offence relating to documents being permissible without sanction. But that would not invalidate a prosecution commenced on a sanction which included both a party and a witness. The offences referred to in s. 195 (c) are the offences described in s. 463 or punishable under ss. 471, 475 or 476 of the Indian Penal Code. The limitation that sanction only is necessary in regard to prosecution for these offences, when such offences have been committed by a party, does not limit the reference to the offences in s. 476, so as to make it legal for a Subordinate Judge to commit a party to the Sessions Court on charges of offences relating to documents, and illegal for him at the same time to commit a witness of the party on similar charges.

Application rejected.

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[586] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

GANGADHARRAO VENKATESH AND OTHERS (*Original Plaintiffs*), *Appellants v.* SHIDRAMAPA BALAPA DESAI AND ANOTHER (*Original Defendants*) *Respondents.** [11th September, 1893.]

Limitation Act (*XV of* 1877), *s.* 19†—*Acknowledgment*—"*Signing*," *what amounts to.*

Certain letters admitting a debt were written by the authority of the debtor, who was a desai. The only words, however, of the letter which were actually in his own handwriting were the words "*guru samarth*" (the exalted preceptor is strong) at the beginning of each letter and the words "*kalave, bahut kay lihine, lobh karava hi vinanti*" (let this be known. What more need be written. Keep regard; this is the representation) at the end. It was proved by evidence that this was the usual mode of signing and authenticating letters and informal documents among the class to which the defendant belonged.

Held, that, by analogy, the writing of specified words by desais at the top and bottom of letters, which was shown to be the usual way, amongst persons of that class, of authenticating letters, was a "signing" within s. 19 of the Limitation Act (XV of 1877) and that the letter was a valid acknowledgment.

The ground upon which it is held that the mark of an illiterate debtor is a sufficient signature, is that the signing in such a manner as is usually adopted

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* Second Appeal, No. 636 of 1890.

†Section 19 of the Limitation Act (XV of 1877):—

19. *Effect of acknowledgment in writing.*—If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purpose of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver or perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section 'signed' means signed either personally or by an agent duly authorized in this behalf.

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by the debtor with the view of showing that he intends to be bound by the document, renders the document effective as an acknowledgment under the section. Whether the circumstance of the debtor not signing his name, is the result of necessity as in the case of an illiterate debtor, or of custom as in the case of a class of debtors having a special status in the community, can be of no importance.

[Appl., 31 C. 1043=9 C.W.N. 83 (86).]

SECOND appeal from the decision of A. D. Pollen, District Judge of Belgaum.

[587] The plaintiff sued to recover the sum of Rs. 1,988, due on a bond executed by the father of the defendants on 17th July, 1878. The bond was payable by instalments, the first of which was to be paid on 30th November, 1878, and it provided that in default of payment of an instalment the whole sum should be recoverable.

The suit was filed on the 15th March, 1888, and claimed to recover the whole sum on the ground of default in paying the first instalment. In order to prevent the bar of limitation the plaintiff relied on certain letters addressed by the deceased defendant to the plaintiff's undivided brother. He contended that these letters were signed acknowledgments within the meaning of s. 19 of the Limitation Act (XV of 1877). The letters were all written by a third person in the defendant's name; and the question was whether they were "signed" by the defendant as required by the section. The letters began with the words "To the creditor from Rajeshri Desai." The only part of the letter, however, in the defendant's own writing were the words "*guru samarth*" (*i.e.*, the exalted preceptor is strong) which were written at the beginning, and the words *kalave, bahut kay lihine lobh karava hi vinanti*" (let this be known. What more need be written. Keep regard; this is the representation).

Evidence was given that this was the usual mode of signing and authenticating letters and informal documents by persons of the class to which the defendant belonged.

The Subordinate Judge held that the letters were sufficiently "signed," and that the suit was not barred. The following is an extract from his judgment.

"The next point is, whether the three letters of the Desai can be treated as acknowledgments as required by s. 19 of the Limitation Act. That section lays down that an acknowledgment must be in writing signed by the debtor or by an authorized agent. In ordinary language, the word 'signing' means, I apprehend, the affixing of his own name by the person signing at the end of a writing with the avowed intention that the writing sohuld be considered as issued under his authority and upon his responsibility. The judicial tribunals have extended this limited meaning by including also a mark made by an illiterate man (*Bheemangowda* v. *Eeranah*, 7 Mad. H. C. R. 358), and the autograph name of the debtor appearing in any part of the document (*Andarji* v. *Dulabh*, I. L. R., 5 Bom., 88), to be within the meaning of the word as [588] used in the Act. By parity of reasoning it may also be said that the affixing of certain specified letters by the debtor himself, by which he intends to give the same effect to the writing as by an actual and proper signature, is also within the sense of the word as used in the Act. The case, *Khwaja Muhammad* v. *Venkatarayar* (2 Mad. H. C. R., 79) lends some support to this view, though I have not the full report before me. In the present case the letters *kalave*, &., appear in the autograph of the Desai, and it is a well-known fact that persons of his class do generally use this mode of signing

in informal and private letters, and such letters are considered as equivalent to signing the full name. Moreover, the Desai's full name appears in the body of the communications, and their writer says that he indited them at the dictation of the Desai. I, therefore, find that the letters in question are sufficiently signed as to satisfy the requirements of the section."

In appeal by the defendants the Judge held the claim time-barred, and reversed the decree.

The following is the portion of his judgment which deals with the letters written by the Desai:—

"The letters 5, 6, 7, 8 are all open to the objection that neither in the body nor at foot are they signed by the debtor or by his agent duly authorized in that behalf. The letters are all written by a third person in the Desai's name, but they are not signed by the Desai. It is said that it is not usual for persons in the Desai's position to sign their names to letters. Instead of signing they write with their own hands certain formal words at the top and at the bottom of a letter. The words at the top of the above four letters are '*guru samarth*;' and the letters end with the formal words '*kalave, bahut kay lihine, lobh karava hi vinanti*;' and it is in evidence that these formal words are in the handwriting of the Desai or his widow. Now, the question arises whether the addition of these formal words in the handwriting of the debtor suffices to meet the requirements of s. 19 of the Limitation Act, which prescribes an acknowledgment made in writing signed by the debtor as being necessary to create a new period of limitation. The Subordinate Judge holds that the addition of the formal words specified above is equivalent to a signature. But on careful consideration of all the reported cases I am unable to agree with him. None of the cases under s. 19 or s. 20 of the Act go as far as this. There must be an autograph signature (which would include a mark in the case of an illiterate man) in some part of the document. A seal or other device, unless it bears the name of the person, would not be sufficient. The word 'sign' or 'signature' must, I take it, be construed in its ordinary and every-day sense. What the Legislature intended by the use of the word may be inferred from the definition given in the General Clauses Act of 1887, which shows that a person who can write must write his own name; and that a mark is only admissible in the case of a person who is unable to write. I cannot extend the meaning of the word 'sign' beyond that given to it in the reported decision; and I must hold that the letters 5, 6, 7 and 8 are not signed by the persons by whom they purport to be written, and, therefore, they have not the effect of giving a fresh starting point from these dates for the purpose of limitation."

The plaintiffs preferred a second appeal.

[589] *P. M. Mehta* (with *Mahadeo C. Apte*), appeared for the appellants (plaintiffs):—The letters are sufficient acknowledgments of the debt. They were written, as is usual among persons of the class to which the Desai belongs, by his authority and are subscribed by him at the top and the bottom. Such subscription is tantamount to signature. Section 19 of the Limitation Act does not mean that in all cases the signature must be made by the debtor himself. He may authorize some one else to make his signature. Further, it is not necessary that the name should be formally subjoined—*Khwaja Muhammad* v. *Venkatarayar* (1). Though the name of the defendant is not in his handwriting, it appears at the top of each

(1) 2 M.H. C. R. 79.

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letter, and his authority may be inferred—*Mathura Das* v. *Babu Lal* (1); *Darrell* v. *Evans* (2).

Inverarity (with *Vasudeo G. Bhandarkar*) for the respondents (defendants):—The Judge found that the words which the defendant has himself written at the top and bottom do not amount to his signature. The name of the defendant in the body of the letters is not in his handwriting. Had it been in his handwriting, it would have been considered to be his signature under the provisions of the Limitation Act—*Andarji* v. *Dulabh*(3).

JUDGMENT.

SARGENT, C. J.—The only question which has been argued in this second appeal is, whether the three letters of the Desai can be treated as acknowledgments as required by s. 19 of the Limitation Act. The body of those letters is admittedly written by a third person and begins with the words "To the creditor from Rajeshri Desai." At the top of the letters are the words "*guru samarth*," and the letters end with the formal words "*kalave, bahut kay lihine, lobh karava hi vinanti.*" These words are all found to be in the handwriting of the Desai himself, and the evidence shows that this is the usual mode of signing letters and informal documents, among the class to which the debtor belonged, with the view of authenticating such documents as the documents of the person so signing. The Subordinate Judge held that the requirements of the section were sufficiently complied with; but the District Judge held that the name of the debtor not being **[590]** found in the letters there was no signing as contemplated by the section, and, therefore, that the letters did not give a fresh starting point for the purposes of the statute.

The decision in *Bhimangowda* v. *Eeranah*(4) shows that the debtor's signature need not necessarily be by writing his name, and that the making his mark by an illiterate debtor at the foot of an acknowledgment makes it a valid one within the contemplation of the section. The ground of that decision must be that the "signing" in such manner as is usually adopted by the debtor with the view of showing that he intended to be bound by the document, renders the document effective as an acknowledgment under the section. It is on this ground indeed that it has also been held that the 'signing' (by which word in its ordinary acceptation is meant signing the name at the foot) may be by writing the name in any other part of the document, provided it be intended to operate as an acknowledgment by the party that it is his instrument—*Mathura Das* v. *Babu Lal*. Whether the circumstance of the debtor not signing his name is the result of necessity as in the case of the illiterate debtor, or of custom as in the case of a class of debtors having a special status in the community, can be of no importance. We agree, therefore, with the Subordinate Judge that by analogy the writing certain specified words by desais at the top and bottom of the letters which is admittedly the usual way, amongst persons of that class, of showing that the letter is to be regarded as written by their authority, is a 'signing' within the section. It is clear, on the findings of the Court below as to the part payments, that the suit would be in time if any one of the letters in question was a valid acknowledgment under the section, and we must, therefore, reverse the decree of the Court below and restore that of the Subordinate Judge. Costs on respondent here and in the Court below.

Decree reversed.

(1) 1 A. 683.
(2) 31 L. J. Exch. 337 (345).
(3) 5 B. 88.
(4) 7 M.H.C. R. 358.