

against the mortgagees and the mortgaged property. On the other hand, *Govinda v. Mana Vikraman*(1) is a direct authority for giving plaintiff the relief claimed in this suit. The decree of the Lower Court is reversed, and there will be a decree for plaintiff for recovery of the amount claimed from defendants Nos. 1 to 5 and 7 and 8 personally and by sale of the mortgaged property.

Appellant is entitled to his costs in this and the Lower Court.

NANU  
v.  
RAMAN.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.*

AMUTHU (DEFENDANT), APPELLANT,

v.

MUTHAYYA (PLAINTIFF), RESPONDENT.\*

1892.  
November 15.  
December 23.

*Limitation—Account settled but not signed—Oral promise by debtor to pay balance—Commencement of limitation.*

The plaintiff and the defendant, who was his agent, examined the account between them on 13th July 1887 and a balance was found due by defendant, who orally promised to pay it in one month. The account was not signed. The plaintiff sued on 10th July 1890 to recover the amount, and it appeared that the last item in the account to the debit of the defendant was dated 28th May 1887:

*Held*, that the suit was barred by limitation.

SECOND APPEAL against the decree of J. A. Davies, District Judge of Tanjore, in appeal suit No. 194 of 1891, confirming the decree of V. Narayana Rau, District Munsif of Negapatam, in original suit No. 219 of 1890.

Suit filed on 10th July 1890 for money due on a settlement of account between plaintiff and defendant. The plaintiff employed the defendant as captain of a vessel, and kept a running account with him. The account, in which the last entry to debit of the defendant was dated 28th May 1887, was examined on 13th July 1887, and it was ascertained that a balance of Rs. 642-5-6 was due thereon by the defendant to the plaintiff. The plaint alleged that the defendant orally promised to pay this amount in one month, and the date of the accrual of the cause of action was 13th July 1887. The defendant raised the plea of limitation.

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(1) I.L.R., 14 Mad., 284.

\* Second Appeal No. 1906 of 1891.

AMUTHU  
#. MUTHAYYA.

The District Munsif passed a decree as prayed. On appeal the District Judge referred to *Dukhi Sahu v. Mahomed Bikhu*(1), but held that that authority was not applicable to the present case. He said : " Had the defendant in this case merely admitted " the correctness of the account, that case would apply to this ; but " here not only the allegation, but the proof by plaintiff's witness, " was that the defendant made an express promise to pay the " balance, and that being so, a new contract was thereby entered " into, and taking either the date thereof or its breach as the " starting point of limitation, this suit was brought within three " years and was therefore in time."

He accordingly confirmed the decree of the District Munsif.

The defendant preferred this second appeal.

*Bhashyam Ayyangar* and *Seshachariar* for appellant.

Besides the case mentioned in the judgment, *Hirada Karibasappa v. Gadigi Muddappa*(2) was referred to on the part of the appellant.

*Rama Rau*, for respondent, supported the judgment on the grounds stated by the District Judge.

JUDGMENT.—It has been found that there was a settlement of accounts between plaintiff and defendant on 13th July 1887, and that defendant promised to pay Rs. 642-5-6, the balance struck, with interest at 12 per cent. per annum, within one month. The suit was instituted on the 10th July 1890. The question is whether the promise to pay amounted to a new contract. On behalf of the defendant-appellant it is argued that the agreement was void as made without consideration.

The learned Judge appears to have misapprehended the remarks of Garth, C.J., in *Dukhi Sahu v. Mahomed Bikhu*(1). An account stated is only a substantive cause of suit in itself when it is in writing signed by the defendant or his agent duly authorized in this behalf. As remarked by the learned Chief Justice, a promise to take a debt out of the operation of the Limitation Act must be in writing. The promise in the present case was only oral and amounted to no more than an admission of the debt due. It is, however, argued for the respondent that the giving a month's time amounted to consideration. No case has been cited in support of this contention, nor do we think it can prevail. The

(1) I.L.R., 10 Cal., 284, see p. 296.

(2) 6 M.H.C.R., 197.

transaction did not amount to a new contract extinguishing the old cause of action. If the defendant had given a promissory note for the amount found due, it would have been different, but a mere oral promise to pay is not sufficient to take the case out of the statute. The decrees of the Lower Courts must be reversed and the suit dismissed with costs throughout.

AMUTHU  
v.  
MUTHAYYA.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.*

VENKATASAMI (DEFENDANT), APPELLANT,

v.

KRISTAYYA (PLAINTIFF), RESPONDENT.\*

1893.  
Feb. 2, 21.

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*Registration Act—Act III of 1877, ss. 36, 72 to 77—Compulsory registration—  
Suit to compel registration.*

The plaintiff and defendant agreed that, in consideration of a sum of money already paid and of a further sum to be paid on the completion of the transaction, the defendant should transfer a certain mortgage to the plaintiff, and an instrument of transfer was prepared and executed to give effect to that agreement, but it was not registered. The plaintiff now sued for a decree compelling the defendant to execute and register that or a similar instrument:

*Held*, that the plaintiff was not entitled to a decree for compulsory registration, and should have proceeded under Registration Act, ss. 36, 72 to 77.

SECOND APPEAL against the decree of H. G. Joseph, Acting District Judge of Ganjam, in appeal suit No. 141 of 1891, affirming the decree of K. Ramalinga Sastri, District Munsif of Chicacole, in original suit No. 29 of 1891.

The plaintiff alleged that it had been agreed between him and the defendant that the defendant, for consideration received and a further sum to be paid when the transfer should be completed, should transfer to him a mortgage deed executed to the defendant by certain persons on 18th August 1887; it was further alleged that a deed of transfer had been prepared accordingly, but not registered; and he now prayed for a decree directing the execution and registration of a deed of transfer, to effectuate the above agreement. The defendant pleaded that the plaintiff had failed to carry out his part of the contract.

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\* Second Appeal No. 681 of 1892.