

(1911) 08 MAD CK 0026
In the Madras High Court

V. Andiappa Chetty

APPELLANT

Vs

P. Devarajulu Naidu deceased, by his son and legal
representative Alagasinga Naidu and Another

RESPONDENT

Date of Decision : 22-08-1911

Acts Referred:

Limitation Act, 1963 — Section 19

Presidency Small Cause Courts Act, 1882 — Section 69

Citation : (1911) 21 MLJ 1024

Judgement

1. Two letters marked Exhibits A, B, in the Small Cause Suit No. 19117 of 1909 have been referred by the Court of Small Causes, Madras, u/s

69 of the Presidency Small Cause Courts Act, for our opinion whether they constitute; acknowledgments of liability within Section 19 of the

Limitation Act. The letters run as follows:

Exhibit A.

Madras, 10th June 1908.

To

R.V. Seshagiri Rao, B.A., B.L.,

High Court Vakil,

MADRAS.

Sir,

With reference to your letter dated 2nd instant I request you to be so good as to furnish me with a copy of a statement of accounts.

Exhibit B.

Madras, 18th June 1908.

To

M.R. Ry. R.V. Seshagiri Rao, B.A., B.L.,

High Court Vakil,

MADRAS.

Dear Sir,

With reference to your letter of the 2nd instant o.n behalf of V. Andiappa Chetty, landing contractor, Madras, I have to inform you that I wish to examine the accounts as my accouuts do not show such an amount mentioned in your letter. I therefore request you will please forward the copy of the account or instruct your client to send his gumasta with his account books.

2. The cases cited at the Bar and referred to in the judgments of the Judges of the Small Cause Court are Quincey v. Sharp (1876) 1 Ex. D. 72;

Seethaiya v. Renga Reddi ILR (1887) M. 289, Jogeshwara Rai v. Raj Narayan Mitter ILR (1903) C. 195 and Maniram Seth v. Seth Rup Chand

ILR (1906) C. 1047. The circumstances of those cases seem to be all; distinguishable from the present, but before proceeding to discuss them

wemay say at once that we agree with the observation of Maclean C.J. in Jogeshwara Rai v. Raj Narayan Mitter ILR (1903) C. 195 that unless

the language of the document be identically the same, a decision upon the construction of one document is not of much assistance to the court in

construing another.

3. In Quincey v. Sharp (1876) 1 Ex. D. 72 the debtor took the initiative by asking his creditor for an account for work done before he received

any demand to pay, thus implying that some work had been done and that it would have to be paid for.

4. In Seethaiya v. Renga Reddi ILR (1887) M. 289 the accounts which had to be taken were mutual, open and current accounts to which Article

85 of the Limitation Act applied, and in Maniram Seth v. Seth Rup Chand ILR (1906) C. 1047 the accounts were open and current though the

Privy Council, in the view that they took, found it unnecessary to decide whether they were also mutual, and the learned Judges contented

themselves with observing that the dealings were not the ordinary ones of banker and customer but rather in the nature of mutual accommodation.

5. Section 19 of the Limitation Act is so worded as to suggest that where there is an acknowledgment of liability in respect of a right and it is

sought to use such acknowledgment for starting a fresh period of limitation, the right acknowledged must be of the same description as the right

which is the subject of the suit. Thus in a suit for the balance due upon taking accounts an admission that accounts must be taken and settled would

be a pertinent acknowledgment, but it might be otherwise in a suit brought to recover a definite sum of money.

6. So also it is not difficult to see that asking for an account in response to a creditor's demand may be a very different thing from acknowledging

the necessity of settling accounts when a creditor bases his right upon accounts. The decision in *Jogeshwara Rai v. Raj Narayan Mitter* ILR (1903)

C. 195 is quoted in support of the view taken by the majority of the judges who made this reference. There a house-owner who received from a

contractor a bill for building work done by him wrote that the bill was incorrect in parts and that the work was unfinished but promised to examine

the work and the estimates and see what was due. It was held that this was not an acknowledgment of liability within the meaning of Section 19 of

the Limitation Act.

7. In point of fact, however, none of these cases really stand on parallel footing to that with which we are now dealing. Each case must be treated

on its own merits. From a consideration of the wording of Exhibits A and B we are of opinion that they do not contain any acknowledgment of

liability sufficient to save limitation. We think there is much force in the comparison made by the Chief Judge of the Small Cause Court between the

request of the 1st defendant in Exhibit A for a copy, of a statement of accounts and the case of a tradesman who sends a bill for a certain sum with

the words ""to account rendered"" to which the customer replies : ""please send me a detailed bill."" We agree with him in thinking that such words

would not amount to an admission of liability.

8. The expression by the second defendant in Exhibit B of a wish to examine the contractor's account does not carry the matter further. The

question referred to us must, therefore, be answered in the negative.