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# LAKSHMIRATAN COTTON MILLS CO. LTD.

*v.*

# ALUMINIUM CORPORATION OF INDIA LTD.

*October* 16, 1970

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[J. M. SHELAT AND C. A. VAIDIALINGAM, JJ.]

*Limitation Act*, 1908, *s.* 19(1)—*Acknowledgment of liability—What amounts to—Authority to make acknowledgment on behalf of corporation, when can be implied.*

C Prior to January 18, 1944 six companies including M/s. Lakshmiratan Cotton Mills Co. Ltd. (the appellant-company) and the Aluminium Corporation of India Ltd. (respondent corporation) were jointly managed by two groups known as the Singhania and Gupta groups. As a result of disputes between the two groups there was a reference to arbitration. After January 18, 1944, the date of the award, the aforesaid six concerns were brought under the management and control of one or the other of the two groups. The Corporation came under the control and management of the Singhania group. In cl. 9 of the award it was said that the D award did not cover the advances which either party or their separate firms may have made to all or any of them or their moneys which may be in deposit with them and that they would be payable and paid in their usual course. After the award the appellant-Company sent a statement of account in respect of advances made to the respondent corporation and expenditure incurred on its behalf. The statement was objected to on the ground that the appellant company had not properly maintained its accounts during the period of joint management. Efforts at recon- E ciliation of accounts having failed the appellants filed two suits claiming Rs. 3,56,207.9.6 and Rs. 72,595.4.6 from the Corporation, being suits Nos. 63 and 65 of 1949. In suit No. 63 of 1949 it was claimed that the suit was within time as after adjustment of several items in 1946 and 1947 a sum of Rs. 2,96,110.11.6 was found due to the appellant-company and that in any event the suit was saved from being barred by limitation by a letter (Ex. 1) dated April 16, 1946 addressed by S the Secretary-*cum*-Chief Accountant of the Corporation, thereby acknowledging the F liability of the Corporation to pay the amount which would be found due and payable under the said accounts. Similar averments were made in Suit No. 65 of 1949. The written statements filed on behalf of the Corporation *inter alia* pleaded that the said claim was barred by limitation, that the said letter did not amount to an acknowledgement within the meaning of s. 19 of the Limitation Act, 1908 which was then applicable to the suits, and lastly, that even if the said letter did amount to an G acknowledgement, it was not binding on the Corporation. The trial court decreed the suits but the High Court dismissed them as being time-barred. In appeals to this Court the questions that fell for consideration were : (i) whether the letter in question amounted to an acknowledgment; (ii) whether it was an acknowledgement by the corporation, and if not (iii) whether the Secretary-*cum*-Chief Accountant had authority express or implied, to acknowledge liability on behalf of the Corporation so as to bind that corporation. Allowing the appeals,

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HELD : (1)(a) From the provisions of s. 19(1) of the Limitation Act, 1908 it is clear that the statement on which the plea of acknowledgement is founded must relate to a subsisting liability as the section requires

that it must be made before the expiration of the period prescribed by the Act. It need not, however, amount to a promise to pay, for an acknowledgement does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the partes such as, for instance, that of a debtor and a creditor and the intention to admit such a jural relationship. Such an intention need not be in express terms and can be inferred by implication or th enature of the admission and the surrounding circumstances. Generally speaking a liberal construction of the statement in question should be given. That of course does not mean that where a statement is made without intending to admit the existence of a particular jural relationship, such an intention should be fastened on the person making the statement by an involved or a far fetched reasoning. [629 C-E]

*Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prosad Chamaria*, [1962] 1 S.C.R. 140, *Tilak Ram* v. *Nathu*, A.I.R. 1967 S.C. 935, 938, 939, *Green* v. *Humphreva*, [1884] 26 Ch. D. 474, 481, *Tajpal Saraogi* v. *Lallanjee Jain*, C.A. No. 766/62 dt. 8-2-1965 and *Abdul Rahim Oosman & Co.* v. *Ojamshee Prushottamdas & Co.*, [1928] I.L.R. 56 Cal. 639, referred to.

(b) From the correspondence between the parties and the surrounding circumstances it must follow that there was a subsisting account in the name of the appellannt company in the books of the Corporation in which interest on the balance shown therein from time to time was being credited and in which amounts in respect of items passed during the course of reconciliation were also duly credited. The statement in the letter Ex. 1 that "after all the above adjustments the position will be as per statement attached", that is to say, that there was a balance of Rs. 107447/13/11 due and payable to the appellant company must clearly amount to acknowledgement within the meaning of s. 19(1). If the letter be looked at in the background of the controversy between the parties which controversy was limited to the question as to the correctness of the amount claimed by the appellant company as also the correspondence which ensued in regard to it, it would be impossible to say that the letter and the statement of account enclosed therewith were merely explanatory and did not amount to an admission of the jural reship of debtor and creditor and of the liability to pay the amount found due at the foot of the account on finalisation. [635 D-F]

The mere fact that letter called for confirmation of the amount of the balance mentioned therein and the fact that the appellant company failed to confirm it, could not lead to a conclusion that the admission of liability was conditional and therefore could not operate as an acknowledgement. The confirmation sought in the letter was not a condition to the admission as to the existence of a subsisting account and the liability to pay when accounts were finalised but to the specific amount which according to the corporation would be the amount payable by it according to its calculation. There was no condi ion subject to which the admission was to be made which remained unperformed. [635 G; 636 F-G; 637 B]

*Maniram* v. *Rupchand*. L.R. 33 I.A. 165, *Raja Kayali Arunachella Row Bahadur* v. *Sri Rajah Rangiah Appa Row Bahadur*, [1906] I.L.R. 29 Mad. 519 and *Ballapragada Ramamurthy* v. *Thammana Gopayya*, [1917] I.L.R. 40 Mad. 701, distinguished.

A *In re River Steamer Co.* v. *Mitchell*, L.R. 6 Ch. App. 822, 828, referred to.

(ii) The plea that the letter Ex. 1 should be regarded as an acknowledgement by the corporation itself was not included among the issues formulated before the courts below. It could not be allowed to be raised for the first time in this Court. [628 B]

B (iii) If the correspondence between the parties together with the statements of accounts enclosed therewith was closely examined it became clear that S was authorised to scrutinise the claim made by the appellant company, the various items for which the appellant company claimed credit and to reject the same and, what is important, to allow others. That he had such an authority was clear from the fact that in respect of such of the items which he allowed, credit was given to the appellant C and necessary entries to the credit of the appellant company were posted in the account maintained by the Corporation in its books of account. It was impossible to say that in the course of finalising the accounts, S accorded his assent to various items claimed by the appellant company without having been authorised so to do. Nor was it possible to say that on his passing those items necessary entries were made in the books of accounts of the corporation without his having so authorised. Further, he could not have sent to the appellant company statements of account D showing the balance due to it "as per the ledger" unless he was authorised to finalise the accounts and arrive at the amount due and payable to the company. [637 E-F; 638 B-C]

*Uma Shankar* v. *Govind Narain*, I.L.R. 46 All. 982, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 116, E 117 and 119 of 1967.

Appeals from the judgment and decrees dated May 19, 1966 of the Allahabad High Court in First Appeals Nos. 441 of 1950, 198 of 1952 and 442 of 1950 respectively.

*S. V. Gupte, S. T. Desai, J. P. Goyal* and *G. N. Wantoo*, for F the appellants (in all the appeals).

*Sidhartha Ray, A. K. Sen, Rameshwar Nath, Krishna Sen* and *Swaranjit Sodhi*, for the respondent (in all the appeals).

The Judgment of the Court was delivered by

**Shelat, J.** Prior to January 18, 1944 M/s. Lakshmiratan G Cotton Mills Co. Ltd. (hereinafter referred to as the appellant-company), Aluminium Corporation of India Ltd. (hereinafter referred to as the corporation, J.K. Limited, Beharilal Kailashpat India Supplies, Northern India Trading Co., and Northern India Brush Manufacturing Co. Ltd. were all jointly managed by two groups, who may conveniently be called the Singhania and the H Gupta groups. Disputes having arisen between them, they were referred to arbitration by a deed of reference, dated December 9, 1943. It is not necessary to go into the details of the award, dated January 18, 1944, by which these disputes were adjudi-

cated upon except that from and after the date of the award the aforesaid concerns were brought under the management and control of one or the other of the said two groups. The corporation came under the control and management of the Singhania group.

Cl. 9 of the award provided as follows :

> "The above award or directions in respect of Laxmi Ratan Cotton Mlls Co. Ltd., Aluminium Corporation of India Ltd., J. K. Ltd., Beharilal Kailashpat India Supplies, Northern India Trading Co. and Northern Brush Manufacturing Co. do not cover the advances which either party or their separate firms may have made to all or any of them or their moneys which may be in deposit with them and they shall be payable and paid in their usual course."

According to the appellants, there existed in their trading books accounts in respect of amounts advanced or spent by them for the corporation in respect of which cl. (9) of the award specifically made provision for and also for interest due thereon. After the award was made the appellant-company sent a statement of account to the corporation, but this was objected to on the ground that the appellant-company, during the course of the previous joint management of the corporation, had not properly maintained the accounts and that several items were either not properly accounted for or entered into. Correspondence thereafter ensued between the parties. The parties also appointed their respective officers to meet and reconcile their respective accounts the corporation being represented by its Secretary-*cum*-Chief Accountant, one Subramanayam, and the appellant-company sometimes by one Arora and at other times by one Newatia. Since no settlement could be arrived at, the appellants filed two suits claiming Rs. 3,56,207-9-6 and Rs. 72,595-4-6 from the corporation, being Suit Nos. 63 and 65 of 1949.

In para 14 of the plaint in Suit No. 63 of 1949, it was claimed that the suit was within time as after adjustment of several items in 1946 and 1947 a sum of Rs. 2,96,110-11-6 was found due to the appellant-company and that in any event the suit was saved from being barred by limitation by a letter dated April 16, 1946 addressed by the said Subramanayam, thereby acknowledging the liability of the corporation to pay the amount which would be found due and payable under the said accounts. Similar averments were also made in the plaint in Suit No. 65 of 1949. The written statements filed by the corporation *inter alia* pleaded that the said claims were barred by limitation,

A that the said letter did not amount to an acknowledgement within the meaning of s. 19 of the Limitation Act, 1908 which was then applicable to the suits, and lastly, that even if the said letter did amount to an acknowledgment, it was not binding on the corporation as the said Subramanayam had no authority to make any such acknowledgement for and on behalf of and binding on B the corporation. On the question of limitation, the Trial Court raised three questions for its determination; (1) whether the letter (Ex. 1) was binding on the corporation, (2) whether it amounted to an acknowledgement, and (3) if so, whether it would extend the period of limitation so as to save the claims made by the appellants from being barred. On consideration of the C evidence, both oral and documentary, the Trial Court held in favour of the appellants on all the three questions and passed decrees in both the suits.

Three appeals were filed in the High Court against those decrees, two by the corporation and the third by the appellant-company as the claim allowed in its favour was for a reduced D amount. As framed by the High Court, the question common to all the three appeals was whether the said letter (Ex. 1) amounted to an acknowledgement extending the period of limitation. The High Court, on consideration of the correspondence between the parties and the other evidence, reached the conclusion that the letter (Ex. 1) was "merely explanatory" and was not E meant to bind the corporation, that even if it did amount to "some kind of acknowledgement", its author, the said Subramanayam, had no authority to acknowledge any debt or liability on behalf of the corporation. In this view the High Court held the two suits barred by limitation and allowed the corporation's appeals. It rejected the appellant-company's appeal and dismissed the two suits. Hence these three appeals under certificates F granted by the High Court.

It was never disputed that, except for the letter (Ex. 1) relied on by the appellant-company, provided it amounted to an acknowledgement binding on the corporation, the claims of the appellants would be barred by limitation. Consequently, the G questions for determination in these appeals are the same as the ones before the High Court. These questions were canvassed before us in their three aspects; firstly, whether the letter (Ex. 1) amounted to an acknowledgement, secondly, if it did, whether it was an acknowledgement by the corporation, and thirdly, if not, whether the said Subramanyam, who addressed it, had the authority, express or implied, to acknowledge liability on behalf of the H corporation so as to bind that corporation.

Counsel for the appellant-company sought to argue that inasmuch as the letter, (Ex. 1) was written by the corporation's

Secretary, who also combined the position of the Chief Accountant, and furthermore, addressed that letter for and on behalf of the corporation, the letter was of and by the corporation. Therefore, if the letter amounts to an acknowledgement, such acknowledgement would be by the corporation itself and no enquiry would then be necessary to ascertain whether the said Subramanayam had the authority to acknowledge the liability so as to bind the corporation. No such plea, however, is to be found in the plant which merely stated that "there are several letters constituting acknowledgement of the unsettled account. The plaintiff files one of such letters which is dated 16th April, 1946." The written statement denied that the corporation ever made any acknowledgement or that the letter of April 16, 1946 was any such acknowledgement. It further denied that Subramanayam, who wrote it, hadk any authority to acknowledge any debt. Such a comprehensive denial notwithstanding, no issue was raised covering the argument now urged that the said letter was and must be treated as one of or by the corporation, and that therefore, there was no question of Subramanayam having or not having the authority to make an acknowledgement on behalf of the corporation. No such argument also appears to have been made either in the Trial Court or the High Court where the controversy was centered around the question whether the said letter contained an acknowledgement and whether its writer, addressing it on behalf of the corporation, had the authority to make such an acknowledgement binding on the corporation. In our view Mr. Gupte could not, at such a belated stage, raise for the first time the plea that it was the corporation which through the said letter made the acknowledgement and that we should understand that letter to mean such an acknowledgement by the corporation itself.

The question, therefore, that really arises for our determination is whether the said letter contains an acknowledgement, which its writer, Subramanyam, had the authority, express or implied, to make. Even that question gets reduced in extent and scope as it was never the case of the appellant-company at any stage that the corporation had clothed its Secretary with such authority expressly. Such a case Mr. Gupte did not make out even before us and proceeded in fact to argue that the evidence on record showed that he had such authority given to him impliedly.

Sec. 19(1) of the Limitation Act, 1908 provides that where, before the expiration of the period prescribed for a suit in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time

A when the acknowledgement was so signed. The expression 'signed' here means not only signed personally by such a party, but also by an agent duly authorised in that behalf. Explanation 1 to the section then provides that an acknowledgement would be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment has not yet B come, or is accompanied by a refusal to pay or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right. The new Act of 1963 contains in s. 18 substantially similar provisions.

It is clear that the statement on which the plea of acknowledgement is founded must relate to a subsisting liability as the C section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgement does not create a new right to action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the liability. The words used in the D statement in question, however, must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor, and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the E surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of-course does not mean that where a statement is made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. (see *Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prosad Chamaria*(1) and F *Tilak Ram* v. *Nathu*(2). As Fry, L.J., in *Green* v. *Humphreys*(3) said "an acknowledgement is an admission by the writer that there is a debt owing by him either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute there G must upon the fair construction of the letter, read in the light of the surrounding circumstances, be an admission that the writer owes the debt." As already stated, the person making the acknowledgement can be both the debtor himself as also a person duly authorised by him to make the admission. In *Khan Bahadur*

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(1) (1962) 1 S. C. R. 140.
(2) A. I. R. 1967 S. C. 935, at 938, 939
(3) (1884) 26 Ch. D. 474 at 481.

*Shapoor Fredoom Mazda's* case(1) the Court accepted a statement in a letter by a bortgagor to a second mortgagee to save the mortgaged property from being sold away at a cheap price at the instance of the prior mortgagee by himself purchasing it as one amounting to an admission of the jural relationship of a mortgagor and mortgagee, and therefore, to an acknowledgement within s. 19. Also, an agreement of reference to arbitration containing an unqualified admission that whoever on account should be proved to be the debtor would pay to the other has been held to amount to an acknowledgement. Such an admission is not subject to the condition that before the agreement should operate as an acknowledgement, the liability must be ascertained by the arbitrator. The acknowledgement operates whether the arbitrator acts or not. (*see Tejpal Saraogi* v. *Lallanjee Jain*(2), approving *Abdul Rahim Oosman & Co.* v. *Ojamshee Prushottamdas & Co.*(3).

The letter (Ex. 1) relied on as an acknowledgement was written to the appellant-company by Subramanayam signing it "for Aluminium Corporation of India Ltd." It consists of several paragraphs dealing with diverse items relating to different amounts claimed by the appellant-company in a statement of claim previously sent by it to the corporation, some of which are refuted by the writer, while the others are accepted. The penultimate paragraph, which is said to contain the admission, reads as follows :

> "After all the above adjustments, the position will be as per statement attached. Interest has been provided on some balances and on others it has not been provided. We request you to confirm the balance of Rs. 1,07,477-13-11, so that we may proceed with the calculation of interest and settle your claim once and for all immediately.
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> Kindly acknowledge this letter and favour us with an immediate reply."

The letter speaks in the last sentence of a copy of it to be sent to Lala Purshottam Dasji Singhania "for information" The copy of the letter, as is clear from the other evidence as also the words "for information" was not sent for approval and was obviously not intended to be subject to such approval by Purushottam Singhania. The statement enclosed with the letter is headed "Account of M/s. Lakshmiratan Cotton Mills Co. Ltd." and first sets out the balance of Rs. 1,00,760-0-7 in favour of

(1) (1962) I. S. C. R. 140.
(2) C.A. No. 766 of 1962, decided on Feb. 8, 1965.
(3) (1928) I. L. R. 56 Cal. 639.

A the appellant-company "as per our ledger", meaning the ledger of the corporation, and the first foot-note thereto states that that amount included interest of Rs. 26,490-11-10 calculated upto March 31, 1943. Several amounts due to other concerns payable to or by the appellant-company are then adjusted and finally the balance is struck at Rs. 1,07,447-13-11 (which is the B one mentioned in the letter (Ex. 1) which if confirmed by the appellant-company, the corporation would "settle your claim once and for all immediately."

The High Court, as aforesaid, held, contrary to the view of the Trial Court, that thise letter was only "explanatory" and was C not intended to be an admission of liability or of the jural relationship between the parties as debtor and creditor. Counsel for the corporation also argued in support of the High Court's view that the letter was written in the process of adjustment and reconciliation of the statement of claim addressed by the appellant-company and a counter-statement to it by the corporation, and therefore, could not be held to be one intended as D an admission of liability on the part of the corporation, and that, in any event, Subramanayam, who wrote it, had no authority to acknowledge any such liability on behalf of the corporation.

Before we proceed to inquire into the correctness or otherwise of the High Court's view in regard to the letter (Ex. 1), E it would be necessary to examine the correspondence which previously ensued between the parties and the surrounding circumstances which led to that letter.

As already stated, under cl. (9) of the award by which the concerns, once jointly controlled, were separated, moneys advanced by either of the parties or their firms or standing in F deposit with them were to be payable by one to the other. The award also directed the Gupta group to hand over to the Singhanias account books and other papers and files relating to the corporation. Accordingly, the Guptas handed them over to the corporation on February 1, 1944. The complaint of the corporation was that these books had not been properly posted G up and contained discrepencies and that the corporation consequently required the help of the Guptas to finalise them. Early in March 1945, the appellant-company had also sent a statement of account in respect of the amounts due and payable to it by the corporation. On April 20, 1945, one Col. Naidu, a director of the corporation, wrote to the appellant-company pointing out from the said statement of account certain items H which the corporation disputed. On 11th/12th September, 1945, the appellant-company sent a statement of account claiming Rs. 2,94,000 and odd as payable to it. On December 17, 1945,

a reply thereto was given by a letter sent by Lakshmipat Singhania, the director-incharge, of the corporation, mentioning various items disputed by the corporation and the efforts made by it to reconcile those items and enclosed with that reply a reconciliation statement showing the true position according to the corporation. Among other things, the reply stated as follows : A

> "You will find from the above that we have tried our level best to see that these accounts are settled as early as possible as we have been very anxious for finalising but unfortunately, there has been absolutely no response from your side. B
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> From the reconciliation statement you will find that according to our books amount due to the Laxmi Ratan Cotton Mills Co. Ltd., is Rs. 98,101-3-1 which includes interest calculated and credited to your account up to 31st March, 1943. The interest from that date till the date of settlement is further to be calculated when this account is properly reconciled and confirmed by you." C D

The reply pointed out that as against the said amount of Rs. 98,101-3-1 the corporation claimed Rs. 38,490-2-2 and Rs. 8,256-13-6 which, according to it, had to be adjusted. Lastly, the reply threatened that unless the accounts were finalised within a month "we will not be paying you any interest on any of your dues beyond 30th September, 1945—". The position, as stated in the statement enclosed with the reply, was as follows : E

*"Reconciliation of Accounts of M/s. Lakshmiratan Cotton Mills Co. Ltd.*

| | | F |
|---|---|---|
| Balance as per A.C.I. Ltd. Books | Rs. 98,101-3-1 | |
| Balance as per statement | Rs. 2,94,658-0-9 | |
| Difference | Rs. 1,96,556-13-8" | |

Then followed detailed items claimed by the corporation totalling Rs. 1,96,556-13-8. The statement referred to above was the one under which the appellant-company claimed Rs. 2,94,658-0-9 and which was sent earlier in March 1945 by Ram Ratan Gupta to Purushottam Singhania. The corporation took objection to it by claiming various amounts and against which, according to the corporation, only a sum of Rs. 98,101-3-1 was payable by it "as per A.C.I. Ltd. Books", that is to say, as shown by the books of account maintained by the corporation. The reply of the appellant-company, dated December 6, 1945, to the G H

A of the appellant-company, dated December 6, 1945, to the afore-aforesaid letter of September 17, 1945 and the statement enclosed thereto shows that the said Arora on behalf of the appellant-company and the said Subramanayam on behalf of the corporation met and tried to reconcile the accounts. The appellant-company by this reply also sent particulars of certain items ap-
B parently called for by Subramanayam at that meeting and in its turn asked for particulars of certain items debited to it in the said reconciliation statement. On December 21, 1945, Subramanayam replied to the appellant-company's letter of December 6, 1945. By that letter he conveyed two things, (1) that in respect of certain items claimed by the appellant-company and
C which were disputed, those items were either passed or disallowed, and (2) that since the appellant-company had combined in its statement of claim accounts of other allied concerns also, he too had combined those accounts while preparing the statement of accounts he was sending along with his letter. The letter concluded by stating : "we herewith enclose a consolidated state-
D ment after merging all these accounts." The consolidated statement, (Ex. 44) enclosed by Subramanayam with his reply, reads as follows :

"*Accounts of Messrs Lakshmiratan Cotton Mills Co. Ltd.*

1945

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December 1. By balance as per our ledger

Rs. 1,00,304-7-7"

Then follow accounts of other concerns whose accounts were brought in in what Subramanayam called the consolidated state-
F ment of account. This statement reflected the position of the appellant-company in the corporation's books of accounts as on December 1, 1945.

It will be noticed that the amount admitted in the statement by the corporation as due to the appellant-company rose from Rs. 98,000 and odd (as per the earlier statement, dated
G September 17, 1945) to Rs. 1,00,304-7-7. This increase was due to the fact that, while adjusting the disputed items, Subramanayam had allowed and "passed" some of them between September and December 1945 when the disputed items were discussed and adjusted, and entries relating to those which were passed were posted to the credit of the appellant-company in the
H books of the corporation.

The letter of December 21, 1945 was replied to by the appellant-company on February 25, 1946 by asking particulars in

respect of item claimed by Subramanayam in his said letter. It was in answer to this letter that Subramanayam wrote the letter (Ex. 1) in controversy and with which he sent the statement showing Rs. 1,07,447-13-11 as "Balance carried down". A

Correspondence continued thereafter between the parties, the appellant company maintaining that a much larger amount was due to it than the sum of Rs. 1,07,447-13-11. Except that, the later correspondence would not throw any light on the question as to acknowledgement, and therefore, we need now detain ourselves on it. B

Leaving aside for the time being the question as to Subramanayam's authority, the following facts emerge from the correspondence and the statements of accounts accompanying some of the letters sent on behalf of the corporation : C

(a) In pursuance of cl. (9) of the said award, the appellant-company sent to the corporation in the beginning of March 1945 a statement of account claiming Rs. 2,94,000 and odd as due to it. D

(b) At no time during the lengtny correspondence which ensued between the parties, the corporation denied its liability to pay; what it did was to dispute the correctness of the amount claimed by the appellant-company by challenging certain items for which the appellant-company claimed credit and by making certain counter claims of its own. As against the statement of account sent by the appellant-company, the corporation sent its own statement which it called the 'reconciliation account'. E F

(c) During the process of adjustment and reconciliation of the several items claimed by the appellant-company some were allowed and some were rejected, and the corporation sought to debit certain items claimed by it against the appellant-company. G

(d) According to the reconciliation statement sent by the corporation on September 17, 1945 only Rs. 98,000 and odd was due to the appellant-company as against its claim for Rs. 2,94,000 and odd. Later, this figure was raised from time to time as some of the items claimed by the appellant-company were allowed H

A with the result that in the statement sent along with the letter (Ex. 1) the balance due to the appellant-company was shown at Rs. 1,07,447.

(c) The statements of accounts, (Exs. 43 and 44) and the one enclosed with the letter, (Ex. 1) B in clear terms stated that the balances shown therein were as shown in the ledger maintained by the corporation. The letters equally clearly stated that interest on such balances was being credited up to certain dates and for the further period would be credited when the accounts were finalised.

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It must follow from these facts that there was a subsisting account in the name of the appellant-company in the books of the corporation in which interest on the balance shown therein from time to time was being credited and in which amounts in respect of items passed during the course of reconciliation were D also being credited. The statement in the letter (Ex. 1) that "after all the above adjustments the position will be as per statement attached", that is to say, that there was a balance of Rs. 1,07,447-13-11 due and payable to the appellant-company, must clearly amount to an acknowledgement within the meaning of s. 19(1). In our view if the letter (Ex. 1) were to be looked E at in the background of the controversy between the parties, which controversy was, as aforesaid, limited to the question as to the correctness of the amount claimed by the appellant-company as also the correspondence which ensued in regard to it, it would be impossible to say that the letter (Ex. 1) and the statement of account enclosed therewith were merely explanatory F and did not amount to an admission of the jural relationship of debtor and creditor and of the liability to pay the amount found due at the foot of the account on finalisation.

But the argument was that since the letter (Ex. 1) called for confirmation of the amount of Rs. 1,07,447 as being the G balance due to the appellant-company and as the appellant company failed to confirm it, the admission of liability was conditional, and therefore, cannot operate as an acknowledgement. In this connection the decision in *Maniram* v. *Rupchand*(1) was relied on and in particular the famous dictum of Mellish, L.J., in *In re River Steamer Co.* v. *Mitchell*(2) approvingly cited therein. The dictum was that an acknowledgement to take the H case out of the statute of limitation must be either one from which an absolute promise to pay can be inferred, or secondly, an

(1) L. R. 33 I. A. 165. (2) L. R. 6 Ch. App. 822, at 828.

unconditional promise to pay the specific debt, or thirdly, that there must be a conditional promise to pay the debt and evidence that the condition has been performed. The statement relied on in *Maniram's* case(1) as an acknowledgement was by the respondent in a written statement filed by him in an earlier probate proceeding in which it was averred that the applicant Rupchand Nanabhai (the respondent) "had for the last five years open and current accounts with the deceased (the testator) and that the alleged indebtedness did not affect his right to apply for probate", as one of the executors. It was held that the statement was sufficient to constitute an acknowledgement. "An unconditional acknowledgement", said their Lordships, "has always been held to imply a promise to pay, because that is the natural inference if nothing is said to the contrary. It is what every honest man would mean to do There can be no reason for giving a different meaning to an acknowledgement that there is a right to have the accounts settled, and no qualification of the natural inference that whoever is the creditor shall be paid when the condition is performed by the ascertainment of a balance in favour of the claimant. It is a case of the third proportion of Mellish, L.J., a conditional promise to pay and the condition performed." We do not see how this decision can support the corporation since in the present case also there was an admission of a subsisting account on the finalisation of which the corporation was prepared to pay the balance found due at the foot thereof. The only dispute was what would be such as balance, Rs. 1,07,447, according to the corporation, and a larger sum according to the appellant-company. The confirmation sought for in the letter (Ex. 1) was not a condition to the admission as to the existence of a subsisting account and the liability to pay when accounts were finalised, but to the specific amount which, according to the corporation, would be the amount payable by it according to its calculation. The decision in *Raja Kavali Arunachella Row Bahadur* v. *Sri Rajah Rangiah App Row Bahadur*(2) does not apply as the condition subject to which the settlement there was made was not performed, and therefore, the document was held to be one which could not be spelt out as an acknowledgement. In *Rallapragada Ramamurthy* v. *Thammana Gopayya*(3) also, the letter relied on as an acknowledgement stated that if certain arbitrators should decide that the defendant should pay any amount he would immediately pay, but if the arbitrators failed to decide the plaintiff might sue and the defendant in that case would not plead limitation. The arbitrators failed to decide. It was held that the letter being conditional and the condition not having been

(1) L. R. 33 IA. 165. (2) [1906] I. L. R. 29 Mad. 519.
(3) [1917] I. L. R 40 Mad. 701.

A performed did not operate as an acknowledgement. This decision too has no bearing on the facts of the present case. Unlike the cases relied on by Mr. Sen, the present case is one of an admission of a subsisting account and the jural relationship and the liability to pay whatever amount would be found due on finalisation of accounts. There is no condition subject to which
B the admission was made which remained unperformed.

Ordinarily, the functions of Subramanym as the secretary of the corporation would be ministerial and administrative. As a secretary only, he would have no authority to bind the corporation by entering into contracts or other commitments on its
C behalf. As the chief accountant and holder of a power of attorney, his functions in regard to the former would be to supervise over maintenance of proper accounts, and in regard to the latter to look after and represent the corporation in litigation. None of these three positions held by him would by itself or cumulatively make him a person duly authorised to make an acknowledge-
D ment binding on the corporation. Also, the fact that he carried on correspondence for the corporation would not make him a person authorised to make an acknowledgement binding on the corporation. [see *Uma Shankar* v. *Gobind Narain*(1)]. But such a description of the functions and duties performed by him would not be complete. If the correspondence together with the state-
E ments of accounts encolsed therewith is closely examined it becomes clear that he was authorised to scrutinise the claim made by the appellant-company, the various items for which the appellant-company claimed credit and to reject some, and what is important, to allow the others. That he had such an authority is clear from the fact that in respect of such of the items which he allowed credit was given to the appellant-company and neces-
F sary entries to the credit of the appellant-company were posted in the account maintained by the corporation in its books of account. Thus, in the reconciliation statement (Ex. 43) sent along with the corporation's letter of September 17, 1945, Rs. 98,101 were shown to be the balance due to the appellant-company. The words used in that statement were "balance as
G per A.C.I. Ltd. Books". These words clearly indicate that there was a subsisting account in the name of the appellant-company in the books of the corporation and that at the foot of that account the sum of Rs. 98,101 was due to it. Ex. 44, another statement of account sent to the appellant-company, stated Rs. 1,00,304-7-7 as being the "Balance as per ledger" as on December
H 1, 1945. As explained earlier, the increase in the balance from Rs. 98,101 to Rs. 100,304 was due to certain items aggregating Rs. 2,203-4-6 having been passed by Subramanayam, and entries

(1) I. L. R. 46 All. 892.

having thereupon been posted in the ledger. Thereafter, further items were passed by him totalling Rs. 465-10-0 which when added raised the balance to Rs. 1,00,760-1-7, as at the end of December 1945. This was the balance "as per our ledger" stated in the statement sent along with the letter (Ex. 1). A

It is impossible to think that in the course of finalising the accounts Subramanayam accorded his assent to various items claimed by the appellant-company without having been authorised so to do. Nor is it possible to say that on his passing those items necessary entries were made in the books of accounts of the corporation without his having so authorised. Further, he could not have sent to the appellant-company statements of accounts showing the balance due to it "as per the ledger" unless he was authorised to finalise the accounts and arrive at the amount due and payable to the appellant company. B C

In his evidence Subramanayam testified that Lakshmipat Singhania, the director-in-charge of the corporation, knew that he was dealing with Arora, the representative of the appellant-company, in the matter of accounts between the parties. He also said that he was to find out the difference between the two and that as a result many points were resolved an he confirmed by letters to the appellant company those points which were so resolved. He then stated that the directors of the corporation were aware of the settlement of the said points by him but they neither ratified nor repudiated them. This was because, as conceded by him, be never placed those settled points before the directors for their ratification. He did not say that he had no authority to settle the differences or that he settled them subject to the approval of the directors. It is clear that he could not have settled the various points of difference between the parties and suitable entries in the books consequent upon such settlement could not have been posted unless he was authorised by the directors to finalise the accounts and make final adjustment with the appellant-company. He tried, of course, to make out that he had no authority except as a secretary to carry on correspondence for clarifying the position of the corporation. He even denied that entries were made in the books of the corporation after he had settled the said items. The denial is futile because the statements of account sent by him to the appellan-company from time to time clearly show that such entries were made. The effect of all this evidence is that besides his functions as the secretary-*cum*-chief accountant, he was authorised to finalise the accounts between the parties, to settle differences between them and to arrive at the final figure payable by the corporation. It was in pursuance of such authority that he dealt with Arora, passed some of the items for which the D E F G H

A appellant-company claimed credit, had those entries posted in the books of the corporation, sent statements of accounts from time to time and finally addressed the letter, (Ex. 1), stating therein that according to the books of the corporation the sum of Rs. 1,07,447 was the balance payable to the appellant-company. He could not possibly have asked the appellant-company to con-
B firm that balance unless he had the authority on behalf of the corporation to acknowledge on its behalf that that was the balance payable by it. Therefore, the conclusion is inescapable that he had the implied authority to make the acknowledgement and wrote the letter (Ex. 1) with the intention of doing so.

C Accordingly, the suits were not liable to be dismissed on the ground of their being barred by limitation, and the High Court was in error in allowing the appeals by the corporation and dismissing the suits.

The result is that the appeals are allowed, and the judgment and order passed by the High Court are set aside. The case will
D have to be remanded to the High Court for deciding the rest of the questions arising in the suits and ascertaining the amounts due to the appellants (the original plaintiffs) as the High Court has not gone into those questions as it dismissed the suits on the point of limitation. In view of the very long period having elapsed due to prolonged adjournments of the appeals while they were pending before the High Court, we earnestly hope that the High
E Court will dispose of the cases as expeditiously as possible. The corporation will pay to the appellants costs of these appeals, such costs to be in one set of costs.

G.C. *Appeals allowed.*