

February, 1863. We accordingly annul the certificate of heirship granted by the District Judge on the 21st of October, 1880, to the minor Gagubha Dipsangji. The parties to bear their own costs in this application.

1882
 BAI BAIBA
 v.
 BAI DAGUBA.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kemball.

KANJI LADHA, PLAINTIFF, v. DHONDE, DEFENDANT.*

January 17.

*Dekhan Agriculturists' Relief Act (XVII of 1879), Section 56—Signed
 balance of account—Evidence.*

A balance of account signed by an agriculturist is an instrument which purports to evidence an obligation for the payment of money, and cannot, therefore, be admitted in evidence, unless written by or under the superintendence of, and attested by, a village registrar, as required by section 56 of Act XVII of 1879.

THIS case was submitted for the decision of the High Court by Rao Saheb G.A. Mankar, Second Class Subordinate Judge of Khed, under section 617 of Act X of 1877. He stated the facts of the case as follows:—

“The plaintiff sues to recover the sum of Rs. 41-8 from the defendant, who is an agriculturist, according to section 2, clause 2 of Act XVII of 1879, upon a *khata*, being an acknowledgment under his signature of a balance of account by the latter in the former's account book. The *khata* is dated 9th October, 1880, that is, six months after a village registrar under Act XVII of 1879 was appointed for Chincholi in this taluka, where the defendant resides. The main question in this case is whether the *khata*, being an acknowledgment of debt by an agriculturist under his signature, is admissible in evidence when it is not registered according to section 56 of Act XVII of 1879. That section runs as follows:—

“No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a village

* Civil Reference, No. 39 of 1881.

1882
KANJI LADHA
v.
DHONDE.

registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by or under the superintendence of, and is attested by a village registrar, provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding'.

"The Amendment Act XXIII of 1881 adds the following words to this section :—'or apply to any instrument which is executed by an agriculturist merely as a surety.'

"If the *khata* in question be an instrument, then it is certainly not admissible in evidence, owing to its being not registered according to the provisions of section 56, as it creates an obligation for the payment of money by an agriculturist residing in a village for which a village registrar has been appointed. The word 'instrument' is not defined in Act XVII of 1879 or in any other Act so far as I am aware. According to Wharton's Lexicon (1867), an 'instrument' is a formal legal writing, *e. g.*, 'a record, charter, deed, or written agreement.'

"The *khata* is then, in my humble opinion, an instrument, and, consequently, not admissible in evidence, owing to its non-registration.

"It may, however, be well doubted whether the Legislature meant that creditors should take their account books to the village registrars in order that the latter might write the intended acknowledgments of debt by their debtors therein, or cause them to be written under their superintendence.

"It may also be observed that a difficulty will arise if such entries be held registrable under section 56. For the entries in account books will have to be attested by the village registrar and also by two respectable witnesses, if the executants are unable to read them, under sections 56 and 57 of Act XVII of 1879. If they be so attested they will become bonds, according to section 3, clause (4) (b) of Act I of 1879, and will not, therefore, be admissible in evidence if not written upon stamp paper. If section 56, then, requires that entries under the signatures of

agriculturists should be registered, it virtually prohibits, in my opinion, such entries being made at all. I doubt, however, whether this was the intention of the Legislature. It therefore appears necessary to submit this case to the Honourable the Chief Justice and Judges of the High Court for the decision of the point raised above."

There was no appearance of parties in the High Court.

Per Curiam.—The signed account is an instrument which purports to evidence an obligation for the payment of money, and cannot, therefore, be admitted in evidence, unless written by or under the superintendence of and attested by a village registrar as required by section 56 of Act XVII of 1879.

APPELLATE CRIMINAL.

Before Mr. Justice Melvill and Mr. Justice Pinhey.

EMPRESS v. MALHARI.*

October 11.

Evidence—Possession of stolen goods—Presumption—Dishonest receipt of stolen property—Dacoity—Jury.

In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused.

The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity.

The appellant along with others was tried by Sir William Wedderburn, Session Judge of Poona, and a jury, for the offence of dishonestly retaining stolen property the possession of which he knew had been transferred by the commission of dacoity under section 412 of the Indian Penal Code, and was sentenced to suffer rigorous imprisonment for four years.

The Session Judge in his charge to the jury with respect to the appellant Malhari summed up thus :—

"There remains the evidence as to the ornaments, articles found in the house of No. 17, Malhari. It is not denied that