

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 Kemball.*

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.

1880  
SEP. 28.  
—  
APPEL-  
LATE  
CIVIL.  
—  
5 B. 89.

[90] " (4) That it had been the custom of Gujarat for hundreds of years to take acknowledgments in this way, yet the lower Court decided contrary to the custom.

" The issues for decision are—

" (1) Was this account written by Bhoga Jetha ?

" (2) If so, is the name of Bhoga Jetha at the head of the account a signature within the meaning of s. 19, Act XV of 1877 ?

" My finding on the first issue is in the affirmative.

" It is proved by the evidence of one witness, who was not cross-examined, that the deceased Bhoga wrote the account with his own hand. The widow simply expresses her ignorance on the subject, and has produced no evidence to prove that the khata is not in her deceased husband's hand-writing.

" As regards the second issue—

" The khata which, as I have above held, is written entirely in deceased's hand-writing, runs as follows (exhibit No. 2) :—

Shri.

Bhowsa Bhoga Jetha's khata of Samvat 1932, Maha vad—

68-0-0, in letters sixty-eight rupees, balance due up to Samvat 1932, Maha vad 2, having made up accounts were found due to you, that is, debited ; (dashkat pote) *i.e.*, his own hand-writing ; errors excepted.

" It is admitted on both sides that the suit will be time-barred unless this acknowledgment is sufficient to bring the suit within the limitation. Mr. Broughton, in commenting on this section, says :—

" The words ' signed by him ' used in s. 4 of Act XIV of 1879, were considered sufficiently complied with where the signature appeared on the body of the instrument, which was delivered as complete, although not signed at the foot or the end, and he refers to 2 Mad. H. C. Rep. 79. However, in that case, it does not appear clear what kind of a signature was made, or where the name was written.

" The decisions with regard to signatures in English cases have been mostly made with reference to the Statute of Frauds. It has [91] in them been ruled, that where the name of the party sought to be charged has been written by his authority it matters not whether it is written at the top or in the middle of the paper. It is a sufficient signature to satisfy the requirements of ' a signature ' although not signed regularly at the bottom. There is always a question whether the party meant to be bound by it as it stood, or whether it was left so unsigned, because he refused to complete it ;' (Smith on Contracts, p. 58.) In this case the evidence shows the respondent did write the account, including his own name, and the words ' dashkat pote ' show that he regarded it as completed.

" I therefore find this issue in favour of appellant, subject to the opinion of the High Court whether in the case of a khata having been written by the judgment-debtor the entry of his name in his own hand-writing is a sufficient signature under s. 19, Act XV of 1877. Subject to the opinion of the High Court, to which I refer the case under s. 617 of Act X of 1877. I reverse the Subordinate Judge's decree, and award the claim with costs."

There was no appearance of parties in the High Court.

The following is the judgment of the Court :—

## JUDGMENT.

WESTROPP, C.J.—The Court answers the question of the District Judge in the affirmative. It agrees with him in thinking that the khata has been sufficiently signed by the deceased, the debtor's name having been introduced in his own hand-writing at the top of the entry, the whole of such entry being in the same hand-writing: *Khawaja Muhammad Janula v. Venkatarayar and another* (1), *Andarji Kalyanji v. Dulabh Jeevan* (2).

1880  
SEP. 28.  
APPEL-  
LATE  
CIVIL.  
5 B. 89.

5 B. 92.

[92] ORIGINAL CIVIL.

*Before Sir Charles Sargent, Justice.*

IN THE MATTER OF THE NURSEY SPINNING AND WEAVING COMPANY, LIMITED; NATIONAL BANK OF INDIA, CLAIMANT; H. R. CORMAC AND OTHERS, *Official Liquidators.* [28th August, 1880.]

*Company—Winding up—Bill of exchange—Liability of Company on bill drawn by Directors—Misrepresentation—Indian Contract Act (IX of 1872), ss. 18 and 19.*

On the 9th October 1878 the National Bank purchased from the N. Company a bill of exchange for 4,000 dollars, equivalent to Rs. 8,680, drawn by the N. Company upon the firm of N. K. & Co., of Hongkong. The bill was in the following form:—"Sixty days after sight of this first of exchange (second and third of same tenor and date not being paid) pay to the order of the National Bank of India the sum of dollars four thousand only; value received and place the same to account of Nursey Kessowji, Ghelabboy Pudumsey, Directors. Nursey Kessowji Secretary, Treasurer and Agent. The Nursey Spinning and Weaving Company, Limited." The bill was duly accepted and presented for payment, but was dishonoured. On the 6th January 1879 the Bank gave notice of dishonour and demanded payment from the Company as drawers of the bill. On the 18th January 1879 the N. Company was ordered to be wound up, and the Bank sent in a claim against the Company as drawers of the bill, and subsequently sent in an alternative claim for Rs. 8,680 being the "amount paid by the Bank to and received by the Company."

*Held* on the authority of *In re The New Fleming Spinning and Weaving Company Limited* (3) that having regard to the form of the bill, the N. Company could not be made liable as drawers, but held also that the Bank was entitled to recover the amount of the bill from the N. Company as money received to the use of the Bank, on the ground that the Directors of the N. Company, while acting within their authority, had sold to the Bank on behalf of the Company, as a bill upon which the Company was liable, one upon which the Company was not liable, and had, therefore, been guilty of misrepresentation within the meaning of ss. 18 and 19 of the Indian Contract Act (IX of 1872).

THIS was a claim in the winding up of the above Company, made by the National Bank of India, to recover payment of the sum of Rs. 8,680 with interest, as money lent and advanced by the Bank to the Company.

On the 9th October 1878 the National Bank of India purchased from the Nursey Spinning and Weaving Company a bill of exchange for four thousand dollars (equivalent to Rs. 8,680), [93] drawn by the Company upon the firm of Nursey Kessowji & Co., of Hongkong. The bill was in the following form:—

"Due, 6th January 1879, exchange for \$ 4,000.

*Bombay, 9th October 1878.*

Sixty days after sight of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of National Bank

(1) 2 M. H. C. R. 79 (81).

(2) 5 B. 89, *supra*.

(3) 4 B. 275.