suggested. It cannot be supposed that, if when the Code of 1861 and 1872 were in force, the sections in them corresponding to section 83 of the present Code were applicable to warrants issued under Act XIII of 1859, that state of the law was intended to be altered in the Code of 1882. To hold that none of the provisions of Chapter VI of the Code apply to such warrants would lead to the conclusion that there is no provision made for the issuing or executing of them. It is not necessary to say whether, under the Act of 1859, breach of contract is constituted an offence. The language of the Act appears to us to indicate that such was the intention of the Legislature, but at any rate the Act authorizes the Magistrates, on a complaint being made, to issue a warrant, and the only question is whether the provisions of the Criminal Procedure Code apply to that warrant. We think that the provision in question does apply.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

1896. October 5, 7, 13.

IN SECOND APPEAL No. 792 of 1895:

PERIAVENKAN UDAYA TEVAR (DEFENDANT), APPELLANT,

v.

SUBRAMANIAN CHETTI (PLAINTIFF), RESPONDENT.*

IN SECOND APPEAL No. 1440 of 1895:

SUBRAMANIAN CHETTI (PLAINTIFF), APPELLANT,

v.

PERIAVENKAN UDAYA TEVAR (DEFENDANT), RESPONDENT.*

Limitation Act, s. 19—Acknowledgment—Deposition signed by the debtor.

To satisfy the requirements of section 19 of the Limitation Act an acknowledgment of a debt must amount to an acknowledgment that the debt is due at the time when the acknowledgment is made.

A record made by a Judge of the evidence given by a debtor as a witness at the trial of a suit and signed by the debtor is a writing signed by the debtor within the meaning of section 19 of the Limitation Act.

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* Second Appeals Nos 792 and 1440 of 1895.

PERIA-VENKAN UDAYA TEVAR v. SUBRAMANIAN CHETTI.

SUBRAMANIAN CHETTI v. PERIA-VENKAN UDAYA TEVAR.

SECOND APPEALS against the decree of C. Gopalan Nayar, Subordinate Judge of Madura (East), modifying the decree of S. Ramasami Ayyangar, District Munsif of Sivaganga, in Original Suit No. 178 of 1894.

The plaintiff sued to recover from the defendant the sum of Rs. 963-3-11, together with interest thereon amounting to Rs. 419, which he alleged to be due under an agreement made in the year 1887.

The defendant is the present Zamindar of Sakkandi, and prior to 1887 his deceased brother was the Zamindar. Prior to the agreement now sued on, the defendant and his brother mortgaged to the plaintiff and his brother half of the village of Sakkandi. The plaintiff and the defendant's brother subsequently prevailed on several ryots of the village to execute in favour of the plaintiff muchilikas in which the occupancy rights in the village were recognised as belonging to the ryots who executed the muchilikas. The occupancy rights in the village were, however, claimed by one Kylasam Chetti, and in 1887 the late Zamindar (the defendant's brother) agreed to indemnify the plaintiff against the costs of any suit that Kylasam Chetti might bring in respect of his occupancy rights. Kylasam Chetti brought a suit (Original Suit No. 1 of 1888 on the file of the Sub-Court) against the plaintiff and the ryots asserting his occupancy rights in that village and obtained a decree. Kylasam Chetti took out execution for his costs. One warrant was issued for Rs. 620 against the ryots; this sum the defendant paid having borrowed the money for that purpose from one Annamalai Chetti. Another warrant for Rs. 963-3-11 was issued against the plaintiff. On the 8th November 1890, plaintiff paid the sum of Rs. 963-3-11, which he now sued to recover with interest. The suit was instituted on the 21st June 1894; and the plaintiff relied on an acknowledgment contained in a deposition given by the plaintiff in Original Suit No. 451 of 1891 on the 7th April 1892 as giving a fresh starting point to the period of limitation.

The deposition was in the following terms:—

"I know of the attachment process having been brought in "Original Suit No. 1 of 1888. When the process was brought I "executed a promissory note for Rs. 1,000 to Annamalai Chetti "for the amount the ryots had to pay. The process against the "ryots was for Rs. 600 and odd. It was for Rs. 1,600 and odd.

"The promissory note I executed for Rs. 1,000 was on account "of the process of attachment and arrest brought against the ryots "in Original Suit No. 1 of 1888. It is not true that Rs. 300 "and odd out of this amount was due to Annamalai Chetti on "prior dealings. This promissory note is with Annamalai Chetti. "A process was brought against the plaintiff for Rs. 600 and odd "and he paid this amount as he was one of the defendants. Two "processes were brought then. One against the ryots for Rs. "1,000, and the other against the plaintiff for Rs. 600 and odd.

"*Q.* The Zamindar had agreed to pay all the costs. Why did "you execute a promissory note for Rs. 1,000 only, and why did "the plaintiff pay the balance of Rs. 620 and odd?

"*A.* A warrant had been brought against him for this amount "and so he paid. He paid as he was one of the defendants (the "first defendant). This amount of Rs. 600 and odd also I was "bound to pay under the original understanding, but the plaintiff "paid it, as a warrant was brought for his arrest."

The defendant pleaded that he was not a party to the agreement; that the agreement was not supported by consideration; and that it was illegal.

Both the Lower Courts found that the agreement was supported by consideration, and that the defendant was a party to it. The District Munsif, however, held the consideration, for the agreement was illegal and dismissed the suit.

On appeal the Subordinate Judge reversed the decree of the Munsif. As to the acknowledgment contained in defendant's deposition, he said:

"Defendant's acknowledgment of liability in exhibit B on "account of money paid by plaintiff under the warrant of arrest "only covers 600 or 620 and odd rupees and not Rs. 963-3-11. "Probably it is due to some mistake or misapprehension, but I "cannot go behind the document. To the extent of the claim "admitted, this is a good acknowledgment within the meaning of "section 19 of the Limitation Act and in modification of the "Munsif's decree I shall direct defendant's payment to plaintiff "of Rs. 620 with interest at 6 per cent. from date of suit."

Both plaintiff and defendant appealed.

Sundara Ayyar and *Krishnasami Ayyar* for appellant.

Narayana Rau for respondent in second appeal No. 792.

Narayana Rau for appellant.

PERIA-VENKAN UDAYA TEVAR v. SUBRAMANIAN CHETTI. SUBRAMANIAN CHETTI v. PERIA-VENKAN UDAYA TEVAR.

Sundara Ayyar and *Krishnasami Ayyar* for respondent in second appeal No. 1440.

JUDGMENT.—We are clearly of opinion that there was nothing illegal or opposed to public policy in the contract between the parties, so as to render the plaintiff's suit unsustainable. With regard to the alleged bar by limitation, the appellant urges two pleas, viz.: (1) that an acknowledgment in a deposition made by a debtor is not sufficient to satisfy the requirements of section 19 of the Limitation Act, inasmuch as a witness is bound to answer the questions put to him, and any acknowledgment cannot, therefore, be regarded as voluntary; and (2) that, in fact, the terms of the acknowledgment in exhibit B, relied on by the Lower Appellate Court is insufficient.

The first point was ably discussed in the case of *Venkata* v. *Parthasardhi*(1). The two learned Judges in that case took opposite views, but we have no hesitation in expressing our concurrence with the view adopted by Muttusami Ayyar, J., viz., that a deposition given and signed by a witness in a suit is as much a writing contemplated by section 19 as is a letter addressed by him to a third party. There is nothing in the language of the section or in the policy on which it is founded to justify us in restricting its scope by excluding statements made in depositions or other proceedings before a Court of Justice. The form of the writing is immaterial. All that is necessary is that the acknowledgment should be in writing and should be signed by the party, or by his agent duly authorized in that behalf. The object was merely to exclude oral acknowledgments. It is true that a deposition is made on compulsion, and its form is often, in fact, generally, determined mainly by the frame of the questions put to the witness. In construing, however, the sufficiency of any alleged admission in a deposition, this fact should be carefully borne in mind, and this brings us to the second point urged upon us, viz., that the words used by the defendant in exhibit B are not such an acknowledgment as the Act requires. This contention, we think, is well founded. The words used are—"This amount of Rs. 600 "and odd also I was bound to pay under the original understand-"ing, but the plaintiff paid it, as a warrant was brought for his "arrest." These words admit that a liability existed at the time

(1) I.L.R., 16 Mad., 220.

of the original understanding that is some three years beforethe acknowledgment was made, but they do not admit any liability as existing at the time that the statement was made. It is true that they do not deny such liability, but that is not sufficient. It is possible that, had the witness been given the opportunity, he might have stated that the debt had been satisfied subsequent to the original understanding, but it was not necessary for him then to have stated this. It was his duty to answer the questions put to him, and the statement cannot be construed as implying any admission beyond what is on a reasonable construction contained in the words themselves. To satisfy the requirements of the section, the words must be such as to show that there was an existing jural relationships, as debtor and creditor, between the parties at the time when the admission was made, or at some time within the period of limitation prescribed by law, according to the nature of the suit. In the present case there is no such admission. The admission merely is that in 1888 the defendant was bound to pay the sum. That admission might be made now without conflicting with the defendant's plea that the recovery of the debt is now barred.

On this finding we must set aside the decree of the Lower Appellate Court, and dismiss plaintiff's suit with costs throughout. This involves the dismissal of second appeal, No. 1440 of 1895 with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

PALANI KONAN (PLAINTIFF), APPELLANT,

v.

MASAKONAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

1896. October 17.

Hindu Law—Suit by a purchaser from a coparcener—Decree for share of coparcener in specific property.

In a suit to recover possession of property purchased by the plaintiff, if it is found that the property is not the separate property of the plaintiff's vendor, but

* Second Appeal No. 762 of 1895.