

APPELLATE CIVIL.

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

HEMCHAND KUBER, PLAINTIFF v. VOHARA RAJI HAJI, DEFENDANT.*

1883
August 16.

Limitation—Acknowledgment—Authorized agent—Act XV of 1877, Sec. 19, Explan. 2.

A balance of account was written by a person at the request of an illiterate debtor in the debtor's name, and signed by the writer in his own name.

Held a binding acknowledgment by a duly authorized agent within the meaning of sec. 19, explan. 2 of Act XV of 1877.

THIS was a reference by Rav Saheb R. C. Desai, Subordinate Judge of Umreth, under section 167 of the Code of Civil Procedure. He stated the case thus :—

“The facts of the case are :—The defendant was indebted to the plaintiff for the sum of Rs. 28-4-0. An account of this claim was settled on Chaitra Sudi 14th of Samvat 1936, corresponding with the 24th April, 1880, and the sum of Rs. 26-12-0 was found due. For this sum the balance of account now sued on was struck by one Keval Jeychand, at the request of the defendant, below the statement of the account by the plaintiff in his own book; but it has neither been signed by the defendant personally or by the writer in the defendant's name.

“The balance of account sued on runs thus :—

“Written by Vohora Raji Haji—to wit Rs. 26-12-0, in letters rupees twenty-six and three-fourths, are due as stated above, dated Chaitra Sudi 14th of Samvat 1936 in the handwriting of Sha Keval Jeychand.”

“The plaintiff has, to bring his claim within limitation, based it on the said balance of account. A question arises, whether the balance sued on is such as can give a fresh starting point for computing the period of limitation under section 19 of Act XV of 1877 ?

“Section 19 of Act XV of 1877 requires that an acknowledgment of liability in respect of any property or right to be sufficient to give a fresh starting point for computing the period of

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limitation should be made in writing *signed by the party* (either personally or by an agent duly authorized in this behalf) against whom such property or right is claimed, or by some person through whom he derives title or liability.

“The balance of account sued on, can, no doubt, be considered to be a sufficient acknowledgment in writing of the liability—*Amritlal Mansuk v. Manikal Jatha*(¹); but whether it is sufficiently signed, is a point to be determined.

“If the whole of the balance of account sued on were written by the defendant himself with his own hand, I should have no hesitation to hold it, on the authority of the rulings of the High Court in the cases of *Andarji Kalyanji v. Dulabh Jeevan*(²) and *Jekisan Bapuji v. Bhowzar Bhoga Jetha*(³), to be a sufficient acknowledgment duly signed by him.

“From the decision of the Allahabad High Court in the case of *Mathura Das v. Babu Lal*(⁴) it may be inferred that the authority of the agent signing the acknowledgment should appear on the face of the acknowledgment; but in the present case the balance of account sued on does not show, on the face of it, that it was written by the writer Keval Jeychand as the duly authorized agent of the defendant.

“In dispensing with signatures at the end of acknowledgments, when they are written by the debtors with their own hands with the introduction of their names at the top, or in any other part of the acknowledgments, the High Courts in India have laid stress on the fact that it is not the practice of Hindu bankers to sign their letters at the foot, and that the signature at the top is one of the modes of signing most generally practised by natives. But in cases of illiterate persons the practice is not, I humbly submit, the same. In such cases the practice generally is for illiterate persons to make their marks, and to ask other persons to write their signatures at the end of their letters or acknowledgments; and sometimes even the marks are dispensed with.

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

(3) I. L. R., 5 Bom., 89.

(2) I. L. R., 5 Bom., 88.

(4) I. L. R., 1 All., 683.

“ In the case of the *Bengal Indigo Company v. Koylas Chunder Dass*(¹) the Calcutta High Court has held that a statement of balances found in one of plaintiff's books duly verified, without any signature by defendant who could not write, was not an acknowledgment within the meaning of section 4 of Act XIV of 1859, and that the entry of the defendant's name in one column, taken in connection with a cross in another column, formed no valid signature. This ruling may, I respectfully submit, be adopted in cases, of acknowledgments by illiterate persons.

“ It is urged on behalf of the plaintiff that the signature of the writer at the end of the *khata* sued on, should be held to be a sufficient signature as being that of an agent of the defendant, and this contention seems to receive support from the ruling of the Calcutta High Court in the case of *Mohesh Lal v. Busunt Kumaree*(²) ; that, under section 20 of Act IX of 1871, the authorized agent may sign either his own name or that of his principal ; but this ruling is based on the ground that, under the 17th section of the Statute of Frauds, it has been held that where goods were sold at auction, and the purchaser authorized the auctioneer's clerk to put down his name as having purchased certain lots, and the clerk accordingly did so, the entry of the purchaser's name so made by the clerk was a sufficient signature, under the statute, to bind the purchasers ; but the fact that under section 20 of Act IX of 1871, a signature by a general agent of the debtor was sufficient, while under section 19 the signature by an agent to be held sufficient should be by one duly authorized in that behalf, and that, by English law, auctioneers and their clerks who take down the biddings are, during the auction and no longer, held to be the authorized agents of the purchasers, may, I humbly submit, be held sufficient to distinguish the present case from the case of *Mohesh Lal v. Busunt Kumaree* referred to above.

“ Considering that the point now under consideration is of general importance, that it is one on which I entertain a reasonable doubt, and that my decision in this case is final, I have deemed this reference necessary.

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(1) 10 W. R. Civ. Rul., 293.

(2) I. L. R., 6 Calc., 340.

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“ My opinion on the point hereby referred being in the negative, I have rejected the plaintiff's claim, contingent upon the decision of the High Court on the said point.”

No one appeared in the High Court.

The decision of the Court was given by

WEST, J.—The acknowledgment in this case would have satisfied the requirements of section 19 of Act XV of 1877 had it been written by Vohora Raji Haji himself. It contains his name as that of the person acknowledging the debt. As Vohora could not write, he got the acknowledgment, including his name, written by a third party. He thus made that third party his agent, and the Subordinate Judge being satisfied as to the facts, Vohora is bound by the acknowledgment.

We answer the reference accordingly.

APPELLATE CIVIL.

1883
August 16.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.
BALKRISHNA PANDURANG, PLAINTIFF, v. GOVIND SHIVAJI,
DEFENDANT.*

*Limitation—Act XV of 1877, Sch. II, Art. 84—Suit by vakil—
Termination of suit.*

The termination of the suit mentioned in article 84 of schedule II of the Limitation Act XV of 1877 means the date when judgment is given.

THIS was a reference by Rav Saheb Vaman Mahadev Bodas, Subordinate Judge of Yeola, under section 617 of the Code of Civil Procedure, for the orders of the High Court. He stated the case thus :—

“ In Suit No. 58 of 1877 of this Court's file, decided on 29th November, 1879, Shankar Shivaji, the defendant, was represented by the present plaintiff, who is a vakil practising in this Court. The claim in the suit was awarded, and Shankar was ordered to pay all costs. On an application made, the plaintiff got, in due time, copies of judgment and decree; but it was on 27th

*Civil Reference, No. 27 of 1883.