Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sukhamoni Chowdhrani v. *Ishan Chunder Roy, from the High Court of Judicature at Fort William in Bengal; delivered* 1*st April* 1898.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Appellant and Respondent are two co-owners of lands subject to payment of rent. The owner of the rent obtained decrees for a large sum in arrear, and to save the estate from sale the Respondent and another co-owner raised a sum of Rs. 50,000 by borrowing from various persons. That sum was deposited in Court, and on the 1st April 1885 was paid to the judgment creditor. The Respondent is Plaintiff in the present suit and is suing the Appellant for contribution to the extent of her share in the estate. The only question before their Lordships is whether or no his suit is barred by lapse of time.

The cause of action arose on the 1st April 1885. The suit was brought in February 1891. If the limit of time is three years it would be barred in April 1888 unless saved by acknowledgment or payment. Both Courts below have considered that the case falls within Art. 61 of Act XV of 1877, and the argument here has proceeded on that footing. Without further examining the

point their Lordships will take it, in the Defendant's favour, that the limit of time is three years.

It is not necessary to discuss more than two of the transactions between the parties. In July 1887 the co-owners, three in number, presented a petition to the District Judge of Tippera, which was in effect an appointment of one Bhipro as manager for (among other things) the protection of their ijmali (joint) property by the payment of their debts. One of the directions given to him was to apply surplus income "to the "payment of the ijmali debts of us three "co-owners, of which a list is given below." The list contained the names of twelve persons from whom the money used to pay the judgment-creditor was borrowed; the amount due to each being set opposite to his name, and the total brought to the amount of Rs. 56,750.

That is a distinct acknowledgment that the total of the debts comprised in the list is a joint debt. The Subordinate Judge held that the Defendant did not thereby admit any liability to the Plaintiff, nor promise to pay him anything. But it is not required that an acknowledgment within the Statute shall specify every legal consequence of the thing acknowledged. The Defendant acknowledged a joint debt. From that follow the legal incidents of her position as joint debtor with the Plaintiff, one of which is that he may sue her for contribution.

This acknowledgment is still more than three years prior to the suit. To gain a later starting-point of time the Plaintiff alleges payments, of which it is only necessary to examine one. On the 14th July 1888 Bhipro the manager paid Rs. 200 for interest on one of the loans constituting the total joint debt. This is proved by his deposition, and by regular entries in his books, and by endorsements on the creditor's bond. The Subordinate Judge thought that the

date of payment was not proved; but it is difficult to see how proof can be more clear or precise. Then he held that the payment was not made for interest on a debt due to the Plaintiff, but was made to a third party, a creditor of the Plaintiff, and not by his request. Sec. 20 of the Limitation Act says that a new starting-point of time shall be gained when interest on a debt is paid as such by the person liable to pay the debt or by his agent. It does not specify any particular mode or form of payment, and there are many modes in which payment may be made. In this case the common agent of the joint debtors paid interest on the joint debt out of joint funds under express instructions contained in the instrument of his appointment. That is clearly a payment in exoneration *pro tanto* of the liability of the Plaintiff, and such as is contemplated by Sec. 20 of the Limitation Act.

The Subordinate Judge dismissed the suit on the grounds above indicated. On appeal the High Court reversed his decree, and remanded the case to be tried. As their Lordships agree with the High Court they will humbly advise Her Majesty to dismiss this Appeal. The Appellant must pay the costs.