

1923
 PRAMATHA
 NATH
 MUKERJEE
 v.
 EMPEROR.
 RANKIN J.

when the proceedings begin afresh in the lower Court.

The result, therefore, is that the convictions of the accused are set aside, and the case sent back to the same Magistrate to begin the trial afresh from the point which I have indicated. The fines if paid must be refunded.

The same order is made on the revision petition at the instance of the second accused, the printer.

E. H. M.

APPELLATE CIVIL.

Before Walmsley and B. B. Ghose JJ.

RAMANI KANTA RAY

v.

BHIMNANDAN SINGH.*

1923
 Feb. 2.

Kabuliyat—Evidence Act (I of 1872), s. 90—Presumption—Am-mukhtar, signature by—Proof of authority to execute a document, if necessary.

Where a *kabuliyat* more than 30 years old purported to have been executed by two ladies, A & B—*ba-kalam*—C, *Am-mukhtar* :—

Held, that under s. 90 of the Evidence Act no doubt there should be a presumption that the document was executed by C, as *Am-mukhtar*, but it must be proved that the *Am-mukhtar* had authority to execute the document on behalf of the ladies.

SECOND APPEALS by Ramani Kanta Ray, the plaintiff.

The analogous appeals Nos. 1551, 1552 and 1553 of 1921 arose out of three suits for rent against the same

* Appeals from Appellate Decrees, Nos. 1551 to 1553 of 1921, against the decrees of Mamatha Nath Bose, Subordinate Judge of Rangpore, dated March 31, 1921, reversing the decree of Jatindra Nath Mukerjee, Munsif of Gaibanda, dated Dec. 3, 1919.

defendants and were heard together. The claim was based upon three *kabuliyats* for rent with interest as stipulated by Sheo Kumari and Kulamanti who were the previous tenants in possession. On their death, the defendants came into possession as the rever- sionary heirs of the last male owner. The *kabuliyats* were executed by one Sadanand Sarkar as *Am-mukhtar* for the widows. The defendants denied the *kabuliyats* and contended that they were not bound to pay interest. The jama was, however, admitted in each case. The Munsif decreed the suits holding that the plaintiff was entitled to get interest as stipulated in the *kabuliyats*. On appeal, the Subordinate Judge held that the defendants were not bound to pay interest at the stipulated rate and accordingly he varied the decrees and allowed the legal interest.

1923

RAMANI
KANTA RAY
v.
BHIM-
NANDAN
SINGH.

Babu Atul Chandra Gupta, for the appellant. The lower Appellate Court is wrong in thinking that *Ubilack Rai v. Dillial Rai* (1), governs the facts of the present case. That case lays down that when a document 30 years old purports to be executed by an agent for his principal the document is not proved to be the principal's by its mere production from proper custody under section 90 of the Evidence Act, but for that purpose proof of agent's authority for such execution is necessary. But in the present case the documents do not purport to be executed by an agent for his principal but purport to be executed by the two ladies, Sheo Kumari and Kulamanti themselves through the pen of Sadanand Sarkar, *Am-mukhtar* ("Sheo Kumari, Kula-
"manti--*ba-kalam*--Sadanand Sarkar, *Am-mukhtar*"). *Am-mukhtar* is a mere description here. A signature affixed to a document by a person through the hand of another is not the latter's signature but of the former :

(1) (1878) I. L. R. 3 Calc. 557.

1923

RAMANI
KANTA RAY
v.
BHIM-
NANDAN
SINGH.

Deo Narain Rai v. Kukur Bind (1), *Sasi Bhusan v. Chandra Peshkar* (2). Section 90 of the Evidence Act provides that in the case of a document executed, the Court may presume that it was duly executed, which in the case of a document executed by a person by affixing his signature through the hand of another means that the Court may presume that the facts necessary for due execution under those circumstances were present, *e.g.*, that the name of the executant was signed by the other person in his presence and at his request. Otherwise section 90 would cease to be applicable to documents executed or attested by illiterate persons and the Evidence Act is the law of a country where illiteracy is the rule and literacy the exception.

Babu Mahendra Nath Roy and *Babu Debendra Narayan Bhattacharjee*, for the respondents, were not called upon.

GHOSE J. These appeals arise out of three suits for rent. The claim is based upon three *kabuliyats* alleged to have been executed by two ladies, Sheo Kumari and Kulamanti. The defendants are in possession of the properties included in the *kabuliyats* claiming to have interest as the reversionary heirs of the last male owner. The question only relates to the rate of interest stipulated in those *kabuliyats* which is six pies per rupee, per month. The defendants' plea is that as the lands have come to their hands as the reversionary heirs of the last male owner, they are not bound by the stipulation contained in the *kabuliyats* as regards the payment of interest and that the ladies did not, as a matter of fact, execute these documents. The documents purport to be more than thirty years old and on the face of them, they are executed or rather signed as (শিও কুমারী and কুলমন্তি বং নদানন্দ আমমোক্তার ।)

(1) (1902) I. L. R. 24 All. 319.

(2) (1906) I. L. R. 33 Cal. 861.

“Sheo Kumari and Kulamanti—*ba-kalam*—Sadananda, *Am-mukhtar*”. The Court of first instance presumed that the documents had been executed by these two ladies under section 90 of the Evidence Act and gave a decree to the plaintiff according to the rate of interest claimed. On appeal the learned Subordinate Judge held that, though there was a presumption that the documents had been executed by Sadanand, no presumption could be raised that Sadanand had authority to execute those documents on behalf of the ladies. Upon that finding, the learned Subordinate Judge held that those documents had not been proved to have been executed by the ladies and that consequently, under no circumstance, could it be held that the defendants were bound by the stipulations contained in them as regards the payment of interest. It is not necessary to refer to the other two points dealt with by the Subordinate Judge, if this finding with regard to the question of the execution of the documents is accepted to be correct.

It is contended on behalf of the plaintiff, who is the appellant before us, that the effect of the signature by the *Am-mukhtar* is that the documents purport to have been executed by the ladies, and if that is so, the presumption under section 90 of the Evidence Act arises and it should be held that the ladies were the executants of the documents. It seems to me that the documents were really executed by Sadanand as the *Am-mukhtar* of the ladies and the presumption raised by section 90 of the Evidence Act is that the documents were executed by Sadanand as *Am-mukhtar*, and it must be proved that this *Am-mukhtar* had authority to execute the documents, on behalf of the ladies. The presumption raised seems to be equivalent to this, as if Sadanand had come to Court and simply said “I signed the documents बकलम

1923

RAMANI
KANTA RAYv.
BHIM-
NANDAN
SINGH.

GHOSE J.

1923

RAMANI
KANTA RAY
v.
BHIM-
NANDAN
SINGH.
GHOSE J.

“(ba-kalum) for the ladies,” and nothing more. In such a case, on that evidence, the plaintiff certainly could not have asked the Court to infer, without further proof, that the documents were executed by the ladies. The presumption under section 90 of the Evidence Act, in my opinion, only exonerates the plaintiff from calling Sadanand for the purpose of proving that he signed the documents (३३) for the ladies. He must prove that Sadanand had authority from the ladies to sign their names. The ground, therefore, urged on this head fails. It is not necessary as I have already stated, to notice the other grounds urged as regards the liability of the defendants to pay interest according to the terms in the *kzbaliyats* as this first ground fails.

Another ground urged is that, instead of allowing interest at the rate of $12\frac{1}{2}$ per cent. per annum, the Court should have allowed damages at the rate of 25 per cent. So far as I can see the difference, if any, would be a very small amount, the rent claimed being for four years. In any case, there is no good ground why the decrees of the Subordinate Judge allowing interest at the rate of $12\frac{1}{2}$ per cent. should not stand.

The appeals, therefore, fail and must be dismissed with costs.

WALMSLEY J. I agree.

B. M. S.

Appeals dismissed.