1903.

HAJI ISMAIL v. THE MUNICIPAL COMMISSIONER OF BOMBAY.

AHMED MOOSA v. THE MUNICIPAL COMMISSIONER OF BOMBAY.

Appeal No. 1298.

Attorneys for the appellant: Messrs. *Khanderao S. and L.*

Attorneys for the respondent: Messrs. *Crawford Brown & Co.*

Appeal No. 1299.

Attorneys for the appellants: Messrs. *Bicknell, Merwanji and Motilal.*

Attorneys for the respondent: Messrs. *Crawford Brown & Co.*

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

1903. December 1.

JAMNA (ORIGINAL PLAINTIFF), APPLICANT, v. JAGA BHANA AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

Limitation Act (XV of 1877), section 20—Part payment—Statement in writing not in debtor's hand—Debtor's mark beneath—Limitation.

The condition prescribed by section 20 of the Limitation Act XV of 1877 that part-payment of the principal debt should appear in the handwriting of the person making the same is satisfied if the payer affixes his mark beneath an endorsement not written by him.

APPLICATION under the extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts' Act IX of 1887) against the decision of Mohanrai D. Desai, Subordinate Judge of Bulsar, in the Surat District, in Small Cause Suit No. 162 of 1903.

The plaintiff sued in the beginning of the year 1903 to recover rupees fifteen in the Court of the Subordinate Judge of Bulsar in his Small Cause jurisdiction basing his claim on a *khata* passed in his favour by the defendants Jaga Bhana and Kika Bhana on the 21st November, 1899. The plaintiff, in order to save the bar of limitation, relied on a part-payment of rupees four made by Kika Bhana on the 5th February, 1900. The part-payment was written by one Jivan Kessur and Kika Bhana had made his mark beneath the writing.

The defendants denied the *khata* and the part-payment and pleaded the bar of limitation.

* Application No. 175 of 1903 under the Extraordinary Jurisdiction.

The Subordinate Judge dismissed the suit as time-barred. He held, relying on *Joshi Bhaishankar* v. *Bai Parvati*[1], that though the part-payment was made by one of the debtors, the endorsement about the payment being in the handwriting of a different person, such payment did not fulfil the requirements of the proviso to section 20 of the Limitation Act. The Subordinate Judge was further of opinion that the rulings of the Madras High Court in *Sesha* v. *Seshaya*[2] and *Ellappa* v. *Annamali*[3] were not obviously approved by the Bombay High Court in the case above quoted.

The plaintiff applied under the extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts' Act IX of 1887) urging *inter alia* that the Judge erred in holding that the claim was time-barred, that he misunderstood the provision of the Limitation Act (XV of 1877), that he erred in relying on the decision in *Joshi Bhaishankar* v. *Bai Parvati*[1], and that he was wrong in thinking that the Madras rulings mentioned above were not approved of by the Bombay High Court. A *rule nisi* having been issued calling on the defendants to show cause why the Judge's decision should not be set aside,

N. K. Desai appeared for the applicant (plaintiff) in support of the rule.

There was no appearance on behalf of the opponents to show cause.

JENKINS, C. J.:—The question raised before us is whether the part-payment of the principal of the debt in suit created a new period of limitation. To ensure that consequence section 20 of the Limitation Act requires that the fact of the payment should appear in the handwriting of the person making the same. In this case there is a statement in writing of the fact of payment, but not written by the debtor's hand. It is however contended that the fact of the payment appears in the debtor's handwriting inasmuch as he has placed his mark beneath it, and we have to adjudicate on the correctness of this contention. More than 20 years ago it was decided by two separate benches of the Madras

(1) (1901) 26 Bom. 246. (2) (1883) 7 Mad. 55.
(3) (1883) 7 Mad. 76.

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High Court that the affixing of a mark, as in this case, was a sufficient compliance with the Act, and it would appear that this view was shared by other learned Judges of that Court: *Sesha* v. *Seshaya*[1] and *Ellappa Nayak* v. *Annamalai*[2]. The reported cases disclose no subsequent dissent from these decisions, though they have been distinguished on more than one occasion. Were the matter *res integra* we might have felt difficulty in arriving at the same conclusion, but it is of paramount importance that in those matters, which enter into the daily life of the people, a long settled rule of law should not lightly be disturbed, merely because it may not fit in with the individual opinion of a Judge or Bench before whom it may come for consideration. It is true that according to prevailing notions, the Courts of one Presidency do not regard themselves as bound by decisions of another even on question of universal application —a matter on which perhaps some day a more satisfactory understanding may prevail—still we think we ought, under the circumstances, to be guided by the Madras decisions which completely cover the point before us.

On this ground therefore we hold the suit is not barred.

Order accordingly.

(1) (1883) 7 Mad. 55. (2) (1883) 7 Mad. 76.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

1903. *December* 9.

MANILAL UMEDRAM AND OTHERS (ORIGINAL JUDGMENT-CREDITORS), APPLICANTS, *v.* NANABHAI MANEKLAL AND OTHERS (ORIGINAL OPPOSING DECREE-HOLDERS), OPPONENTS.*

Civil Procedure Code (Act XIV of 1882), section 295—Rateable distribution—Realization of assets—Interpretation.

A certain sum of money, which was deposited in a Bank in the joint names of the Collector and a judgment-debtor, and which belonged to the judgment-debtor, was sent by the Collector in the form of a cheque to the Court at the request of the Court to which the judgment-creditor had applied for the payment of his decretal amount out of the said money. After the cheque was

* Application No. 96 of 1903 under the extraordinary jurisdiction.