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the personal capacity, the claims being based upon a money demand. We make the Rule absolute, set aside the District Judge's decree and remand the appeal to the District Judge to be decided on the merits. All that we have here decided is that under Order VIII, Rule 6, it is competent to the defendant to urge by way of set-off the claim which he seeks so to urge. Costs costs in the appeal.

Decree set aside.

J. G. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

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September 14.

NIWAJKHAN NATHANKHAN (ORIGINAL DEFENDANT), APPLICANT *v.* DADABHAI MUSSE VALLI (ORIGINAL PLAINTIFF), OPPONENT.*

Limitation Act (IX of 1908), section 20—Part-payment—Payment recorded by endorsements in the hand-writing of the person receiving—Endorsement only signed by the debtor—Whether sufficient acknowledgment.

To save the suit from being barred by limitation, the plaintiff relied on part-payments made by the defendant. The part-payments were recorded by endorsements which the plaintiff admitted were in his hand-writing, but he contended that the endorsement being signed by the defendant was a sufficient acknowledgment within section 20 of the Limitation Act, 1908 :

Held, that the fact of payment recorded being not in the hand-writing of the person making the payment the provisions of the section were not satisfied.

Santishwar Mahanta v. *Lakhikanta Mahanta*, (1) applied.

APPLICATION for revision (under section 25 of the Provincial Small Cause Courts Act IX of 1887)) against the decree passed by K. H. Kirkire, First Class Subordinate Judge at Broach, in Small Cause Suit No. 636 of 1915.

Suit for rent.

The plaintiff claimed to recover Rs. 219-14-0 as due on two rent notes. The rent notes were dated the 27th

* Application No. 183 of 1916 under revisionary jurisdiction.

(1) (1908) 35 Cal. 813.

June 1909 and 10th July 1910, the dates fixed for payment of the rent being the 13th March 1910 and 2nd March 1911 respectively.

The suit was brought in 1915.

In order to save the suit from the bar of limitation the plaintiff relied on part-payment of Rs. 15 made by the defendant. The part-payments were recorded by endorsements in the hand-writing of the plaintiff signed by the defendant.

The defendant contended that the endorsement under these circumstances was not an acknowledgment within the meaning of section 20 of the Limitation Act 1908, and therefore the suit was barred by limitation.

The lower Court decreed the plaintiff's claim holding that the signature of the defendant under the endorsement was a sufficient acknowledgment within section 20 of the Limitation Act, 1908.

The defendant preferred an application under revisional jurisdiction.

T. R. Desai, for the applicant :—I submit the lower Court is wrong in holding that the limitation is saved by the mere signature of the debtor below an endorsement written by a third person. This is the case of a debtor who could write and put his signature. It is not the case of an illiterate person. Section 20 of the Limitation Act (IX of 1908) requires that the very fact of part-payment of the principal must appear in the hand-writing of the person who makes the payment. The section is meant for the protection of the debtors against fraud by creditors and should be strictly construed in favour of the debtor. In *Lodd Govindoss Krishnadoss* v. *Rukmani Bai*,[1] it was held that where the debtor is not an illiterate person the whole endorsement about the fact of payment and not mere

[1] (1913) 38 Mad. 438.

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signature should appear in the hand-writing of the debtor: see also *Santishwar Mahanta* v. *Lakhikanta Mahanta*[1]; *Mukhi Haji Rahmuttulla* v. *Coverji Bhuja*.[2]

The lower Court was wrong in its view that the Bombay cases are against my submission. In *Joshi Bhaishankar* v. *Bai Parvati*,[3] it was held that the fact of payment must be in the hand-writing of the person who actually makes the payment. In *Jamna* v. *Jaga Bhana*,[4] the present question had not arisen. It was the case of an illiterate debtor and its authority cannot be extended to the case of a debtor who can write.

A. G. Sathaye, for the opponent:—The case of *Jamna* v. *Jaga Bhana*[4] would apply equally to the case of a signature made by a debtor under a writing in the hand of another. There is nothing to show that the debtor could write beyond his signature. If a mark is enough *a fortiori* signature would be: see *Sesha* v. *Seshaya*;[5] *Ellappa* v. *Annamalai*[6] which being not yet overruled are good law. The section 20 should be liberally construed so as to help the honest debtor whose dues are proved.

SCOTT, C. J.:—The plaintiff sued the defendant to recover Rs. 219-14-0 as due upon two rent notes, dated respectively the 27th June 1909 and the 10th July 1910, the dates fixed for payment of the rent being the 13th March 1910 and the 2nd March 1911, respectively. The suit was not brought until the year 1915, but the plaintiff alleged that part payments of Rs. 15 had been made by the defendant. The part payments were recorded by endorsements which the plaintiff admitted were in

(1) (1908) 35 Cal. 813.
(2) (1896) 23 Cal. 546.
(3) (1901) 26 Bom. 246.
(4) (1903) 28 Bom. 262.
(5) (1883) 7 Mad. 55.
(6) (1883) 7 Mad. 76.

his handwriting, but he contended that the endorsement being signed by the defendant was a sufficient acknowledgment within section 20 of the Limitation Act. That section provides that "a fresh period of limitation shall be computed from the time when the payment was made, provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same." Now, in these endorsements, the fact of the payment appears in the handwriting of the plaintiff, the person receiving, and not the person making it, and it has been held by the Calcutta High Court in *Santishwar Mahanta* v. *Lakhikanta Mahanta*,[1] that a mere signature to an assertion of payment is not sufficient to bring the case within the proviso to section 20 of the Limitation Act. In that conclusion we concur. Otherwise it is difficult to understand what is meant by the stipulation that the fact of payment should appear in a particular handwriting. A mere signature is not a statement of a payment, and it is meaningless without something in writing to which it is appended which will record the fact of payment. If, then, the fact of payment recorded is not in the handwriting of the person making the payment, the provisions of the section are not satisfied. It is not alleged here, much less proved, that the person making the payment could do nothing more than sign his name. So it is unnecessary to consider the cases which have allowed as a good acknowledgment a mere signature or a mark, where it is proved that the person paying was able to do no more in the way of recording the payment. We set aside the decree of the lower Court and dismiss the suit with costs throughout.

Decree set aside.

J. G. R.

[1] (1908) 35 Cal. 813.