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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
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LONDON, W.C.1.

78594

Judgment
22/1964

No. 44 of 1962

IN THE PRIVY COUNCIL

O N A P P E A L

FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA AT DAR ES SALAAM

B E T W E E N

CONSOLIDATED AGENCIES LIMITED (Defendant)
Appellant

- and -

10 BERTRAM LIMITED (Plaintiff)
Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an appeal by the Defendant by leave of the Court of Appeal for Eastern Africa from a Judgment of that Court given at Dar es Salaam on the 29th March 1962, allowing the Plaintiff's appeal from a judgment of the High Court of Tanganyika delivered on the 19th September 1961. pp.138-139
pp.123-137
pp. 84-99

2. The question for decision on the Appeal is:-

20 Whether the balance sheets of the Appellant company, signed by its directors in the circumstances hereinafter mentioned, constituted acknowledgments of the liability of the Appellant within section 19 of the Indian Limitation Act, 1908.

30 3. The law governing limitation of actions in Tanganyika is contained in the Indian Limitation Act, 1908, with such amendments thereof as were in force on the 1st December 1920, which was applied to Tanganyika by virtue of the Indian Acts (Application) Ordinance of that date (Cap.2). The Schedule to the Act sets out the periods prescribed for different

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causes of action, the relevant periods being as follows:

"	<u>Description of suit</u>	<u>Period of limitation</u>	<u>Time from which period begins to run</u>	
57.	For money payable for money lent	Three years	When the loan is made	
58.	Like suit when the lender has given a cheque for the money	Three years	When the cheque is paid	10
59.	For money lent under an agreement that it shall be payable on demand	Three years	When the loan is made	
85.	For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties	Three years	The close of the year in which the last item admitted or proved is entered in the account: such year to be computed as in the account. "	20

pp.126-127

Section 19, which is set out in full in the judgment of Forbes V-P, provides, shortly stated, that where, before the expiration of the period prescribed for a suit in respect of any right, an acknowledgment of liability has been made in writing signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was signed. Section 20 provides that where interest on a debt or part of the principal of a debt is paid by the debtor before the expiration of the prescribed period, a fresh period of limitation shall be computed from the time when the payment is made. Section 25 of the Indian Contract Act, 1908, which also applies in Tanganyika, provides, in effect, that where a promise is made in writing to pay a time-barred

10 debt, a fresh contract comes into existence and the promise may be sued upon notwithstanding the absence of any consideration other than the time-barred debt. In the absence of a promise to pay, an acknowledgment made after the prescribed period has expired does not give rise to a fresh period of limitation; an acknowledgment made within the prescribed period is not, however, required to contain an express or implied promise to pay for it to be effective for the purposes of Section 19.

4. The proceedings in this case were started by a Plaintiff issued in the High Court of Tanganyika on the 13th April 1961. By this Plaintiff the Respondent alleged that the Appellant was indebted to it in the sum of Shs. 349,962/52 made up as follows:

pp. 1-5

p. 2
L. 12-24

Shs. 23,427/52 on account of Loan No. 1
Shs. 326,535 on account of Loan No. 2
Shs. 349,962/52

20 being moneys lent and advanced by the Respondent to the Appellant on an open and current account and being payable on demand. The Respondent also claimed Shs. 6,040/45 on account of interest on the said sum at the rate of 6% from the 1st January 1961 to the 15th April 1961. Annexed to the Plaintiff were two Statements of Account, showing the payments alleged to have been made and the interest alleged to be due in respect of the said two loan accounts. Statement 'A', relating to No. 1 Account, showed a cash loan by the Respondent to the Appellant of 30 Shs. 85,000 on the 9th March 1951, a number of payments by the Appellant on account up to and including a payment of Shs. 5,000 on the 18th March 1955, a further payment by the Appellant of Shs. 300 on the 15th May 1958, and two further advances by the Respondent in June 1959 amounting to Shs. 2,430. Statement 'B', relating to No. 2 Account, showed a cash loan by the Respondent to the Appellant of Shs. 269,000 on the 3rd August 1954, and payments by the Appellant on account of Shs. 20,030 on the 26th 40 August 1958 and Shs. 26,000 on the 31st March 1959.

p. 2 L. 25-30

p. 4

p. 5

5. By its Defence dated the 19th May 1961 the Appellant denied any liability to the Respondent, and pleaded that the Respondent's claims were barred by the statute of limitation by virtue of the provisions of Articles 57, 58 and 59 of the Indian Limitation Act, 1908, or by one or more of them.

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- p. 8 6. On the 13th June 1961 the Plaintiff was amended by the addition of a paragraph pleading that the Respondent's claim was not barred by the law of limitation as the debt due to the Respondent had been acknowledged by the Appellant in its books and accounts from year to year.
- pp. 8-9 7. By an additional written statement of defence dated the 21st June 1961 the Appellant denied that the alleged debt had been acknowledged, and pleaded that the alleged acknowledgment did not fulfil the requirements of the law relating to acknowledgments, and that entries, if any, in the Appellant's own books and accounts were not acknowledgments in law unless, amongst other requirements, they were communicated to the Respondent within the period of limitation prescribed by law. 10
- pp.10-84
pp.84-99 8. The action was tried by Weston J. on the 4th September 1961, and his judgment was delivered on the 19th September 1961. At the hearing it was agreed between the parties that the only issue was whether the debt was time-barred, and the Appellant conceded that there should in any event be judgment for the Respondent for the two amounts of Shs. 1,430 and Shs. 1,000 advanced in June 1959. 20
- p.10 L.11
p.54 L.10
9. The Appellant contended:
- pp.51-58
89-90 (a) As regards No. 1 Account, that a fresh period of limitation commenced on the 18th March 1955, that no acknowledgment or part payment was made during the following three years, and that the debt was, with the exception of the said sums of Shs. 1,430 and Shs. 1,000, time-barred on the expiration of that period of three years, i.e. on the 18th March 1958, by virtue of Article 59 of the Indian Limitation Act, 1908; 30
- (b) As regards No. 2 Account, that no acknowledgment or part payment was made within the period of three years from the date of the loan, and the debt was accordingly time-barred on the expiration of that period, i.e. on the 3rd August 1957, by virtue of the same Article. 40
- pp.68-73 10. The Respondent contended first that the accounts were mutual open and current accounts, and that the relevant Article of the Indian Limitation Act, 1908,

was Article 85, so that, as regards Account No. 1, the three year period of limitation arising out of the part payment made on the 18th March 1955 did not commence until the end of the year, i.e. the 31st December 1955, and the part payment made on the 15th May 1958 was thus effective to start a fresh period of limitation. This contention was rejected by Weston J. in his judgment, and was not argued by the Respondent before the Court of Appeal.

pp.90-91

10 The Respondent further contended that the Appellant had acknowledged its liability in its books and accounts from year to year, and produced Balance Sheets of the Defendant for the years ending 31st December 1954, 1955, 1956 and 1957. Each of these Balance Sheets contained an entry under current liabilities relating to "Loans" or "Loans and accrued interest", and Mr. Houghton, the auditor employed by the Appellant, gave evidence, which was accepted by the Judge, that among the Defendant's liabilities, included in the amount appearing as "Loans" in each of the Balance Sheets, were the debts alleged to be owing to the Respondent. The Judge further found that each of the Balance Sheets was signed by the Appellant (by its Directors acting on its behalf) a considerable time (between 14 and 23 months) after the end of the year to which it related.

pp.140; 142
146, 149

pp.19-24

p.93 L.6

pp.94-95

11. The Appellant contended that these Balance Sheets did not constitute acknowledgments within Section 19 for three reasons:

30 (a) because, in the words of Rustomji on Limitation, 6th Edn., at p. 213:

p. 66

"an acknowledgment of an indebtedness upon the aggregate of several distinct classes of claims, but which neither refers to any particular claim nor to one debt only, has been held not sufficient to take any one of the claims out of the statute";

40 (b) because at most each of the Balance Sheets acknowledged a past liability, i.e. a liability subsisting at the 31st December of the year to which it related, whereas the requirements of Section 19 were not satisfied unless there was an acknowledgment of a liability subsisting at the date when the acknowledgment was signed;

pp.62-66

(c) because the Balance Sheets were not communicated, or not proved to be communicated, to anybody except the Appellant's own auditors.

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- p.93 L.21-44 12. Weston J. rejected the first of these contentions, and followed the English case of Jones v. Bellgrove Properties Ltd., (1949) 2 K.B. 700, and a case in the Madras High Court, Rajah of Vizianagram v. Official Liquidator, (1952) A.I.R. (Madras) 136, in holding that each of the Balance Sheets was a writing signed by the Appellant referring with sufficient particularity to its liability to the Respondent.
- p.99 L.11-14 He accepted the Appellant's second contention, however, and held that the Balance Sheets were no more than acknowledgments of past liability, and as such not sufficient under Section 19 of the Indian Limitation Act, 1908. In view of this finding he did not think it necessary to consider the Appellant's third contention. In the result he found that the Respondent's claim was time-barred, and accordingly judgment was entered for the Respondent in the sum of Shs. 2,430 only, together with interest, and the Respondent was ordered to pay 95% of the costs of the suit. 10
- p.99 L.15
- p.99 L.30
- pp.100-101
- pp.101-102 13. The Respondent appealed to the Court of Appeal for Eastern Africa on the ground that the Learned Judge should have held that the Balance Sheets were acknowledgments of the subsisting liability of the Appellant to the Respondent within Section 19 of the Indian Limitation Act, 1908, and that the Respondent's claim was not therefore time-barred, and should have entered judgment for the Respondent as prayed. 20
- pp.103-122
- pp.123-137 14. The appeal was heard on the 13th February 1962, and on the 29th March 1962 the Court of Appeal for Eastern Africa (Forbes V-P., Crawshaw J.A. and Newbold J.A.) delivered judgment allowing the appeal with costs. Forbes V-P., who delivered the leading judgment of the Court, with which Crawshaw J.A. and Newbold J.A. agreed, directed his attention almost exclusively to the question whether the signature of the Balance Sheets could operate as admissions of the existence of the debt at the dates of signature. He accepted that an acknowledgment of a debt, to be effective for the purposes of Section 19, must be an acknowledgment of an existing debt and that at first sight the Appellant's argument, that the signature of a Balance Sheet can only operate as an admission of a debt shown thereon as at the date to which the Balance Sheet refers, appeared sound; but he held that the 40
- pp.131-134
- p.131 L.36

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English cases of Re Atlantic and Pacific Fibre Co., (1928) Ch. 836, and Jones v. Bellgrove Properties Ltd., (1949) 2 K.B. 700, and the Indian case of Rajah of Vizianagram v. Official Liquidator, (1952) A.I.R. (Madras) 136, established that Balance Sheets could operate as an admission of liability as at the date of their issue, and that these cases ought to be followed and applied in the present case. He accordingly held that the signature of the Balance Sheets was an effective acknowledgment of the existence of the debt at the date of the signature, that successive acknowledgments were made in the respective Balance Sheets which kept alive the right to recover the debt, and that judgment should therefore be entered for the Respondent with costs as prayed in the Plaint.

p.133 L.43

p.134 L.18

p.134 L.28

15. The Appellant submits that the Court of Appeal was correct in holding that an acknowledgment, to be effective for the purposes of Section 19, must be an acknowledgment of a subsisting debt, but that it erred in applying the English decisions to the Indian Limitation Act, 1908, since the question whether the signature of a Balance Sheet operates as an acknowledgment of a debt subsisting at the date of the signature or merely as an acknowledgment that the company was indebted at the end of the year to which the Balance Sheet relates was not in issue in either of them. The Appellant further submits that the judges of the Madras High Court fell into a similar error in the Indian case on which the Court of Appeal relied, since they purported to follow Jones v. Bellgrove Properties Ltd. without considering whether this question was there in issue; in addition they appear to have overlooked the earlier Indian decision of Kashinath Shankarappa v. New Akot Cotton Ginning & Pressing Co. Ltd., I.L.R. 1950 Nag. 562, in which it was held that the mere signing of a Balance Sheet by a Director of a company does not operate as an acknowledgment for the purposes of Section 19. In the Appellant's submission it is manifestly untrue to say, as the Court of Appeal has said, that by signing the Balance Sheet for the year ended 31st December 1954, for example, on some date between the 19th and 27th October 1956, the Directors of the Appellant company acknowledged that the loans of Shs. 412,385 shown in that Balance Sheet were a subsisting liability of the Appellant at the date of signature; in fact the Balance Sheet for the following year shows that the liability on account of loans had already been reduced by Shs. 135,000 by the 31st December 1955, and it is accepted by the Respondent

p. 140

p. 142

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p.4 L.17-18 that the Appellant had paid the Respondent Shs. 15,000 in respect of the No. 1 Account during 1955.

p.9 L. 1-9 16. The Appellant further submits that there is no evidence that the Balance Sheets were ever communicated to anyone other than the Appellant's own agents until after the expiration of the relevant periods of limitation, which expired on the 18th March 1958 as regards the No. 1 Account and the 3rd August 1957 as regards the No. 2 Account. Mr. Houghton, the Appellant's auditor, gave evidence that he would not communicate the Balance Sheets to anybody else, and that he regarded them as confidential documents, and his evidence was not challenged on this point. In the Appellant's submission it is essential, in order that a document should be capable of constituting an acknowledgment for the purposes of Section 19 of the Indian Limitation Act, 1908, that it should be communicated to the creditor or to some third party, and that a document which is not communicated within the period of limitation to anyone other than the debtor's own servants or agents cannot operate as such an acknowledgment. The Court of Appeal failed to consider this contention in their judgments. 10 20

17. The Appellant submits, thirdly, that an acknowledgment, to be effective for the purposes of Section 19 of the Indian Limitation Act, 1908, must relate to the particular indebtedness or liability sued for, and that a vague and general statement in a Balance Sheet that a company is liable for loans totalling a stated sum does not comply with the section. Without the evidence to connect this statement with the loan due to a particular creditor the statement is meaningless, and there is nothing in the Balance Sheets in the present case which entitled the Respondent to treat the Appellant's account books as incorporated by reference so as to form an acknowledgment for the purposes of Section 19. The Court of Appeal in Jones v. Bellgrove Properties Ltd. gave no reasons for its decision to the contrary, and the authority on which it purported to rely, Re Atlantic and Pacific Fibre Co., affords no support for its decision since in that case no extrinsic evidence was required to enable the creditor to establish that the Balance Sheet referred to his own debt. The Appellant submits that the decision on this point in Jones v. Bellgrove Properties Ltd. was erroneous, or alternatively that it has no application to Section 19 of the Indian Limitation Act, 1908. 30 40

18. The Appellant submits that this appeal ought to be allowed and the Decree of the High Court of Tanganyika dated the 19th September 1961 ought to be restored for the following amongst other

R E A S O N S

- 10 (1) BECAUSE the Balance Sheets of the Appellant did not acknowledge a liability subsisting on the respective dates on which they were signed, and did not therefore constitute acknowledgments for the purposes of Section 19 of the Indian Limitation Act, 1908.
- (2) BECAUSE there was no evidence that the said Balance Sheets were communicated within the relevant periods of limitation to anyone other than the servants and agents of the Appellant, and such communication is essential in order that a document shall constitute an acknowledgment for the purposes of the said Section 19.
- 20 (3) BECAUSE the Balance Sheets did not acknowledge the indebtedness of the Appellant in respect of the claim of the Respondent, but acknowledged at most an indebtedness upon the aggregate of several claims, and such an acknowledgment is not sufficient to comply with the said Section 19.
- (4) BECAUSE the Judgment of the Court of Appeal for Eastern Africa was wrong and ought to be reversed.

E. G. NUGEE.

No. 44 of 1962

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O N A P P E A L
FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA AT DAR ES SALAAM

B E T W E E N

CONSOLIDATED AGENCIES
LIMITED (Defendant)
Appellant

- and -

BERTRAM LIMITED (Plaintiff)
Respondent

CASE FOR THE APPELLANT

ATTENBOROUGH,
12 New Court,
Lincoln's Inn, W.C.2.