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he averred to have been infringed by the defendants, but to enforce the performance by them of duties connected with the shrine of Ranchhod Raiji, the worship at that shrine, and the revenues arising from offerings made by worshippers at it. This is the kind of case contemplated by s. 539 of the Code of Civil Procedure. As a dissenting chapel in England may be the subject of an information by the Attorney-General as a charitable institution (*Attorney-General* v. *Fowler* (1), so we think that a trust for a Hindu idol and temple is to be [268] regarded in India as one 'created for public charitable purposes.' If that is so, a suit relating to the temple of Ranchhod Raiji was not competent to Manohar alone or without the consent, in writing, of the Advocate-General. Moreover, it could not be instituted in a Court inferior to the District Court. The Court of the Subordinate Judge no longer has jurisdiction in such cases.

"For these reasons, we must refuse to restore the injunction set aside by the Subordinate Judge. His predecessor seems to have had no authority to make it." (Printed Judgments for 1878, p. 252.)

[R., 6 B. 42 (50) ; 12 B. 267 ; 37 C. 123=10 C.L.J. 355=14 C.W.N. 18=3 Ind. Cas. 642 ; 2 C.L.J. 460.—ED.]

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Before Mr. Justice West and Mr. Justice Birdwood.

ZIULNISSA LADLI BEGAM SAHEB (*Original Defendant*), *Appellant v.* MOTIDEV RATANDEV (*Original Plaintiff*), *Respondent.** [20th June, 1887.]

Limitation Act (XV of 1877) s. 19—Oral evidence of acknowledgment—Advisability—Acknowledgments made before the coming into force of Act XV of 1877—Evidence.

Under s. 19 of the Limitation Act, XV of 1877, oral evidence of the contents of an acknowledgment cannot be received, nor is there any saving of acknowledgments received or given back before the Act came into operation.

SECOND appeal from the decree of S. Hammick, District Judge of Surat, confirming the decree of Khan Bahadur B. E. Modi, First Class Subordinate Judge of Surat, in suit No. 201 of 1883.

The plaintiff sued to recover the sum of Rs. 775, with interest, being the balance of an account for moneys lent and advanced to the defendants Nos. 1 and 2 through their agent, defendant No. 3.

The original loan was made in 1876. At the end of every year the account was adjusted, a balance was struck, and a new receipt or acknowledgment was passed by the defendant No. 3 as agent for defendants Nos. 1 and 2. The last of such acknowledgments was dated 3rd November, 1880. Within three years from this date the present suit was filed in 1883.

The plaintiff produced the last acknowledgment only in support of his claim. The previous ones, he alleged, had been [269] returned to defendant No. 3, and were not forthcoming. He, therefore, adduced oral evidence to prove the intermediate acknowledgments.

The defendants contended that the suit was barred by limitation.

Both the lower Courts overruled this contention, and passed a decree for the amount claimed against defendants Nos. 1 and 2.

Against this decree a second appeal was preferred to the High Court.

Manekshah Jehangirshah for the appellant.—Section 19 of the Limitation Act (XV of 1877), expressly provides that oral evidence shall not be received of the contents of an acknowledgment, if it is lost or destroyed. This provision is a repetition of that in s. 20 of Act IX of 1871. In the

* Second Appeal No. 24 of 1885.

(1) 15 Ves. 85.

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present case the original loan was made in 1876. There is no acknowledgment of that loan till 1880. The intermediate acknowledgments cannot be proved by oral evidence. The debt is, therefore, barred.

Gokuldas Kahandas Parek, for the respondent:—The acknowledgment, upon which the plaintiff relies, is not a bare acknowledgment of a past liability. It is, in fact, a new promise to pay a time barred debt. Section 19 of Act XV of 1877 does not exclude oral evidence of a document handed to the debtor.

JUDGMENT.

WEST, J.—In this case an acknowledgment, dated 3rd November 1880, is relied on by the plaintiff as having, as the last of an annual series, kept alive his right to sue for a debt contracted and due on the 22nd October, 1876. The intermediate acknowledgments, it is said, were given back, and it is contended that, on proof of this, they can be proved by oral evidence so as to bridge over the interval of four years between the original obligation and the acknowledgment actually produced. But s. 19 of the Limitation Act, XV of 1877, says clearly that oral evidence of the contents of an acknowledgment may not be received, nor is there any saving of acknowledgments received or given back before the Act came into operation. We are constrained, therefore, to apply the enactment to which we have referred, and the true sense of which cannot be doubted after a comparison with the corresponding s. 20 of Act IX of 1871. **[270]** It excludes the intermediate acknowledgments as resting on oral proof, by which the one of 3rd November, 1880, might have been made to bear on a debt then still not barred by limitation, and we must consequently reverse the decrees of the Courts below and reject the claim. Costs in this Court to be borne by the respondent and in the Courts below as there adjudicated.

Decree reversed.

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12 B. 270.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

GOVIND ATMARAM (*Original Defendant*), *Appellant v.* SANTAI (*Original Plaintiff*), *Respondent.** [15th August, 1887.]

Evidence—Burden of proof—Suit by a claimant to property under attachment.

The defendant having attached certain property as belonging to his judgment-debtor B, the plaintiff applied for the removal of the attachment, alleging that she had purchased the property from B prior to the defendant's decree. Her application was rejected, and an order maintaining the attachment passed. The plaintiff thereupon brought the present suit to establish her right to the property in question. The Court of first instance dismissed the suit. The plaintiff appealed to the District Judge, who reversed the lower Court's decree, holding that it was incumbent on the defendant to show that the alleged transaction of sale was fictitious. On second appeal by the defendant to the High Court.

Held, that the District Judge was wrong in throwing the burden of proof on the defendant. The defendant had obtained an order maintaining his attachment, and it was incumbent on the plaintiff, who impugned that order by the

* Second Appeal, No. 459 of 1885.