiction of the Court of Ahmedabad where he was found.

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### APPELLATE CIVIL.

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*Before Mr. Justice Kemball and Mr. Justice Pinhey.*

July 4.

RA'MCHANDRA GANESH, APPLICANT, v. DEVBA AND OTHERS,  
OPPONENTS.\*

*Limitation—Part payment—Execution sale—Act XV of 1877, section 20.*

A sum realized by an execution sale cannot be considered part payment within the meaning of section 20 of the Limitation Act XV of 1877, so as to give a new period of limitation.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction against the decree made by A. M. Cantem, Subordinate Judge of the First Class at Belgaum.

The suit was brought in 1880 on a registered bond bearing date the 27th of June, 1861, to recover a money claim of Rs. 232-4-0. The principal debt was secured on service land, it being agreed that the debtors were to retain possession of the said land, and to pay the rent annually to the creditor in lieu of interest. But the creditor, being unable either to obtain punctual payment of the rent, or to get possession of the land, instituted the present proceedings for the recovery of the principal money

\* Application, No. 142 of 1881, under Extraordinary Jurisdiction.

together with arrears of unpaid interest. The first issue in the case was "Is the claim time-barred," and upon this the Subordinate Judge passed the following judgment:—"It is contended that a decree was obtained by the plaintiff against one of the defendants for rent of the land mortgaged by the bond and the amount recovered through the Court in 1879, and that therefore, the claim is not time-barred. But such payments do not give a new period of limitation : *Rughoo Nath Doss Cookman v. Ranees Shiromenees Pat Mahadabee*(1). The claim is, therefore, barred, and is rejected with costs." The suit being of a nature cognizable by the Court of Small Causes there is no appeal against this decision, and the plaintiff, therefore, applied to the High Court to exercise its extraordinary jurisdiction.

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*Ghanasham Nilkanth Nadkarni* for the applicant.—There was an acknowledgment of his debt by the defendant in 1876, and this suit having been brought within six years of the acknowledgment, the claim was not time-barred. The plaintiff had recovered judgment for certain arrears of rent—in other words, of interest—in a suit filed by him, and in execution of his decree had received payment in 1879.

The Court granted a rule *nisi*.

*Ganesh Ramchandra Kirloskar*, for the defendants, showed cause.—The decision cited by the Subordinate Judge is right, and should not be disturbed. The case quoted by him is sufficient authority for the proposition that a sum realized in execution of a decree cannot be considered as part payment, so as to give a new period of limitation. The payment to the Nazir of the Court in satisfaction of the judgment debt is not a payment to the creditor of interest as such : *W. Moran v. Dewan Ali Sirang*(2). An acknowledgment must contain an express or implied promise to pay : *Smith v. Thorne*(3). Payment of interest under a judgment recovered not being such that, promise to pay the principal could be inferred in fact from it, is not sufficient to take the principal debt out of the statute of limitations : *Morgan v. Rowlands*(4). The principle underlying all the statutes of

(1) 24 Calc. W. R. 20. Civ. Rul.

(3) 18 Q. B. 134.

(2) B. m. L. R. 418.

(4) L. R. 7 Q. B. 493.

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limitation is that a payment to prevent the barring by statute must be an acknowledgment by the person making the payment of his liability, and an admission of the title of the person to whom the payment is made : see *Harlock v. Ashberry* (1)

*Ghanasham Nilkant Nadkarni, contra.*

The Court discharged the rule with costs.

(1) 19 L. R. Ch. Div. 539, reversing Fry, J.'s judgment in 18 Ch. D. 229.

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ORIGINAL CIVIL.

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*Before Mr. Justice Latham,*

May 1, 2, 3.

MERWANJI HORMUSJI (PLAINTIFF) v. RUSTOMJI BURJORJI AND  
NUSSERWANJI ARDESIR WADIA (DEFENDANTS).\*

*Partnership—Limitation—Suit by representative of a deceased partner for a share of a specific asset of the partnership recovered after the right to a general partnership account is barred.*

A suit may be brought by the representative of a deceased partner against the surviving partner of a firm to recover a share in a sum received by the surviving partner in respect of a partnership transaction within the period of limitation, although a suit to take partnership accounts generally would be barred.

H. J., the plaintiff's father, and the defendant R. were partners in the firm of Hormusji and Rustomji which carried on business in China. In the year 1862 the firm of N. K. & Co. was largely indebted to the firm of Hormusji and Rustomji. At the end of that year the latter firm ceased to do business, but no formal dissolution of the partnership ever took place. In 1869 the defendant R. filed a suit (No. 491 of 1869) in the High Court of Bombay in his own name and that of H. J., his former partner, against the firm of N. K. & Co. for an account of the dealings of that firm with the firm of Hormusji and Rustomji, and by a decretal order dated 19th March, 1870, the suit was referred to the Commissioner to take the accounts as prayed for. On the 17th December, 1872, H. J. died at Hongkong intestate. On 22nd February, 1873, the defendant R. assigned to the second defendant W. for Rs. 20,000 the claim of the firm of Hormusji and Rustomji against the firm of N. K. & Co. The plaintiff did not know of this arrangement, and he only became aware of it in 1880. The plaintiff alleged that of the said sum of Rs. 20,000 the second defendant W. paid to the first defendant R. Rs. 10,000 in 1873, and for the remaining Rs. 10,000 gave a promissory note payable in July or August, 1881. The plaintiff took out letters of administration to his father H. J., and brought this suit on 16th July, 1880, claiming a moiety of the Rs. 10,000 already paid by the defendant W. to the first defendant R.

\* Suit No. 344 of 1880.