APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Nánábhái Haridás.

RANCHHODDA'S NATHUBHA'I AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* JEYCHAND KHUSHA'LCHAND AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.* 1884 *April* 29

Limitation—Promise—Acknowledgment—Account stated—Balance admitted due—'Báki devá'—Act IX of 1872, *Sec.* 25.

The Gujaráti words "*báki devá*", which are of common use in balancing accounts, import no more than the English words "balance due", from which an unwritten contract may be inferred, but which do not of themselves amount to a promise to pay within the sense of Act IX of 1872, sec. 25, cl. 3.

THIS was a second appeal from the decision of G. M. Macpherson, Judge of the district of Surat, reversing the decree of the First Class Subordinate Judge of Surat.

This action was instituted by the owners of the shop known as Bhagvándás Mathurádás against Jeychand and Bháichand, heirs and successors in ownership of the business carried on by Khushálchand Mulchand, to recover Rs. 2,334-4-0 from the defendants personally and from the property of the deceased Khushálchand. The plaintiffs alleged that they had dealings with Khushálchand, after whose death Jeychand, who managed the business, passed an acknowledgment for Rs. 1,955 found due on making up the accounts.

Jeychand contended that the claim was time-barred, as the original debt having been already barred when he signed the acknowledgment, which, therefore, was not binding; that he was not personally liable, and he had found that, if the plaintiffs had allowed the proper deductions to his father, the plaintiffs were his debtors instead of creditors.

Bháichand also contended that the claim was time-barred, and denied that he signed the acknowledgment, or knew anything about it.

The Subordinate Judge found in favour of the plaintiffs both

* Second Appeal, No. 95 of 1883.

1884

RANCHHOD-DÁS NATHUBHÁI v. JEYCHAND KHUSHÁL-CHAND.

on the point of limitation and the merits, and made a decree against the defendants personally and against the property of the deceased Khushálchand.

The District Judge reversed that decree, and rejected the claim for these reasons:—

"Plaintiffs and defendants' father had dealings. What they originally were, does not appear, but since 1870 no dealings took place, the only matters in account being debiting Khushálchand with the sum due at the end of the year. This went on till 1877, when any claim for the money due would have been time-barred. There were no promises or acknowldgements which could have taken the case out of the adverse operation of the Limitation Act, nor were there any payments of interest or principal.* * * * * *. Jeychand signed a statement in the account that the account was made up, and Rs. 1,955 were found to be due. This was useless under the Limitation Act, being long after the time allowed for suing had expired. The writing contains no promise to pay the money, and thus this agreement made without consideration was void under section 25 of the Contract Act, 1872, as the promise was not reduced to writing. In *B. Rámji* v. *Dharma*[1] the High Court ruled that the bare statement of an account is not a contract, there being no promise in writing such as is required by section 25, clause 3 of the Contract Act. The difference between a mere acknowledgment of indebtedness and a promise to pay, is well established. Therefore the document sued on, gives no ground of action * * * * I find, therefore, that when the acknowledgment was signed by Jeychand the debt was time-barred; and as there is no promise in writing to pay the debt, or part of it, there is no right to the money. Could the money be sued for and decreed, the sum claimed, Rs. 2,334-4-0, would be payable, but that Bháichand did not authorize Jeychand to sign for him."

The plaintiffs appealed to the High Court.

Shivrám Vithal Bhándárkar for the appellants.—The acknowledgment on the document sued on, runs thus:—

[1] Printed Judgments for 1882, p. 330

"Balance due on the 12th of Ashad Vad of Samvat 1933, Monday (6th August, 1877) Rs. of the British currency are [found] due after comparison (રૂબરૂ). By the hands of Jeychand 1,955-0-0.

"Jeychand Khushálchand, heir to the deceased Sháh Khushálchand Mulchand, having a shop at Jalgaon. To wit: Having come to Surat, and having understood the account, I have found Rs. 1,955, namely, nineteen hundred and fifty-five of the British currency, to be due as of Monday the 12th of Ashad Vad of Samvat 1933. The handwriting is that of Jeychand Khushálchand."

This acknowledgment, I submit, is a promise to pay. The words "*báki devá*", or "balance payable", have been so construed—*Nagindás Dharamchand* v. *Trikamdás Thakarsi*[1].

Máneksháh Jehángirsháh Taleyárkhán for the respondents.—There is no promise. The entry shows merely the sum ascertained to be due, but no more. The case cited, is not in point. There might have been a promise there to pay by instalments.

SARGENT, C. J.—We think that the District Judge was right in holding that the entry in plaintiffs' books did not amount to a promise to pay, as required by section 25 of the Contract Act. The Gujaráti words "*báki devá*" are of common use in balancing accounts, and import no more than the English words "balance due", from which doubtless an unwritten contract may be inferred, but which do not of themselves amount to a promise to pay—*Amritlál Mansukh* v. *Máneklál Jethá*[2]. In the case of *Nagindás Dharamchand* v. *Trikamdás Thakarsi*[1] the words were "balance struck payable *(devá)* by two instalments," when the ordinary meaning of the word "*devá*" was probably considered to be enlarged by the context. We must, therefore confirm the decree with costs.

Decree confirmed.

(1) Printed Judgments for 1877, p. 239.

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