

1884  
 NÁRÁYAN  
 NAGARKAR  
 v.  
 VITHU  
 JÁKHOJI.

are, at any rate, in possession, and are entitled in this suit to say that plaintiff has not established his title to sell the specific lands mortgaged to him. As Vithu refuses the share of the purchase-money allowed to him, and it is plain that a question may arise as to whom it belongs under the circumstances, the decree is wrong in authorizing plaintiff to pay himself out of it. The decree should, therefore, be varied by omitting all mention of the purchase-money. Plaintiff to pay the defendants their costs of this appeal.

*Decree varied.*

## APPELLATE CIVIL.

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

June 26.

DAGDUSA TILAKCHAND, PLAINTIFF, v. SHAMAD, DEFENDANT.\*

*Limitation Act, XV of 1877, Sch. II, Art. 64—Account stated—Simultaneous verbal agreement—Simultaneous written agreement.*

A simultaneous verbal agreement cannot extend the ordinary period of limitation for a suit on an account stated. An agreement to extend the period must be in writing, and signed by the defendant or his agent.

UNDER section 617 of the Civil Procedure Code, Act XIV of 1882, this case was submitted for the opinion of the High Court by Ráv Sáheb Káshináth B. Maráthe, Subordinate Judge of Amalner.

The defendant Shamad undertook to pay to the plaintiff Rs. 24 on behalf of one Bába, and signed an account by his mark on 2nd January 1881. The plaintiff brought a suit against the defendant to recover the said sum in the Subordinate Judge's Court. The suit was based on the said account, and the plaint was presented on 14th January 1884,—that is, twelve days after the lapse of three years from the date on which the account was signed. The plaintiff alleged that when the account was signed, the defendant made a simultaneous verbal agreement

\*Civil Reference, No. 15 of 1884.

to the effect that the debt was to be repaid one month after the date of the account; and contended, therefore, that the cause of action arose on 2nd February 1881.

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The question referred for decision was :—

Whether a simultaneous verbal agreement could bring within time a claim based on an account stated ?

The opinion of the Subordinate Judge, with Small Cause Court powers, at Amalner was in the negative.

There was no appearance of parties in the High Court.

*Per Curiam*—Assuming this to be a case of an account stated, as to which we are not called upon to express any opinion, we think that the question referred to us must be answered in the negative. The Limitation Act of 1877, Sch. II, art. 64, is too clear to admit of any doubt on the point. As provided therein, the ordinary period of limitation for a suit on an account stated within the meaning of that article is three years from the date of the statement of account. The only thing which extends such period is a simultaneous *written agreement* “signed by the defendant or his agent.....” making the debt payable at a future time. The “simultaneous *verbal agreement*,” therefore, though held proved in this case, cannot have the effect of extending the three years’ limitation.

*W. N. 1896, p. 132.*

### APPELLATE CIVIL.

*Sa NR 4 Bom. 584.*

*Before Mr. Justice West and Mr. Justice Nanábhái Haridás.*

GOVINDRA V DESHMUKH, DECEASED, BY HIS SONS (ORIGINAL PLAINTIFFS),  
APPELLANTS, v. RA'GHO DESHMUKH (ORIGINAL DEFENDANT), RESPOND-  
ENT; AND RA'GHO DESHMUKH (ORIGINAL DEFENDANT), APPELLANT, v.  
GOVINDRA'V DESHMUKH (ORIGINAL PLAINTIFF), RESPONDENT.\*

*June 30,*

*Mortgage—Redemption—Evidence given of other mortgage than the mortgage in respect of which suit brought—Evidence Act I of 1872, Sec. 35—Statement of a survey officer as to entry as occupant how far admissible.*

The plaintiff sued to redeem certain lands alleged to have been mortgaged by his ancestor to the ancestors of the defendants in 1823. At the hearing the deed

\* Cross Appeals, Nos. 129 and 130 of 1883.