1885.

BÁBURÁV AMRIT PETHE v. GANPATRÁV DÁMODAR.

NÁNÁBHÁI HARIDÁS, J.—We think that in this case the rule must be made absolute. A Small Cause Court would have jurisdiction to go into the question whether any part of the principal was due to the plaintiff in respect of which interest was claimable—*Rám Shewuk Sáhoo* v. *Futto Roy*(1). The defence here virtually was that nothing was due; that the principal sum of Rs. 1,500, which carried interest, had been more than paid off by the plaintiff having received Rs. 4,000 as the value of materials removed by him. If the defendant previously consented to this removal, or subsequently ratified the removal, he may be presumed to have agreed to the value received being applied to the payment of the debt due to the plaintiff; and if that debt was paid off, no interest would accrue upon it. The Subordinate Judge was, therefore, wrong in declining to inquire into the matter and determine whether the sum upon which interest was claimed, or any part of it, was still due.

We must, therefore, reverse the decision of the Subordinate Judge, and send the case back for a new decision after making such inquiry.

Costs of this application to follow final decision.

*Decree reversed and suit remanded.*

(1) 12 Calc. W. R., 184, Civ. Rul.

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## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Birdwood.*

1885. *July* 30.

MAHA'LAKSHMIBA'I, (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE FIRM OF NAGESHWAR PURSHOTAM, (ORIGINAL DEFENDANT), RESPONDENT. *

*Limitation Act XV of* 1877, *Sec.* 19, *Expl.* 1—*Acknowledgment—Entry of a debt in a debtor's book.*

An entry in a debtor's own book does not amount to an acknowledgment within the meaning of section 19 of Act XV of of 1877, unless communicated to his creditor or to some one on his behalf—Explanation 1 to section 19 showing that the acknowledgment is contemplated as "addressed" to the creditor.

Every acknowledgment, in order to create a new period of limitation, must be signed by the debtor or some one deputed by him, no matter in what part of the document the signature is placed.

* Civil Reference, No. 24 of 1885.

1885.

MAHÁLAKSHMIBÁI v. THE FIRM OF NAGESHWAR PURSHOTAM.

THIS was a reference by J. B. Alcock, Assistant Judge of Khándesh at Dhulia, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference, for the purposes of the report, was stated as follows:—

"This action was instituted by the appellant to recover Rs. 80, with interest, which she deposited with the defendant.

"The defendant contended that the money belonged to the plaintiff's brother, Bhagwán, and not to the plaintiff, and that the suit is time-barred.

"The lower Court found that the money in dispute was the plaintiff's and not her brother's, but that the suit is time-barred.

"The grounds of appeal are as follows:—

"1. The suit is not time-barred.

"On 11th December, 1876, the appellant deposited Rs. 50 with the respondent. On 17th December, 1877, she deposited a further sum of Rs. 30 with him. On 25th February, 1881, the respondent credited the appellant in his ledger with the sum due to her, including interest. He credited her with interest yearly from the time of the deposit in his *vyaj vahi* or interest book. The point for decision is, whether these entries are acknowledgments which would extend the period of limitation under section 19 of Act XV of 1877. Some of these entries were written by the respondent himself and some by his agents. The Subordinate Judge found that they are not acknowledgments such as are contemplated in section 19 of the Limitation Act—(1) because they were not made to any person, but merely made by the respondent in his own books; (2) because the sum due is not mentioned in the entries; (3) because the entries are not signed. The second reason does not appear to have any force, because the various sums are mentioned in the day-book, while the entries in the ledger are general acknowledgments of the balance due, whatever it may be (the words used being *sarve báki*). With regard to the third reason, the appellant cites the case of *Hemchand Kuber* v. *Vohora Ráji Háji*[1], in which it was held that

(1) I. L. R., 7 Bom., 515.

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MAHÁLAKSHMIBÁI v. THE FIRM OF NAGESHWAR PURSHOTAM.

a balance of account in the creditor's books at the request of, and in the name of, an illiterate debtor, and signed only by the writer in his own name, is a binding acknowledgment. But in the present case the account is written, not in the creditor's, but in the debtor's own books.

"I am inclined to think that the view taken by the lower Court is correct, and that the entries in the present suit do not amount to an acknowledgment signed by the debtor within the meaning of section 19 of the Limitation Act. But, as there is no second appeal in this case, I have decided to refer to the High Court for the favour of a ruling on the following points:—

"1. Is an entry of a sum due to any person in the books of the debtor an acknowledgment under section 19 of the Limitation Act?

"2. If so, then, in order to make that section applicable, must the entry be signed by the debtor, or is it sufficient that it should be written by him or his agent?"

There was no appearance for the parties.

SARGENT, C. J.—An entry in the debtor's own book would not amount to an acknowledgment within section 19 of Act XV of 1877, unless communicated to his creditor, or to some one on his behalf. Explanation I to section 19 shows that the acknowledgment is contemplated as "addressed" to the creditor.

Every acknowledgment, in order to create a new period of limitation, must be signed by the debtor, or some one deputed by him, but it does not matter in what part of the document the signature is placed—*Jekisan and Pránvalab Bápuji, Managers of the Firm of Bápuji Kuverji*, v. *Bhowsar Bhoga Jetha*[1]; *Bálkrishna Pándurang* v. *Govind Shiváji*[2]; *Mathurá Dás* v. *Bábu Lál*[3].

(1) Printed Judgments for 1880, p. 265. (2) I. L. R., 7 Bom., 518.
(3) I. L. R., 1 All., 685.