*Privy Council Appeal No.* 112 *of* 1932.
*Allahabad Appeal No.* 1 *of* 1932.

**Firm Bishun Chand, through Lala Sri Ram** - - - *Appellants*

*v.*

**Seth Girdhari Lal and another** - - - - - *Respondents*

FROM

**THE HIGH COURT OF JUDICATURE AT ALLAHABAD.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 14TH MAY, 1934.

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*Present at the Hearing*:
LORD BLANESBURGH.
LORD WRIGHT,
SIR LANCELOT SANDERSON.
[*Delivered by* LORD WRIGHT.]

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This appeal involves a question of general importance in regard to the law of limitation. The appellants carry on business as money-lenders, and for twenty-five years had been lending money to the respondents, the rate of interest being 10 annas per cent. per mensem. The loans were entered in the appellants' books with charges for interest at intervals, and so also were the payments on account made by the respondents from time to time. The suit was brought as on an account stated evidenced by entries as below described in the appellants' ledger; it was stated to their Lordships that the ledger set out the various items of credit and debit. The appellants' books were not produced at the hearing of the appeal, though produced at the trial. At the foot of the page of the ledger on the debit side there was written by or on behalf of the appellants: "Balance due to be received after adjusting the account up to Kunwar Sudi 9 Sambat, 1982 (that is, the 26th September, 1925), Rs. 16,043-8-9." Below this entry was written in the writing of one of the respondents, "Balance due to be paid after adjusting the account up to Kunwar Sudi 9, Rs. 16,043-8-9": this latter entry was signed by both respondents, who were both literate. The respondents pleaded that they merely signed in reliance on the word of the appellants and did not go into the accounts

with them. They did not, however, give evidence before the Judge. The appellants gave evidence that the respondents had signed the entry " after they had understood the accounts " ; that " sometimes they would come for the purpose of making up accounts " ; that after the respondents had signed the entry the appellants sent them a registered notice, whereupon they were asked by the respondents for time, but as in the end no payment was made, they brought the present suit. The appellants stated in evidence that the last loan granted the respondents was Rs. 1,000 on the 9th August, 1921, and that the last acknowledgment of the accounts by the respondents previous to that sued upon was on the 10th October, 1921. It is clear that considerable payments, either on account of principal or interest or of both, were made between 1921 and 1925 : what these payments precisely were does not appear, nor is it possible for their Lordships, not having the appellants' books before them, to say to what extent the debts were barred by limitation—that is, apart from any question of an account stated. The respondents pleaded that " within three years from the date of institution of the suit "—that is, from the 17th August, 1927—they had neither contracted any debt from the appellants nor paid them any sum of money. It might be inferred, though not with certainty, that they could not have made the same assertion if the date taken had been the date at which they signed the entry in the ledger. In any case, their Lordships have no specific evidence on this point.

The Subordinate Judge accepted the appellants' evidence and found that there was in fact a settlement of account between the parties on the 26th September, 1925, so that the balance then struck became itself a debt which was to carry future interest at 10 annas per cent. per mensem : he found that the respondents " satisfied themselves of the correctness of the balance before they signed the note." He accordingly gave judgment for the appellants, holding that there was an account stated within the meaning of article 64 of schedule 1 of the Indian Limitation Act, 1908.

The judgment was reversed on appeal by the High Court of Allahabad. The learned Judges held that in law the words " account stated " cannot properly be applied to a moneylending transaction where one party lent to the other and the other merely made repayments of the money lent, so that the borrower was always the debtor of the lender : such transactions, they held, were entirely unilateral and there could be no statement of a mutual account, so as to satisfy the words in article 64 of the Limitation Act " accounts stated between them."

The question is whether this ruling is correct in law, a question on which there has been considerable conflict of authority in the Courts of India. Thus in *Raj Narain Rao* v. *Ram Sarup*, I.L.R. 52, All. 480, the learned Judges (p. 486) thus sum up the position on the authorities :—

> " But there is undoubtedly, as observed by Blackburn, J., in *Laycock* v. *Pickles* (1863), 33 L.J. (Q.B.), 43, a technical meaning attached to this

expression, viz., 'the real account stated is when several items of cross claims are brought into account on either side, and being set against one another, a balance is struck, and the consideration for the payment of the balance is the discharge on either side; each party resigns his own rights on the sums he can claim in consideration of a similar abandonment on the other side, and of an agreement to pay and to receive in discharge the balance found due.' There are numerous cases of the Indian High Courts where this phraseology has been borrowed, and stress has been laid on the restricted meaning of the expression. We may only give references to a few of such cases, viz., *Nahanibai* v. *Nathu Bhau* (1883), I.L..R., 7 Bom., 414; *Jumun* v. *Nand Lal* (1892), I.L.R., 15 All., 1; and *Suraj Prasad* v. *W. W. Boucke* (1920), 5 Pat. L.J., 371. On the other hand, there are undoubtedly some observations to the contrary in *Dukhi Sahu* v. *Mahomed Bikhu* (1883), I.L.R., 10 Cal., 284, and a clear expression of opinion in *Manjunatha Kamti* v. *Devamma* (1902), I.L.R., 26 Mad., 186, and a reference to such contrary opinion in *Sarifun Mandalin* v. *Feradoul Khatun*, A.I.R., 1923 Cal., 578. It may be pointed out that the case of *Ganga Prasad* v. *Ram Dayal*, (1901) I.L.R., 23 All., 502, was explained in *Bhola Nath* v. *Net Ram*, (1906) 3 A.L.J., 800, where it was pointed out that the facts of the case made it one of a very restricted application. The learned advocate for the respondent has strongly urged before us that in a purely loan transaction, even though there may be payment by the debtor from time to time, inasmuch as there can be no adjustment of reciprocal claims or demands, the final balance struck, even though with mutual consent, can never amount to an account stated. On the other hand, the learned advocate for the appellants has strenuously urged before us that it is not necessary that there should be mutual demands of claims, but if there are credit and debit entries in an account, though indicating only the advances made by one side and payments made by the other, the final settlement of accounts between the parties may amount to an account stated within the meaning of article 64. There is no doubt that even though no case may be directly in point and exactly similar to the case on facts, there is a preponderance of observations in favour of the contention advanced on behalf of the respondent, though there are also express views to the contrary."

It is unnecessary here further to cite the various authorities; it is enough to say that in the present case the Court relied on the definition given in *Ganga Prasad* v. *Ram Dayal*, I.L.R., 23 All., p. 502, which in their opinion was supported by the weight of authority. In that case it was said at p. 503 with reference to the meaning of the words "account stated" in article 64 of the Limitation Act :—

"An 'account stated' in the true sense is where several cross claims are brought into account on either side and are set off against each other and a balance is struck. The consideration for the payment of the balance is the discharge on each side. Such an account stated certainly evidences a new contract on which a suit can be based. It was held in *Jamun* v. *Nand Lal* (1892), I.L.R., 15 All., 1, that article 64 of schedule ii of the Limitation Act applied only to such an account stated, and not to a case like the present, where there were no demands to be set off against each other, but only debts on one side of the account and payments made by the debtor on the other.

The earlier decisions of this Court are conflicting. In *Nand Ram* v. *Ram Prasad* (1880), I.L.R., 2 All., 641, *Thakurya* v. *Sheo Singh* (*ibid.* 872), *Zulfikar Husain* v. *Munna Lal*, (1880) I.L.R., 3 All., 148, and *Sital Prasad*

v. *Imam Bakhsh*, Weekly Notes, 1883, p. 47, it seems to have been assumed, rather than held, that a mere acknowledgment of a balance struck in the plaintiff's books was an account stated within the meaning of article 62 of schedule ii of the Limitation Act of 1871, or of article 64 of schedule ii of the present Limitation Act. The Court's attention does not in any of those cases seem to have been directed to the precise meaning of an account stated.

On the other hand, in *Kanhaiya Lal* v. *Stowell* (1880), I.L.R., 3 All., 581, a settlement of accounts, such as we have in the present case, seems to have been considered a mere acknowledgment; and in *Ghasita* v. *Ranchore*, Weekly Notes, 1881, p. 65, the Court declined to uphold a decree which was based entirely on an acknowledgment of this kind. In this state of the authorities in this Court we consider that we are free to follow the decision in *Jamun* v. *Nand Lal*, (1892) I.L.R., 15 All., 1, and hold that what is sued upon in the present case is not an account stated, but a mere acknowledgment."

In this state of the authorities in the Indian Courts their Lordships feel both entitled and bound to consider the question as a matter of principle, and in doing so some reference must be made to the decisions on the point in the English Courts, since particular reliance has been placed by the Courts in India on the language, as quoted above, of Blackburn, J., in *Laycock* v. *Pickles*, 4 B. & S. 497. But before referring to the English cases their Lordships desire to consider a recent decision of this Board in the case, so far unreported, of *Siqueira* v. *Noronha*. That was on an appeal from the Court of Appeal for Eastern Africa varying a judgment of the Supreme Court of Kenya. The Indian Limitation Act, 1877, which so far as is material is the same as the Act of 1908 had been applied to Kenya by the Order in Council, and the principal question discussed in the judgment of this Board, delivered by Lord Atkin on the 15th February, 1934, was whether there was an account stated within Article 64 of the Act. The plaintiff had for many years, from about 1913 until 1928, been employed by the defendant. In the books of the business there were accounts of the plaintiff's drawings from time to time; there was no account on the other side in respect of his salary, because the salary had never been fixed. In 1928 an account was drawn up and signed by the defendant's manager showing credits for salary and debits for drawings, and ending, " By balance in your favour, 42,458-84." The account had started with a balance of 26,000 shillings in 1921, and appears throughout to have been in the plaintiff's favour. Lord Atkin held that it was an account stated involving a promise to pay the balance for good consideration. He distinguished and put on one side that form of account stated which constituted a mere acknowledgment of a debt. Then he thus stated what would properly be described as a real account stated :—

" But, on the other hand, there is another form of account stated which is a very usual form as between merchants in business, in which the account stated is an account which contains entries on both sides, and in which the parties who have stated the account between them have agreed that the items on one side should be set against the items upon the

> other side and the balance only should be paid ; the items on the smaller side are set off and deemed to be paid by the items on the larger side, and there is a promise for good consideration to pay the balance arising from the fact that the items have been so set off and paid in the way described."

Lord Atkin quoted the language of Viscount Cave in *Camillo Tank Steamship Company, Limited*, v. *Alexandria Engineering Works*, 38 *Times* L.R. 134 :—

> " There is the second kind of account stated, where the account contains items both of credit and debit, and the figures on both sides are adjusted between the parties and a balance struck."

Lord Cave, in the passage quoted by Lord Atkin, went on to quote the words of Blackburn, J., in *Laycock* v. *Pickles* (*supra*), the main purport of which has already here been set out in the passage quoted above from the judgment in I.L.R. 52 Allahabad : Lord Cave did not, apparently, lay any emphasis on a distinction between mere items of debit and credit and what Blackburn, J., describes as items of claim. It seems that the case which Lord Atkin was dealing with was a case in which the employee could have claimed his salary, just as here the appellants could have claimed the money lent and interest, and that what the account stated brought in on the other side was merely the record of the monies drawn by the employee, which seem to correspond with the partial payments made from time to time in the present case to the appellants by the respondents. In a sense this latter class of item might be brought within Blackburn, J.'s, words as " items of claim," because in any action for the monies due they might be relied on by way of a counter-claim or set off. It does not appear from Lord Atkin's opinion that the authorities in the Indian Courts were cited in that case, and some distinction may be drawn between the relationship of the parties in that case as contrasted with the relationship of the appellants and respondents in the present case. Hence their Lordships do not feel able to treat that decision as conclusive of the present appeal. But it certainly favours the contentions of the present appellants. In *Laycock* v. *Pickles* (*supra*) the plaintiff was indebted to the defentants in the sum of £111. He had a claim against them for labour and materials for £67, and it was agreed that in return for the transfer of certain property he should be credited with £70. A balance was then struck, and his final liability was agreed at £22, which sum the plaintiff was held entitled to recover as upon an account stated. It was with reference to these facts that Blackburn, J., spoke of items of claim ; but he also uses the phrase, " It is the same as if each item was paid and a discharge given for each, and in consideration of that discharge the balance was agreed to be due." These words may well be used to describe what the Subordinate Judge in the present case found to have been the position between the appellants and respondents, save that the partial payments brought into the account and treated as having discharged the

debt *pro tanto*, leaving only the agreed balance, had been paid, not at the time of the account, but previously. Indeed, the essence of an account stated is not the character of the items on one side or the other, but the fact that there are cross items of account and that the parties mutually agree the several amounts of each and, by treating the items so agreed on the one side as discharging the items on the other side *pro tanto*, go on to agree that the balance only is payable. Such a transaction is in truth bilateral, and creates a new debt and a new cause of action. There are mutual promises, the one side agreeing to accept the amount of the balance of the debt as true (because there must in such cases be, at least in the end, a creditor to whom the balance is due) and to pay it, the other side agreeing the entire debt as at a certain figure and then agreeing that it has been discharged to such and such an extent, so that there will be complete satisfaction on payment of the agreed balance. Hence, there is mutual consideration to support the promises on either side and to constitute the new cause of action. The account stated is accordingly binding, save that it may be reopened on any ground—for instance, fraud or mistake—which would justify setting aside any other agreement. In *Ashby* v. *James*, 11 M. & W. 542 (the leading authority for the rule that though some of the items are barred by limitation, a settlement of accounts including these items is none the less binding), Baron Alderson thus summed up the position :—

> " Here the striking of a balance between the parties is evidence of an agreement that the items of the defendant's account should be set off against the earlier items of the plaintiffs, leaving the case unaffected either by the Statute of Limitations or the set off."

This rule does not depend on the character or the origin of the debts or credits on either side—as, for instance, whether on the one side the consideration for the items is work and labour and on the other, goods supplied. Thus, in *Foster* v. *Allanson*, 2 T.R. 479, where accounts had been settled on the dissolution of a partnership, the stress that was laid on the fact that items were included which were not connected with the partnership was due simply to the desire to avoid the technical plea that, the articles of partnership being under seal, the action should have been in covenant instead of being brought, as it was, in assumpsit as on an account stated. Indeed, it follows from the idea of an account stated that whatever the consideration for each item, every item must appear in terms of money, since what is being agreed is matter of account : it is also clear that in that great class of cases where the whole dealings between the parties are financial, the items of account can only be in terms of money and can only consist of payments of one to the other and vice versâ. It seems that the rule adopted by the Court in the decision appealed from would exclude from the category of legally valid " accounts stated " all

such financial accounts. Nor can it be material, as it seems, in determining whether there can be an account stated, whether the balance of indebtedness is throughout, as it must be at the end, in favour of one side. Equally it seems irrelevant whether the debt in favour of the final creditor was created at the outset by one large payment or consisted of several sums of principal and several sums of interest; nor can it matter, in this connection, whether the only payments made on the other side were simply payments in reduction of such indebtedness or were payments made in respect of other dealings. In any event, items must in the same way be ascertained and agreed on each side before the balance can be struck and settled. By way of illustration, reference may be made to accounts between principal and agent. It is true that the ascertainment and agreement of the items in such accounts may involve investigating the position as between the agent and third parties: that circumstance may, indeed, have an important bearing in regard to any subsequent claim to reopen the accounts, as in the case of *Williamson* v. *Barbour*, 9 Ch. D. 529, but does not directly affect the actual settlement of the items in the first place as between the principal and agent. The closest parallel, however, to the case presented in this appeal is that of accounts between banker and customer; that relationship is one of debtor and creditor, the banker being debtor when the account is in credit, and the customer being debtor when the account is overdrawn. It has not been doubted that in law there can be a settled or stated account between banker and customer: what has been questioned is whether the acceptance by the customer without protest of a balance struck in the pass-book constitutes a settled account, but the question has had reference merely to the issue whether such a settlement can be inferred as a matter of fact from the passing backward and forward of the pass-book. The legal competence of such a settlement, if made, is not questioned. In *Blackburn Building Society* v. *Cunliffe Brooks and Company*, 22 Ch.D. 61, at p. 71, Lord Selborne said, "Nor can they (the bankers) have the benefit of the doctrine that a pass-book passing to and fro is evidence of a stated and settled account." On the other hand, in *Vagliano* v. *Bank of England*, 23 Q.B.D. 243, at p. 263, Bowen, L.J., rejected the idea that there had been a settlement of account between the customer and the bank, but he did so purely on the ground, as he stated, that "there was no evidence what as between a customer and his banker is the implied contract as to the settlement of account by such dealing with the pass-book." It is clearly involved in these observations that there can in law be a settlement of account as between banker and customer, and that this is the law, is constantly assumed and acted upon in practice; but in such cases the dealings are purely financial on each side and consist of money credits and debits, in the course of which one side may never be able to sue the other for a demand or claim because he is always

in debt to the other, though, if sued for the whole debt, he could avail himself of payments he has made in partial reduction of the debt on running account, though merely by way of set-off or counter-claim. The customer in such cases may have had a continuous overdraft, and be in this respect in the same position as the respondents on the account in question. But it would be an unfortunate restraint on legitimate and ordinary business relations if the law were to say that an account could not be mutually stated and agreed between parties in such relationship. Their Lordships do not think that such is the law for the reasons and on the authorities they have set out: they think after a careful examination of all the relevant provisions of the Act, that the same conclusion governs the meaning of the term "account stated" in article 64 of the Limitation Act; there is no definition of the term in the Act.

They are of opinion that on these principles the settlement in fact, made between the appellants and respondents in the circumstances and in the manner found by the Subordinate Judge, should be upheld.

That conclusion will dispose of this appeal and make it unnecessary to determine the further issue which was argued—whether the appellants were entitled to recover under section 25 (3) of the Limitation Act.

The authorities referred to above show that where an account has been settled, it is immaterial that some of the items were statute-barred. It has not been decided whether the same principle would be applied if all the items were statute-barred, but in the present case it is left in doubt, on such evidence as there was before the Court, whether all the items were so barred, and it would be for the respondents to upset, if they could, the validity of the settled account. Their Lordships see no reason in this case to go behind it.

On the whole case, their Lordships are of opinion that the appeal should be allowed with costs here and below, and the decree of the Subordinate Judge restored.

They will humbly so advise His Majesty.

**In the Privy Council.**

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*v.*

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