

**Amuthu Vs. Muthayya**

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**SooperKanoon Citation :** [sooperkanoon.com/793678](http://sooperkanoon.com/793678)

**Court :** Chennai

**Decided On :** Dec-23-1892

**Reported in :** (1893)ILR16Mad339

**Judge :** Muttusami Ayyar and ;Wilkinson, JJ.

**Appellant :** Amuthu

**Respondent :** Muthayya

**Judgement :**

1. It has been found that there was a settlement of accounts between plaintiff and defendant on 13th July 1887, and that defendant promised to pay R Section 642-5-6, the balance struck, with interest at 12 per cent. per annum, within one month. The suit was instituted on the 10th July 1890. The question is whether the promise to pay amounted to a new contract. On behalf of the defendant-appellant it is argued that the agreement was void as made without consideration.

2. The learned Judge appears to have misapprehended the remarks of GARTH, C.J., in *Dukhi Sahu v. Mahomed Bikhu* I.L.R. 10 Cal. 284 An account stated is only a substantive cause of suit in itself when it is in writing signed by the defendant or his agent duly authorized in this behalf. As remarked by the learned Chief Justice, a promise to take a debt out of the operation of the Limitation Act must be in writing. The promise in the present case was only oral and amounted to no more than an admission of the debt due. It is, however, argued for the respondent that

the giving a month's time amounted to consideration. No case has been cited in support of this contention, nor do we think it can prevail. The transaction did not amount to a new contract extinguishing the old cause of action. If the defendant had given a promissory note for the amount found due, it would have been different, but a mere oral promise to pay is not sufficient to take the case out of the statute. The decrees of the lower Courts must be reversed and the suit dismissed with costs throughout.

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