

1885.
 TRIBHUVAN
 GANGAHAM
 v.
 AMINÁ.

plaintiff's pleader has next contended that the *kháta*, of which exhibit A is a copy, is an account stated, and that a suit will lie on it. The question as to whether a *kháta*, like the original of exhibit A, is an 'account stated', has been considered by the Honourable High Court in application No. 99 of 1882, under its extraordinary jurisdiction—*Náhánibái v. Nathu Bháu*⁽¹⁾. I am, therefore, of opinion that the *kháta*, of which exhibit A is a copy, is not an 'account stated', and the plaintiff cannot sue on that document. The plaintiff must sue on the original cause of action, and may give such *khátás* in evidence to show that his suit is within time.

"Suits on such *khátás* are often brought, and the plaintiffs in their complaints say that causes of action accrued to them on the days on which such *khátás* are executed. I, however, entertain a doubt as to the correctness of what I have said above. This is a small cause suit, and I, therefore, refer the following points to the Honourable High Court for their decision, under section 617 of the Civil Procedure Code of 1882."

There was no appearance for the parties.

SARGENT, C.J.—The Subordinate Judge is right, in our opinion, in treating the *kháta* in question, which consists of only one item, as a mere acknowledgment, and as not amounting to an account stated. See the case of *Náhánibái v. Nathu Bháu*⁽¹⁾.

(1) I. L. R., 7 Bom., 414.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

WA'LA HIRÁJI, PLAINTIFF v. HIRA' PA'TEL, DEFENDANT.*

1885.
 June 18.

Civil Procedure Code (Act XIV of 1882), Sec. 266—Attachment and sale of arms in execution of a decree by *Názir* of the Court—Arms Act XI of 1878, Sec. 1, Cl. (b), and Sec. 5—Public servant, sale of arms by.

The sale of arms by the *Názir* of the Court, in execution of a decree, is a sale by a public servant in discharge of his duty, and is, therefore, excluded by section 1, cl. (b), from the operation of the Indian Arms Act XI of 1878.

* Civil Reference, No. 16 of 1885.

It is expedient for the Court ordering such sale to give notice of the sale and of the purchaser's name and address, as contemplated by section 5 of that Act, to the "Magistrate of the District or to the police officer in charge of the nearest police station."

THIS was a reference by Ráo Sáheb V. N. Ráhurkar, Subordinate Judge of Panvel, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference was stated as follows:—

"One Wála Hiráji Márwádi obtained a money-decree against Hirá Pátel in original suit No. 1067 of 1883. He applied for the execution of this decree this year. A warrant of attachment being issued against the moveable property, all his moveables were attached, and among them *two spears* and *one dagger*. As the Court entertains a doubt, whether the judgment-creditor can ask for the sale of the spears and the dagger, it has postponed their sale till the decision of this reference, the sale of other moveables being ordered. 'Spears' and 'dagger' come under the head of *arms* (*vide* section 4 of Act XI of 1878). Section 5 of that Act prevents any *person* from selling or keeping or offering or exposing for sale any arms except under a license. Any breach of this section is treated as an offence, and is made punishable under section 19 (a) of the same Act. The questions that arise are:—

"(1.) Whether *arms* are *goods* within the meaning of section 266 of the Civil Procedure Code ?

"(2.) Whether the application of the section 266 is limited, or, in other words, whether the rights of a judgment-creditor are affected by the provisions of the Arms Act ?

"The Court is of opinion that *arms* come under the head of *goods* within the meaning of section 266, and that the rights of a judgment-creditor are affected by the provisions of the Arms Act."

There was no appearance for the parties.

SARGENT, C.J.—The sale of arms by the Nazir of the Court, in execution of a decree, is a sale by a public servant in discharge of his duty, and, therefore, excluded by section 1, clause (b), from the operation of the Indian Arms Act XI of 1878; but we think it would be a proper thing for the Court ordering the sale to give the notice of the sale and of the purchaser's name and address contemplated by section 5 of the Act.

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WÁLA
HIRÁJIP.
HIRÁ PÁTEL.