

1883

In re
HANSRAJ
MALJI AND
NARANDAS
DAYAL.

in the firm's business, nor of any express representation by him that he was of full age; and the filing of his petition cannot alter his *status*. He must, under all these circumstances, be allowed to withdraw from the insolvency proceedings.

Application granted.

Attorneys for the infant insolvent.—Messrs. *Jefferson, Bhaishankar and Dinsha.*

Attorneys for the opposing creditors.—Messrs. *Craigie, Lynch and Owen.*

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

NAHANIBAI, WIDOW OF VENKATIDAS (ORIGINAL PLAINTIFF), APPLICANT, *v.* NATHU BHAU (ORIGINAL DEFENDANT), OPPONENT.*

Signed balance of account—Account stated—Acknowledgment—Limitation—Act IX of 1871, Sec. 20, and Sch. II, Art. 62—Act XV of 1877, Sec. 19, and Sch. II, Art. 64.

A sum of money was deposited with the defendant's firm in 1857. Three years afterwards interest was paid by the firm, which was debited in the ledger to the creditor against a credit of a like amount. In 1875 a balance was struck, and carried to another account signed by the defendant, and acknowledging the same to be "due for balance of old account". In 1878 the account was again balanced, and the balance again transferred to a fresh account similarly signed.

Held that the transaction did not amount to an account stated within the meaning of article 62, schedule II of Act IX of 1871, or article 64 of schedule II of Act XV of 1877, and was no more than a mere acknowledgment, which, as the suit had then long been barred by limitation, was of no avail.

An account stated, in the true sense of the term, and in the sense employed in the above-mentioned sections of the Limitation Acts of 1871 and 1877, is where several items of claim are brought into account on either side, and, being set against one another, a balance is struck, and the consideration for the payment of the balance is the discharge on each side; each party resigning his own rights on the sums he can claim, in consideration of a similar abandonment on the other side, and of an agreement to pay, and to receive in discharge, the balance found due.

THIS was an application to the High Court in its extraordinary civil jurisdiction for a reversal of the decree of W. H. Crowe, Assistant Judge of Thana at Nasik, reversing the decree of Rav Saheb Vamanrav Bodas, Subordinate Judge of Yeola.

* Extraordinary Civil Application, No. 99 of 1882.

The plaintiff sued in 1880 to recover Rs. 467 due on an account signed by the defendant on the 26th of October, 1878. In 1857 she deposited a sum of Rs. 300 with the defendant's firm. This was entered to the plaintiff's credit in the ledger of the defendant, and signed by the defendant's brother. A sum of Rs. 54, being the amount of three years' interest, was next entered, and a balance of Rs. 400 shown as due in 1875. The defendant carried over this balance to another account next year, credited Rs. 72 as interest up to 1878, and, debiting Rs. 42 on account of some wheat, struck a balance, showing Rs. 425 "due for balance of old account". These words were in the handwriting of the defendant. At the back of this ledger entry the balance was set out in another account, signed by the defendant and his brother, and dated 1878, October 26, which the plaintiff made the foundation of her suit.

The Subordinate Judge awarded the claim. The Assistant Judge had it to be barred. He said: "The statement of account contains no promise to pay; it is an acknowledgment merely, and is dated 26th October, 1878. The previous account likewise contains no promise to pay; it merely acknowledges a balance due of Rs. 425. Under the ruling in *Amritlal v. Maniklal*⁽¹⁾ such an entry is not a contract in writing, and, therefore, not being a contract, does not fall within the definition, laid down in section 25, cl. 3 of the Contract Act (IX of 1872), of a promise to pay a debt barred by limitation. By section 19 of Act XV of 1877 such acknowledgment must be made before the expiration of the period prescribed for a suit in respect of any property, or right, in order to form the starting point for a new period of limitation. In this case it was clearly made after the expiration of such period."

The plaintiff, accordingly, applied to the High Court.

Pandurang Balibhadra for the applicant.—The account in question is an account stated, and is governed by article 62 of schedule II of Act IX of 1871—*Nand Ram v. Ram Prasud*⁽²⁾; *Thakurya v. Sheo Sing Rai*⁽³⁾; *Tariney Churn Nundy v. Shaikh Abdur Rohoman*⁽⁴⁾; *Sheikh Akbar v. Sheikh Khan*⁽⁵⁾; *Zulfikar*

1883

NAHANIBAI

v.

NATHU

BHAU.

(1) 10 Bom. H. C. Rep., 375.

(3) I. L. R., 2 All., 872.

(2) I. L. R., 2 All., 641.

(4) 2 Cal. Rep., 346.

(5) I. L. R., 7 Cal., 256.

1883

NAHANIBAI
v.
NATHU
BHAI.

Husain v. Munna Lal(1). The Bombay cases point the other way, but they do not consider article 62 of the Limitation Act of 1871, or the corresponding article 64 of Act XV of 1877—*Amritlal v. Maniklal*(2); *Hanmantmal Motichand v. Rambabai*(3); *Ramji v. Dharma*(4). It is not necessary to have entries of debits and credits on both sides. To make an account an account stated, it is sufficient that the account should be adjusted, the balance struck, and signed by the debtor.

The Court granted a *rule nisi*.

V. M. Pandit showed cause.—The account between the parties is not a real account stated. It is a mere acknowledgment of a barred debt, and, therefore, of no avail. If the acknowledgment of 1875 did not revive the original obligation, that of 1878 was equally ineffectual. The earlier entry is governed by section 20 of Act IX of 1871. There being no promise to pay, it is no contract—section 25 of the Indian Contract Act, IX of 1872. The Court below was, therefore, right in holding the claim barred, and the rule should be discharged.

WEST, J.—The original debt in this case was contracted eighteen years before the striking of the balance on which eventually the present suit was instituted. Three years afterwards the debtor paid interest, which he debited in his ledger to the creditor against a credit of the like amount for interest accrued due. Fifteen years afterwards the interest was again computed, and the debtor's successor in title, his brother, carried over the balance to the next year with a written memorandum "Due for balance of old account". As an acknowledgment this could not avail to revive the right to sue which had long before been barred by limitation; but it is urged that the transaction was an account stated, and that on such a statement in writing signed a new cause of action arose, which, under article 64 of schedule II of Act XV of 1877, could be sued on at any time within three years from its date. Now, there are, no doubt, some cases which assume, and some few which necessarily imply, that an account made up, as this one was, on a particular date, with an acknowledgment of an aggregate sum due, constitutes an account stated. But there are others, even amongst these cited by

(1) I. L. R., 3 All., 148.

(2) 10 Bom H. C. Rep., 375.

(3) I. L. R., 3 Bom., 193.

(4) I. L. R., 6 Bom., 683.

Mr. Pandurang, which assume, or imply with equal force, that an acknowledgment in a ledger of a sum as due on foot of a particular account is of the nature of, and subject to the rules of limitation applicable to any other acknowledgment of debt in writing. Thus we should have, under section 19 of the Act, an acknowledgment ineffectual to bar limitation, because not made within the prescribed period, while one of exactly the same character might be made under article 64 of schedule II at any time whatever, and would bar limitation, because no time is prescribed within which an account must be stated. The Legislature cannot have intended to lay down rules which would be self-contradictory, or have meant by article 64 to defeat its own purpose in section 19. We must see if a reasonable construction cannot be found, which will give a distinct operation to each of the two rules, and an operation that will obviate clashing and inconsistency. Such a construction is immediately found when we adopt Lord Blackburn's definition of "account stated" in *Laycock v Pickles* (1). The learned Judge says: "In common talk an account stated is treated as an admission of a debt due from the defendant to the plaintiff; but there is also a real account stated, which is equivalent to what is called, in the old law, an *insimul computaverunt*, when several items of claims are brought into account on either side, and being set against one another, a balance was struck, and the consideration for the payment of the balance was the discharge on each side" (2). This is, no doubt, the true sense of account stated: each party resigns his own rights on the sums he can claim in consideration of a similar abandonment on the other side, and of an agreement to pay, and to receive in discharge, the balance found due. In the present case there had been a payment of interest fifteen years before the closing of the account. From that time forward there were no accounts at all until the interest was computed and added to the principal, which had lain due for fifteen years to make up a sum then acknowledged to be due. On the other

1-83

NAHANIBAI

v.
NATHU
BHAU.

(1) 33 L. J., Q. B., at p. 47.

(2) An account stated (so-called) gives no new starting point for limitation when the items are all on one side. See *Thakoor Pershad Singh v. Mohesh Lal** and *Khemchand v. Narayanji*. †

* 24 Cal. W. R., 390.

† Secd. Appeal 560 of 1870, decided on the 12th December, 1871, by Gibbs and Lloyd, JJ., unreported.

1883.

NAHANIBAI
v.
NATHU
BHAU.

side of the account there were no entries, and though claims or payments might have been made, it does not appear that any had been made. There was thus no account to state in the real sense of the term. There was nothing for the debtor to give up in consideration of the balance struck being taken as final, because there was, and could be, no item to his credit. To admit such a transaction as here occurred to be a statement of account, which might be made after any lapse of time, would be to provide the easiest possible way, not only for barring limitation, but for defeating the Limitation Act.

After the acknowledgment in 1875 the account was again balanced in 1878, and the acknowledgment of a sum due was repeated. But as the previous acknowledgment had not revived the right to sue, neither could this second one.

We, therefore, discharge the rule with costs.

Rule discharged.

APPELLATE CIVIL.

1883
July 19.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

SITARAM KRISHNA, PLAINTIFF, v. DAJI DEVAJI, DEFENDANT.

Bond—Addition of false attestation—Material alteration of a document.

In an action on an attested instrument not required by law to be attested, the obligee, while the instrument was in his possession and custody, got another attesting signature added to it by a man who had not, in fact, witnessed the execution of it by the obligor.

Held that although the alteration did not vary the contract, it was material in the sense of stating a falsehood, either expressly or by implication, by way of increasing the apparent evidence of its genuineness, and that the obligee could not sue upon it.

THIS was a reference, under section 617 of the Code of Civil Procedure, to Ráv Sáheb Sakharam M. Chitale, Subordinate Judge of Mahad.

The plaintiff sued to recover from the defendant Rs. 48 due on a bond dated 5th of February, 1879. The defendant did not appear in person or by pleader. In course of the conduct of the suit it appeared that one Ganesh Krishna at the request of the plaintiff had attested the bond sued upon, but was really not