

contains a contract for the payment of interest after due date at the rate of Rs. 1-12-0 which was payable before due date, and that on any default compound interest might be charged. If I did not hold this view, I should then be of opinion that the plaintiff was entitled to the interest claimed, as there does not seem to be anything unreasonable in the rate agreed upon as interest for the money lent or in the arrangement provided in case of default.

The Subordinate Judge has found that the covenant to pay compound interest must be regarded as a penal clause in the deed. I do not think that it is so, and there is nothing in the law which forbids a decree for such interest when there has been an agreement to pay it. I would modify the judgment and allow compound interest which has been disallowed by the Subordinate Judge, thus decreasing the appeal with costs.

OLDFIELD, J.—I concur in the proposed order.

Appeal allowed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr Justice Straight.

NAND RAM (DEFENDANT) v. RAM PRASAD (PLAINTIFF)*

*Suit for money on accounts stated—Act IX of 1871 (Limitation Act), sch. ii, art. 62—
Note or memorandum whereby an account is expressed to be balanced—Act XVIII
of 1869 (Stamp Act) sch. ii, No. 5—Stamp—Limitation.*

On the 9th October, 1875, the book containing the accounts between the plaintiff and the defendant, kept by the plaintiff, was examined by the parties, and a balance was struck in the plaintiff's favour which was orally approved and admitted by the defendant. On the 2nd April, 1877, the plaintiff sued the defendant for the amount of this balance "on the basis of the account-book." *Held* that the suit was in effect one on accounts stated falling within art. 62, sch. ii of Act IX of 1871, and could be brought within three years from the 9th October, 1875, for the total balance struck, and being so brought was within time.

Held also that the entry of the balance struck, not being signed by the defendant, was not a note or memorandum of the kind mentioned in No. 5, sch. ii of Act XVIII of 1869, and did not therefore require to be stamped.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of Straight, J.

* Second Appeal, No. 745 of 1879, from a decree of W. C. Turner, Esq., Judge of Cawnpore, dated the 3rd April, 1879, affirming a decree of Babu Ram Kallu Chauhan, Subordinate Judge of Cawnpore, dated the 23rd March, 1878.

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AM PRASAD.

Munshi *Hanuman Prasad* and Pandit *Bishambhar Nath*, for the appellants.

Pandit *Ajudhia Nath*, for the respondent.

The following judgments were delivered by the Court :

STRAIGHT, J.—This was a suit brought by the plaintiff, respondent, to recover the sum of Rs. 4,765, principal and interest, on the basis of an account-book. The plaintiff carries on business at Cawnpore under the style of Nand Ram and Babu Ram, while the defendants trade at Shikohabad as Nand Ram and Golab Chand. As far back as the year 1869 there were dealings between the plaintiff and defendants, the latter forwarding goods for sale to Cawnpore, drawing on the plaintiff against such goods, and occasionally making purchases through him for the purposes of their business at Shikohabad. On the 9th of October, 1875, Mohan Lal, one of the defendants, was at Cawnpore, and upon that day the accounts between the two firms were gone into and a balance was struck, the amount ascertained as being due from the defendants to the plaintiff being Rs. 4,198-4-9. Upon a promise of Mohan Lal to pay Rs. 3,598-4-9 of this amount within two weeks the plaintiff undertook to forego the other Rs. 600, which were, however, to be recoverable, if the debt was not paid within the time specified. The Rs. 3,598-4-9 were not paid according to promise, and ultimately upon the 2nd April, 1877, the present suit was brought. For the purposes of this judgment it is sufficient shortly to say that the pleas of the defendant Nand Ram were to the effect, that the claim was barred by limitation, that Mohan Lal had no authority to bind his firm at the adjustment of accounts; and in this and the lower appellate Court the further ground was taken, that the entry in the plaintiff's books of the balance struck was in the nature of a note or memorandum of the character contemplated by No. 5, sch. ii, Act XVIII of 1869, and that not being stamped it was inadmissible in evidence to take the claim out of limitation. Further, that as such a note or memorandum, being liable to only a one anna stamp, and not having been stamped at the time of execution, it was useless according to the provisions of s. 28 of the Stamp Act of 1869. The first Court decreed the plaintiff's claim and that decision was upheld by the Judge.

It has been found as a fact that Mohan Lal had full authority on the 9th of October, 1875, to act on behalf of the defendant's firm in the adjustment of the accounts, and the only points to be considered by us in special appeal appear to be, first, Is the plaintiff's claim barred by limitation? secondly, Is the entry in the books of the plaintiff, striking the balance, one that requires a stamp, as provided by No. 5, sch. ii of the Stamp Act of 1869?

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The matter was very fully argued before us on the part of the appellants, but the contentions of their learned pleader were based upon a misconception of the nature of the claim. The form of action "on accounts stated" is a perfectly well-understood one, and the use of the term "on account-book" in the present plaint is only another way of describing a suit of such a description. It must be taken as proved that upon the 9th October, 1875, the accounts of the transactions between the plaintiff and the defendants were submitted to Mohan Lal, and that the items were checked and the balance struck was approved by him upon that date. In effect it comes to this, that upon such day the sum of Rs. 4,198-4-9 was found to be due from the defendants to the plaintiff on accounts stated between them. Consequently, I am of opinion that the form of the plaintiff's present claim properly falls within cl. 62 of the second schedule of Act IX of 1871; that it was competent for the plaintiff to bring his suit within three years of that date for the total balance struck; and that having instituted the present proceedings on the 2nd April, 1877, he is within time.

As to the second point taken on behalf of the appellants, I do not think that the entry in the ledger of the plaintiff stating the balance on the debit side of the defendants' account, which was approved and admitted by Mohan Lal, is a note or memorandum of the kind mentioned in No. 5, sch. ii of the Stamp Act of 1869. As I intimated at the time of the hearing, I think that the writing therein contemplated is intended to be signed by the person to be charged with it, admitting that an account due to him has been balanced, or that a debt payable by him is due. Such entry as we have in the present case is no evidence of the admission of liability, but it is evidence of the debt being due and of the

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account having been stated. This latter fact being proved it was competent for the lower Courts to accept Mohan Lal's acknowledgment, oral though it be, and they would appear most properly to have found the liability of the defendants established. I would dismiss the appeal with costs.

STUART, C. J.—I entirely approve and concur in my honourable and learned colleague's examination of this case. It is quite clear that the three years' limitation had not run and that the suit was within time, and that being so, perhaps the question respecting the admissibility of the note or memorandum which was argued to fall within the terms of No. 5, sch. ii, Act XVIII of 1869, is not very material. But I may observe that I agree with Mr. Justice Straight that this is not such a note or memorandum, and that to be liable to stamp-duty it ought to be signed or otherwise proved as a note or memorandum separate and distinct in itself, and not as here, as a mere summing up in the way of a continued account without any special acknowledgment. The appeal is dismissed with costs.

Appeal dismissed.

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CRIMINAL JURISDICTION.

Before Mr. Justice Straight.

EMPRESS OF INDIA v. AJUDHIA.

Trial of more than one offence—Joinder of charges—Limit of conviction—Act X. of 1872 (Criminal Procedure Code), ss. 314, 452, 454, 455—Act XLV of 1860 (Penal Code), s. 71.

Held that, where in the course of one and the same transaction an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge and to designate not only the principal but the subsidiary crimes alleged to have been committed, yet in the interests of simplicity and convenience it is best to concentrate the conviction and sentence on the gravest offence proved.

Where, therefore, a person who broke into a house by night and committed theft therein was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for eighteen months, the Court convicted him of the offence