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of costs. We therefore vary the decrees of the lower Courts in the matter of costs by allowing only one set to the defendants in each Court. In other respects the decree is affirmed.

The costs of this appeal must be borne by the appellants.

*Decree partially varied.*

G. B. R.

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## APPELLATE CIVIL.

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*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

1911.  
February 23.

EBRAHIM HAJI YAKUB (ORIGINAL DEFENDANT 5), APPELLANT, v.  
CHUNILAL LALCHAND KABRE AND OTHERS (ORIGINAL PLAINTIFFS),  
RESPONDENTS.\*

*Limitation Act (XV of 1877), section 19—Contract Act (IX of 1872), sections 208 and 209—Suit to recover money—Acknowledgment by defendant's Gumasta (agent) after his death—Death of the defendant not known to plaintiff—Limitation.*

Plaintiffs' firm had dealings with one Haji Usman from the 5th January 1901 till the 25th October 1903. Haji Usman's business was managed by a Gumasta (agent). Haji Usman died in or about March 1903, and the plaintiffs had no knowledge of his death. On the 2nd June 1903 the Gumasta wrote to the plaintiffs a post-card stating, "you mention that there are moneys due; as to that I admit whatever may be found on proper accounts to be owing by me; you need not entertain any anxiety." On the 30th May 1906 the plaintiffs brought a suit against the managers of Haji Usman's estate to recover a certain sum of money on an account stated.

The defendants pleaded the bar of limitation on the ground that there was no acknowledgment of the debt by a competent person.

*Held*, that the suit was not time-barred. The Gumasta's letter of the 2nd June 1903 was an acknowledgment within the meaning of section 19 of the Limitation Act (XV of 1877).

The case fell within the provisions of sections 208 and 209 of the Contract Act (IX of 1872). The termination of the Gumasta's authority, if it did terminate, did not take place before the 2nd June 1903 as the plaintiffs did not

\* Second Appeal No. 374 of 1909.

know of the principal's death, and the *Gumasta* was bound under section 209 to take, on behalf of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

SECOND appeal from the decision of C. Fawcett, District Judge of Ahmednagar, confirming the decree of M. V. Kathavate, First Class Subordinate Judge.

Plaintiffs' firm had dealings with one Haji Usman Haji Oomar. The dealings continued from the 5th January 1901 till the 25th October 1903. Haji Usman's business was managed by a *Gumasta*. Haji Usman died in or about the month of March 1903. The plaintiffs had no knowledge of his death. In June 1903 Haji Usman's *Gumasta* wrote a post-card to the plaintiffs acknowledging liability on account of the dealings. The acknowledgment was as follows:—

You mention that there are moneys due; as to that I admit whatever may be found on proper accounts to be owing by me; you need not entertain any anxiety.

On the 30th May 1905 the plaintiffs filed the present suit against the defendants to recover Rs. 775 due on an account stated. The plaint alleged that the defendants were in possession of deceased Haji Usman's estate as *Panch* of his caste and that defendant 1 managed it in consultation with the other defendants. The plaint further alleged that there were acknowledgments of the debt in two post-cards, dated the 2nd June 1903 and 23rd February 1904, and that the debt was due on current accounts.

Defendant 1 answered that he had no personal knowledge of the debt in suit, that defendant 2 had instituted an administration suit, No. 361 of 1903, in the Bombay High Court and that Court had appointed a Receiver on whose report the management of the estate of the deceased was entrusted to the defendant who paid off all the proved debts and discharged defendants 2, 3, 4 and 5 from all liability and that the claim was time-barred, there being no acknowledgment of the debt by a competent person.

The other defendants raised the same defences to the action.

The Subordinate Judge found that the claim was proved and that it was not time-barred. He, therefore, awarded the claim.

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On appeal by the defendants, the District Judge confirmed the decree.

Defendant 5 preferred a second appeal.

*P. D. Bhide* for the appellant (defendant 5) :—The authority of the *Gumasta* terminated on the death of the principal: section 201 of the Contract Act. Hence the *Gumasta* had no authority under section 19 of the Limitation Act to acknowledge the debt of the deceased principal. An acknowledgment passed after the termination of the authority is of no avail: *Parbuttinnath Roy v. Tejomoy Banerji*<sup>(1)</sup>, *Dinomoyi Debi v. Roy Luchmiput Singh*<sup>(2)</sup>. Explanation 2 to section 19 of the Limitation Act requires that the agent ought to be duly authorized in that behalf and this requirement must be strictly construed. The old English Law did not recognize such authority in the agent. It was only latterly that power to acknowledge debt was given to a duly authorized agent: Banning on Limitation, p. 47 (3rd Edn.). Section 19 of the Limitation Act requires a strict construction and it cannot be controlled by sections 208 and 209 of the Contract Act. These latter sections are meant only to protect the agent in his dealings with others but are not meant to make such acknowledgment binding on the representatives when it is made on the principal's death. It cannot be said that the acknowledgment in the present case was made for the protection of the interest of the deceased principal.

*D. R. Patvardhan* for the respondents (plaintiffs) :—The acknowledgment passed by the *Gumasta* was valid. Section 208 of the Contract Act provides that the termination of authority does not take effect till the third person knows of the death of the principal. In the present case the *Gumasta* was found to have full authority and the representatives of the deceased principal seemed to have authorized all the dealings of the *Gumasta*.

SCOTT, C. J. :—It is admitted that the defendant 1, by an order of the Court made in an administration suit, is the manager

(1) (1879) 5 Cal. 303.

(2) (1879) L. R. 7 I. A. 8

of the property of Haji Usman Haji Oomar who died in or about March 1903.

The plaintiffs' firm had dealings with Haji Usman's firm at Malegaon. The business of that firm, according to the finding of the lower Court, was, during the life-time of Haji Usman, carried on by a *Gumasta* named Khanderao.

The suit was instituted by the plaintiffs on the 30th of May 1906 by presenting the plaint to the officer of the Court at Ahmednagar. In order that the plaintiffs may not be met by a bar of limitation they have to show that there was some acknowledgment binding upon the estate given under section 19 of the Limitation Act within the three years anterior to the 30th of May 1906. The acknowledgment relied upon for this purpose is dated 2nd of June 1903. It is in the shape of a post-card addressed to the plaintiffs by the *Gumasta* Khanderao from Malegaon in the name of Haji Usman Haji Oomar in which no reference is made to the death of the latter. It purports to be an answer to a letter from the plaintiffs relating to their account and concludes by saying "you mention that there are moneys due; as to that I admit whatever may be found on proper accounts to be owing by me; you need not entertain any anxiety."

The learned Judge of the lower appellate Court has held that there was no reason to suppose that the plaintiffs at this time knew that Khanderao's authority had terminated by the death of Haji Usman, and it is not alleged that they had notice of his death at that time, assuming the authority of the writer of the letter to give acknowledgment had terminated.

It appears from the decision of the Privy Council in *Maniram Seth v. Seth Rupchand*<sup>(1)</sup> that an acknowledgment in terms such as we have referred to would be an acknowledgment within the meaning of section 19.

The question, then, is whether the *Gumasta* Khanderao, who was in charge of the business on the 2nd of June 1903, could bind the estate of Haji Usman who died two months previously.

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(1) (1906) 33 Cal. 1047.

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The learned Judge has held that there is a strong presumption in favour of the arrangement which existed in Haji Usman's time as deposed to by the witness Khanderao having continued with, at any rate, the implied authority of Haji Usman's legal representatives, so far as to cover the acknowledgment of the 2nd of June.

According to the evidence of Khanderao and a number of letters which were proved in the case, he carried on business for his master and generally managed the affairs of the firm, and his master always allowed him to write letters on behalf of the firm and never repudiated any of them.

Under these circumstances, we think, that the case falls within the provisions of sections 208 and 209 of the Contract Act. The termination of Khanderao's authority, if it did terminate, did not take effect as regards plaintiffs before the 2nd of June as they did not know of Haji Usman's death; and Khanderao was bound under section 209 to take on behalf of the representatives of his late principal all reasonable steps for the protection and preservation of the interests entrusted to him. The post-card written on the 2nd of June was, we think, a reasonable letter for the manager to write to a creditor who was inquiring about the moneys due to him, and was written for the protection and preservation of the assets of the shop. We, therefore, hold that the suit was not barred by limitation.

We affirm the decree of the lower appellate Court and dismiss the appeal with costs.

*Decree affirmed.*

G. B. R.

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