[APPELLATE CIVIL JURISDICTION.]

1873
September 2.

*Referred Case.*

AMRITLA'L MANSUK..... *Plaintiff.*
MA'NIKLA'L JETHA' and another.....*Defendants.*

*Account Stated—Implied Contract—Limitation—Written Contract—Sec.* 21 *of Act IX. of* 1871.

An entry of an account stated, made by a debtor in his creditor's books, is not a contract in writing within the meaning of Act IX. of 1871, Sec. 21.

THIS case was referred by Gopál Hari Deshmuhk, Judge of the Small Cause Court at Ahmadabad, for the opinion of the High Court, with the following statement of facts :—

"Two partners, Mániklál and Ranchhod, opened a firm under the name of Mániklál Ranchhodás. In Samvat 1924 Ranchhodás wrote a *thámkhátá* in the name of the firm in favour of the plaintiff. In Samvat 1925 and 1926, he continued the account, adding interest and striking balance which was found due. The balance is not signed by any one. In the account of Samvat 1926, payments of two items are written in the handwriting of one of the partners, Ranchhodás. * * *

"The first defendant sets forward, among others, the plea of limitation. He states that the original *thámkhátá* is not a contract according to the judgment of the High Court passed on the 9th April 1872 on reference from this Court in case No. 3380 of 1872, which was as follows: 'The entry in question is simply the record of a payment of Rs. 101, and contains nothing to show whether that sum is repayable or not. We do not understand it as implying any contract to that effect.' He further states that the balance, in the Samvat year 1926, not being signed by any of the partners, is not a contract.

1873.

AMRITLA'L MANSUK v. MA'NIKLA'L JETHA'.

"The plaintiff replies that the judgment referred to was passed before the Indian Contract Act of 1872 came into force, and so is not applicable. That by Sec. 2, cls. (*e*) and (*h*) of that Act (Act IX. of 1872) a contract is an agreement, and an agreement must contain a promise. By Sec. 9 of the same Act, a promise may be expressed or implied. He thus reasons and says that a promise is implied by writing the balance as due, and, therefore, it is a written contract.

"If the *thámkhátá* is a written contract, it would give a new period of limitation from the date of the last payment written by Ranchhodás. If the *thámkhátá* is not a written contract, the claim will be barred, the last balance being more than three years old.

"My opinion is that the account produced in this case is a written contract containing an implied promise. The judgment above referred to was on a *thámkhátá*, showing no balance, whereas the present account shows balance, and states that it is due by the firm whose name is mentioned, in the heading of the account. By the High Court's decision in *U'medchand Hukamchand* v. *Shá Bulákidás* (*a*), a balance struck is an implied contract in writing, and as such it ought to give a new period of limitation from the date of the last payment."

The case was argued before MELVILL and PINHEY, JJ., on the 2nd September 1873.

*Nagindás Tulsidás* for the plaintiff.

*Shántárám Náráyan* for the defendants contended that to constitute a contract in *writing* there must be an express promise in the writing itself. An entry showing an adjustment of account was an admission of a debt, and from such an admission the law implied a promise to pay. There was no express promise in such an entry, as distinguished from a promise implied by such an entry, and therefore it did not amount to a contract in writing contemplated by Sec. 21 of the Limitation Act of 1871.

(*a*) 5 Bom. H. C. Rep. O. C. J. 16.

MELVILL, J.:—The question referred is whether an entry of an account stated, made by a debtor in his creditor's books, is a contract in writing within the meaning of Sec. 21 of Act IX. of 1871?

We are of opinion that this question must be answered in the negative.

It is not perhaps necessary for us to adopt so strict a rule of construction as was laid down in the well-known case of *Wain* v. *Warlters* (*b*), in which it was held that an agreement is not an agreement in writing, within the meaning of the Statute of Frauds, unless the consideration for the promise, as well as the promise itself, be stated in writing. But we think that at least the promise must be so stated. The entry is nothing more than an acknowledgment of an existing debt, from which the law implies a contract or promise. The consideration for the contract is expressed in writing, but not the contract itself. The entry is not a contract in writing, but a writing from which an unwritten contract may be inferred.

We must, therefore, hold that the suit, in which this reference has been made, is barred by limitation.

(*b*) 2 Smith, L. Ca. 221, 6th Edn.