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We do not, however, think that the above section of the Limitation Act was present to the mind of the Legislature when framing section 374 of Act X of 1877. The causes for which the withdrawal of a suit may be permitted, are not causes "of a like nature" with defect of jurisdiction—*Chunder Madhub Chuckerbutty* v. *Bissessuree Debea*(1). Section 374 seems to have been framed with the intention of laying down in the most general terms a rule which, in regard to suits, was perhaps unnecessary, viz., that in the fresh suit any question of limitation should be decided in the same manner as if the former suit had not been brought at all.

The same rule must, we think, be applied to applications. Clause 4, article 179, of Act XV of 1877 must be read subject to the rules contained in sections 374 and 647 of the Code of Civil Procedure; and, therefore, notwithstanding that the present application has been presented within three years from the date of the application of 1878, yet the question of limitation must be determined as if the application of 1878 had never been presented at all.

The result is that the decrees of the lower Courts must be confirmed with costs.

Decree confirmed.

(1) 6 Calc. W. R., 184.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

September 4.

RAMJI (ORIGINAL DEFENDANT), APPELLANT, *v.* DHARMA (ORIGINAL PLAINTIFF), RESPONDENT.*

Limitation—Acknowledgment—Account stated—Adjusted account—Adjustment of accounts, effect of—"Ruzu"—Act XV of 1877, Section 19—Act IX of 1872, Section 25, Clause 3.

The *"ruzu"* or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract. If it is to be used as an acknowledgment giving a fresh starting point for computing a new period of limitation it must be made in writing and signed before the expiration of the period of limitation prescribed. If it is to be used as evidence of a new contract furnishing

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a basis for a new cause of action, it must contain a promise in writing duly signed as required by the Contract Act IX of 1872, sec. 25, cl. 3, a bare statement of an account not being such a promise.

THIS was a second appeal from the decision of E. Cordeaux, Judge of Khandesh, confirming the decree of the Subordinate Judge of Yaval.

The plaintiff sued to recover Rs. 1,820 due on an account adjusted on the 26th of February, 1879. The original account (not produced in the case) contains an item of Rs. 100 advanced nine years before the date of the account, various small items, and, finally, an item of Rs. 1,600 dated the same day as the account. At the foot of the account appears the signature of the defendant. The suit was brought on the 29th of March, 1879, that is to say, a month after the "*ruzu*" or adjustment of the account.

The defendant contended that the "*ruzu*" was a forgery, and that he owed nothing, and that the claim was barred.

Both the Courts found the "*ruzu*" proved, and awarded the claim.

The defendant appealed to the High Court.

Shantaram Narayan.—We contend that, of the sum awarded, Rs. 201-10 is barred on two grounds: first that the "*ruzu*" was made after the expiry of the limitation prescribed, and, secondly, that it does not contain a promise to pay. For purposes of limitation an account stated is a mere acknowledgment. "*Ruzu*" is nothing more than a statement of a sum of money. Under the Limitation Act XIV of 1859 a suit to recover the balance of an account adjusted and signed by the defendant might be brought within six years: *Humedchand Hukamchand* v. *Shah Bulakidas Lalchand*(1). But that was on the idea that an adjusted account was an implied contract. Under the Act of 1859 the signature of the defendant was not necessary to make an account a stated account: *Mulchand Gulabchand* v. *Girdhar Madhav*(2); *Hargopal Premsookhdas* v. *Abdul Khan*(3). Under the Limitation Act IX of 1871 an entry of an account stated was held to be not a contract in writing. To constitute a contract the promise was required to be stated in writing: *Amritlal Mansuk* v. *Maniklal Jetha*(4);

(1) 5 Bom. H. C. Rep., 16 O. C. J.
(2) 8 Bom. H. C. Rep., 6 A. C. J.
(3) 9 Bom. H. C. Rep., 429.
(4) 10 Bom. H. C. Rep., 375.

Hanmantlal Motichand v. *Ramabai* (1). So that there must be a distinct written promise. As to implied contract we deny that there is any implied contract under the Contract Act. There is either a contract, or there is none. The term implied contract does not occur, and Chapter V is headed "Of certain relations resembling those created by contract." Sections 68 to 72, which compose the chapter, omit to make any mention of an account stated. As a contract in respect of a debt barred, section 25 of the Contract Act (IX of 1872) requires that it must be in respect of a debt not barred. The law is well settled in that respect.

Hon. *V. N. Mandlik*.—The Contract Act does not do away with implied contracts. An adjustment of account or "*ruzu*" is a promise to pay the balance settled. To constitute a promise it is not necessary that the defendant should in so many words say that he promises to pay the balance. A promise to pay is contained in the idea of a "*ruzu*."

KEMBALL, J.—The main contention in this appeal is that so much of the claim as respects the balance of Rs. 210-10 was time-barred, and we think the objection is good. The "*ruzu*", on which this suit was brought must be used either as a revival of an original promise or as evidence of a new contract. As an acknowledgment it would obviously have no effect—see section 19, Act XV of 1877—if not made before the expiration of the period of limitation prescribed; and if it is relied on as furnishing a new cause of action, the bare statement of an account is not a contract, there being no promise in writing such as is required by section 25, clause 3, of the Contract Act—*vide Amritlal Mansuk* v. *Manekllal Jetha and another* (2) and *Hanmantmal Motichand* v. *Ramabai*(3). To the extent of the claim, therefore, in respect of the balance the suit is beyond time. With regard to the other objections, we think the appellant has made out no sufficient case for interference. We accordingly amend the decrees of the Courts below by deducting the sum of Rs. 201-10 from the amount awarded. Each party to bear his own costs of this appeal.

Decree amended.

(1) I. L. R. 3 Bom. 193. (2) 10 Bom. H. C. Rep., 357.
(3) I. L. R., 3 Bom., 198.