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I would confirm the decree of the lower appellate Court with costs.

MACLEOD, C. J. :—I agree.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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CHUNILAL RATANCHANDRA GUJRATHI (ORIGINAL PLAINTIFF), APPLICANT *v.* LAXMAN GOVIND DUBE (ORIGINAL DEFENDANT), OPPONENT*.

Ruzu Khata—Suit based on a khata—Maintainability of suit.

There had been certain dealings between the plaintiff and the defendant resulting in the defendant incurring debts to the plaintiff on the 3rd July 1914, 21st July 1914 and 3rd September 1914. An account of the dealings being made, the defendant signed an acknowledgment (Khata) for Rs. 90 on the 29th June 1917. The plaintiff having sued to recover the amount due on the Khata, the Subordinate Judge held that the suit was not maintainable on the Ruzu Khata and dismissed it. The plaintiff having applied to the High Court,

Held, reversing the decree and allowing the suit, that inasmuch as the acknowledgment made before the limitation period expired, implied an unconditional promise to pay, there was no reason why it should not form the basis of the suit.

Maniram Seth v. *Seth Rupchand*(1), which in effect overruled *Shankar* v. *Mukta*(2), followed.

APPLICATION under Extraordinary Jurisdiction against the decision passed by S. A. Gupte Subordinate Judge at Pimpalgaon.

Suit on a Ruzu Khata.

*Application No. 304 of 1920 under Extraordinary Jurisdiction.

(1) (1906) 33 Cal. 1047 (2) (1896) 22 Bom. 513.

The plaintiff sold to the defendant goods of different value on the 3rd of July 1914, 21st July 1914 and the 3rd September 1914, and got a separate Khata for each of these items. An account of these Khatas was made on the 29th June 1917 and a fresh Khata for the balance of Rs. 90 was opened.

The plaintiff sued to recover the amount due on the Khata of 29th June 1917. The defendant admitted that he had passed the Khata sued on and asked for instalments.

The Subordinate Judge held that no suit lay on a Ruzu Khata : *Shankar* v. *Mukta*[1]. He, therefore, dismissed it.

The plaintiff applied to the High Court under its Extraordinary Jurisdiction.

S. R. Parulekar, for the applicant.

D. C. Virkar, for the opponent.

MACLEOD, C. J. :—The plaintiff sued to recover on a Ruzu Khata, dated 29th June 1917. There had been certain dealings between the plaintiff and the defendant resulting in the defendant incurring debts to the plaintiff on the 3rd July 1914, 21st July 1914 and the 3rd September 1914. The account was made up on the 29th June 1917, and after taking into consideration payments made and interest charged, the defendant signed the acknowledgment sued on for Rs. 90. The suit was brought to recover Rs. 90 together with interest at twelve per cent. from the 29th June 1917. At the hearing the defendant admitted that he had passed the Khata sued on and asked for instalments. The learned Judge held that no suit lay on a Ruzu Khata following the decision in *Shankar* v. *Mukta*[1], and accordingly

[1] (1896) 22 Bom. 513.

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the suit was dismissed with costs. In the case of *Shankar* v. *Mukta*[1] the following questions were referred by the Subordinate Judge to the High Court:—(1) Is the Ruzu Khata sufficient evidence of the promise alleged by plaintiff; (2) Can a suit lie on such promise? The Court answered both these questions in the negative. Reference was made to a number of decisions which were considered by the Court as being authority for the proposition that a Ruzu Khata cannot form the basis of a suit, but that, the original transactions forming the basis of the suit, the subsequent Ruzu Khatas are only evidence of the debt due serving to prevent the operation of the Statute of Limitation. The Chief Justice at p. 518 said:

"No reasons are assigned by the Courts for the view which they have adopted in opposition to the view that a Ruzu Khata is an unequivocal admission of a debt, from which the law implies a promise to pay, and thus (except for limitation purposes) contains in itself all the requisites of a valid contract which can form the immediate basis of a suit. The decisions are possibly based on the provisions of section 50 of the Civil Procedure Code, which apparently contemplates that the plaintiff should state his original cause of action and treat acknowledgments of it as exceptions taking the case out of the range of the limitation law. However that may be, we think that the authorities are so numerous and uniform as to prevent us from following the technical English law upon this subject."

Clearly the Chief Justice would have preferred to follow the English law but for the principle of *stare decisis*.

This question was considered by their Lordships of the Privy Council in *Maniram Seth* v. *Seth Rupchand*[2]. No doubt there the plaintiff sued on the original account and relied on an acknowledgment by the defendant to prevent the bar of limitation. The questions were discussed whether an acknowledgment only amounted to a bare acknowledgment of the debt

(1) (1896) 22 Bom. 513.

(2) (1906) 33 Cal. 1047.

or whether it implied a promise to pay. Their Lordship said at p. 1057:

"An acknowledgment according to the Indian Act must be signed by the party to be affected by it, and the only document, which can be relied upon as an acknowledgment signed by the respondent, is the statement filed by the respondent in the proceedings touching the application for probate, the material part of which has been already set out, but which it is convenient here to repeat. 'For the last five years he' (the respondent) 'had open and current accounts with the deceased.'...There is, therefore, a clear admission that there were open and current accounts between the parties at the death of Motiram. The legal consequence would be that at that date either of them had a right as against the other to an account. It follows equally that, whoever on the account should be shown to be the debtor to the other, was bound to pay his debt to the other, and it appears to their Lordships that the inevitable deduction from this admission is that the respondent acknowledged his liability to pay his debt to Motiram or his representative, if the balance should be ascertained to be against him. The question is whether this is sufficient by the Indian law to take the case out of the statute. It has been already pointed out that the acknowledgment was made before the statutory period had run out. Thus one requisite of section 19 is complied with. The necessity of signature by the party to be charged is also complied with. The acknowledgment is not addressed to the person entitled, but according to the 'explanation' given in section 19 this is not necessary. We have therefore the bare question of whether an acknowledgment of liability, if the balance on investigation should turn out to be against the person making the acknowledgment, is sufficient. Their Lordships can see no reason for drawing any distinction in this respect between the English and the Indian law. The question is whether a given state of circumstances falls within the natural meaning of a word, which is not a word of art, but an ordinary word of the English language, and this question is clear of any extraneous complications imposed by the statute law of either England or India. In a case of very great weight, the authority of which has never been called in question, Lord Justice Mellish laid it down that an acknowledgment to take the case out of the Statute of Limitations, must be either one from which an absolute promise to pay can be inferred, or, secondly, an unconditional promise to pay the specific debt, or, thirdly, there must be a conditional promise to pay the debt, and evidence that the condition has been performed...An unconditional acknowledgment has always been held to imply a promise to pay, because that is the natural inference, if nothing is said to the contrary. It is what every honest man would mean to do. There can be no reason for giving a different meaning to an acknowledgment that there is a right to have the accounts

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settled, and no qualification of the natural inference that, whoever is the creditor shall be paid, when the condition is performed by the ascertainment of a balance in favour of the claimant."

If, then, the acknowledgment, which in this case was made before the limitation period expired, implies an unconditional promise to pay; I can see no reason why it should not form the basis of a suit. In any event the only penalty which could fall on the plaintiff would be to have to amend his plaint so as to implead the previous transactions. It is clear, therefore, that the decision in *Shankar* v. *Mukta*[1] having been overruled in effect by the decision in *Maniram Seth* v. *Seth Rupchand*[2], the plaintiff in this case must be entitled to a decree for Rs. 90 with interest at six per cent from the 29th June 1917 to 29th June 1920, and the costs of the suit. The amount to be paid in two annual instalments, the first to be paid within three months from the date these proceedings are returned to the lower Court. The defendant to pay the costs of the Rule.

SHAH, J. :—I agree.

Rule made absolute.

J. G. R.

(1) (1896) 22 Bom. 513.

(2) (1906) 33 Cal. 1047.

APPELLATE CIVIL.

1921.

March 31.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

DHULABHAI DABHAI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* LALA DHULA AND ANOTHER, HEIRS OF THE DECEASED DHULA RAMA (ORIGINAL DEFENDANTS), RESPONDENTS*.

Hindu law—Joint family—Co-parceners—Sale of his share by a co-parcener —Suit for partition by the purchaser—Maintainability of suit.

* Second Appeal No. 158 of 1920.

(With Second Appeal No. 862 of 1920.)