

1880
SEP. 22.
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APPEL-
LATE
CRIMINAL.
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5 B. 88=
5 Ind. Jur.
426.

Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees: Provided that when an accused person has been convicted on his own plea, no such appeal shall lie except as to the extent or legality of the sentence." We think that this proviso, construed in its plain and obvious sense, is to limit the right of appeal when the accused has pleaded guilty to such matter as may be special ground of complaint with respect to the sentence as distinguished from the conviction itself, whether on the ground that the extent of the sentence is beyond what the circumstances of the case required, or that the sentence is illegal as not authorized by law. The intention of the Legislature would appear to be to treat the plea of guilty as a waiver of the right to appeal except as to the justice and legality of the sentence itself. In the present case the petitioner, who had pleaded guilty, complains that his conviction on a charge of having committed an offence under s. 177 of the Penal Code is bad, having regard to s. 296 of the Bombay Municipal Act, and his application is, therefore, an appeal against the legality of the conviction which, in our opinion, is excluded by the proviso to s. 167 of the Presidency Magistrates' Act.

Order accordingly.

5 B. 88.

[88] APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice
and Mr. Justice M. Melvill.*

ANDARJI KALYANJI, DECEASED, HIS HEIRS HIS DAUGHTERS BAI AMBA
AND ANOTHER (*Plaintiffs*), *Appellants v. DULABH JEEVAN*
(*Defendant*), *Respondent*.* [12th November, 1877.]

Limitation Act No. XIV of 1859, s. 4—Acknowledgment—Signature.

When an account stated was written by a debtor himself, with his name at the top of the entry, it was held to be sufficiently signed within the meaning of s. 4 of Act XIV of 1859.

[*F.*, 5 B. 89; 31 C. 1043=9 C.W.N. 83; *R.*, U.B.R. (1892—1896) Civil, 462.]

THIS case was submitted for the opinion of the High Court by E. Hosking, Assistant Judge at Surat, under s. 28 of Act XXIII of 1861. He stated it as follows:—

"The following is a translation of a stated account (Ex. 2) in the said appeal; 'Samvat 1924, Margashirsh vad 12th Saniyar (Saturday) the account of Desai Andarji Kalyanji passed by his own hand to Soni Dulabh Jairam after settlement of accounts—

145½, Balance Rs. 145½, in figures one hundred and forty-five and a half; by his own hand.'

"I have found that this account was written by Andarji Kalyanji. The point on which I feel doubtful is, whether this account should be held to be signed by Andarji Kalyanji within the meaning of s. 4 of Act XIV of 1859, and, therefore, I refer this point to the High Court for decision. I have made my decision in the appeal contingent on the

* Civil Reference No. 20 of 1877.

decision of the High Court on this point. I am of opinion that the writing of his name by Andarji Kalyanji in the heading of this account, as above shown, is not a signature."

There was no appearance of parties in the High Court.

JUDGMENT.

WESTROPP, C.J.—The Court thinks that the account stated has been sufficiently signed by Andarji Kalyanji within the meaning of s. 4 of Act XIV of 1859. The signature is in one of the modes of signing most generally practised by natives.

5 B. 89.

[89] APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice Kembal.*

JEKISAN BAPUJI AND ANOTHER (*Plaintiffs*), *Appellants* v. BHOWSAR BHOGA JETHA, DECEASED, BY HIS SON AND HEIR SAMAL BHOGA, A MINOR, REPRESENTED BY HIS MOTHER BAI MANCHA (*Defendant*), *Respondent*.* [28th September, 1880.]

Limitation Act, No. XV of 1877, s. 19—Acknowledgment—Signature.

Where the whole of an account stated (khata) was written by a debtor himself with the introduction of his name at the top of the entry, the khata was held to be sufficiently signed within the meaning of Act XV of 1877, s. 19.

[F., 31 C. 1043 = 9 C.W.N. 83.]

THIS case was referred for the opinion of the High Court by S. H. Phillpotts, Judge of the District Court of Ahmedabad, under s. 617 of Act X of 1877. The case came before him in appeal, and was stated by him as follows:—

"This action was instituted by appellants to recover Rs. 68 principal and Rs. 16 interest, less Rs. 10-8-0 as differences in currencies, on a balance of account alleged to have been stated on Maha vad 2, Samvat 1932 (11th February 1876), by the deceased Bhoga Jetha.

"Respondent denied all knowledge of the transaction.

"The Subordinate Judge of Kaira, Rao Saheb Dowlatrai Sampatrai, rejected the claim on the ground that the account not having been signed by deceased, the claim was barred by limitation. He appears to have been of opinion that the khata had been written by the deceased, but recorded no finding on the point.

"Appellants appealed on the grounds—

"(1) That the lower Court's decision was contrary to law and evidence.

"(2) That the lower Court was in error in rejecting the claim on the ground that the balance sued on did not bear the signature of Bhoga, because the said Bhoga had written his own name in the heading, and added 'dashkat pote' (his own signature).

"(3) It was proved that Bhoga had acknowledged the debt, yet the claim was rejected.

* Civil Reference, No. 15 of 1880.