

Original Suit No. 22 of 1869.

Parshotam Manchharam

Plaintiff.

Mirza Abdul Latif Khan

Defendant.

1869
July 19.

*Limitation—Acknowledgment in writing—Signature of Agent—
Act XIV. of 1859, Sec. 4.*

Under Sec. 4 of the Limitation Act (XIV. of 1859) an acknowledgment in writing, signed by the agent or *constituted attorney* of the debtor, is not sufficient.

This suit was brought by the plaintiff to recover from the defendant, as heir and legal representative of Mirza Alli Muhammad Khan, the sum of R-. 17,545, with interest thereon at 9 per cent. per annum, from the 8th of January 1869, until payment.

It was alleged by the plaintiff that Mirza Alli Muhammed Khan, on the 17th of November 1859, made a promissory note in favour of the plaintiff in the following form:—

Bombay, 17th November 1859.

“Borrowed and received of and from Parshotam Manchharam the sum of Rs. 8,038, which I promise to pay on or before the 17th of November 1860.

“(Signed) ALI MUHAMMAD.”

Subsequently, Mirza Alli Muhammad Khan went to reside at Hyderabad, and during his absence managed his business in Bombay through his *constituted attorney*, Muhammad Tuckee. The plaintiff further alleged that Muhammad Tuckee, in December 1866, adjusted the account of the money due upon the promissory note up to the 17th November 1866, and signed such adjusted account, and thereby acknowledged Rs. 14,693-11-9 to be due to the plaintiff from Mirza Alli Muhammad Khan.

Mirza Alli Muhammad Khan died on the 31st August 1868, leaving the defendant his heir and representative. Demand for payment of the amount due was alleged to have been made upon the defendant, who failed to pay any portion thereof.

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The adjusted account on which the plaintiff relied was headed thus:

“Memorandum of interest from the 17th of November in the year 1859, on the account of Mirza Alli Muhammad Khan Shustri.

(For) acknowledgment for.”

Then followed the figures showing compound interest calculated with yearly stops, and at the foot it was signed across a one-anna receipt stamp.

“MUHAMMAD TUKEE

for

ALLI MUHAMMAD.”

The power of attorney under which Muhammad Tukee was said to have acted was in its material parts as follows:—

“To all to whom these presents shall come: I, Mirza Alli Muhammad Khan, formerly of Bombay, but now residing in Dakhau Hyderabad, send greeting.

“Whereas: I have landed property and other dealings and transactions carried on in Bombay, and am unable to attend to the same personally and therefore I am desirous to appoint a proper person to do all acts and deeds which may be requisite to be done for the management of my affairs during my absence from Bombay. Now know ye, that I, the said Mirza Alli Muhammad Khan, do hereby appoint my nephew, Aga Muhammad Tukee, my true and lawful attorney for me, and in my name to enter into, and upon, and view, and survey all and singular my messuages, &c., and to ascertain the state and condition thereof, and to give notice to the tenants to make repairs, pay taxes, &c.; to enter into any contract or agreement for granting any lease, and to execute leases, &c. to sell and convey the lands, and purchase others, &c.; to sign receipts, and grant conveyances; and also for me, and in my name, to borrow moneys as occasion may require, on the mortgage of all or any of my messuages &c. for the purpose of my dealings and transactions in Bombay, and to sign mortgages, &c.; and also for me and in my name, to pay out of such moneys to my creditors such sum or sums of money as may be due by me to them, and to take from them, on payment of the moneys due to them, receipts, acquittances, releases, or such discharges as may be deemed expedient and necessary; and also to bring and defend suits, &c., and to compromise the same or refer them to arbitration, &c., and also for me and in my name, to sue for, recover, and receive all manner of rents, arrears of rent, &c.; and also in my name generally to use and employ all such lawful and equitable means for recovering and receiving all credits, rents, sum and sums of money or things whatsoever, which my said attorney shall consider to be due and owing to me from any person or persons

whomsoever; and on receipt of the said credits, &c., to give releases, &c., for the same, and generally for me, and in my name, to do, execute, and perform all such acts, deeds, matters, and things as may be necessary or expedient in or about the premises; and as fully and effectually to all intents and purposes as if I myself were personally present.

“(Signed) Ali Muhammad (Seal).”

The defendant in his written statement denied the authority of Muhammad Tuckee to bind the deceased or himself by the alleged adjustment.

The suit came on for hearing before Couch, C.J., on the 16th. of July 1869.

Mc Culloch (with him *Scoble*) for the plaintiff.

Pigot and *Latham* for the defendant.

On *McCulloch* opening the case, *Pigot*, for the defendant, took the preliminary objection that the suit was barred by limitation, as, in order that an acknowledgment of a debt may operate to give a new period of limitation to commence from the date of such acknowledgment, the acknowledgment must be in writing, signed by the person liable himself, and not by his agent. He relied on *Budoobhoosun Bose v. Euaet Moonshee*(a).

McCulloch:— The case cited cannot, I admit, be distinguished from the present; but the Court here is not bound by a ruling in the Calcutta High Court, unless it concurs in it. According to English law, what a man can do himself he can depute an agent to do for him; and what an agent does, binds his principal. There seems no reason why the same principle should not apply to cases under the Limitation Act.

The case was allowed to stand over, to give Counsel for the plaintiff an opportunity of looking for authorities.

19th July—*McCulloch* state that he was unable to adduce any authority against the Calcutta case that had been cited.

Couch, C. J.:— In this case there must be a decree for the defendant with costs.

(a) 8 Cal. W. Rep. Civ. R. I.

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The defenant has cited a case decided by the High Court of Calcutta, and I concur in that decision. The arguments for the plaintiff which were used by Mr. McCulloch were all put forward in the case of *Hyde Johnson (b)*, and were there overruled. The same reasons apply to Sec.4 of Act XIV of 1859, as the Court in that case considered to apply to 9 Geo. IV., ch. 14, s. 1. In England it was thought prudent to make an alteration in the law, and now the signature of an agent is there sufficient (c). There has been no such alteration of the law in this country. As the law at present stands, I must hold that the signature of an agent is not sufficient to fulfil the requirements of Sec. 4 of the Limitation Act, and this suit must therefore be dismissed with cost.

Attorney for the plaintiff—*C. Tyabji*.

Attorneys for the defendant—*Kcir, Prescott, and Winter*.

(b) 2 Bing. N. C. 776. (c) 19 & 20 Vict., ch 97, s. 13.