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decide this question, for even if the fourteen months claimed by the decree-holder be deducted, the present application will still be barred by limitation. For these reasons we accept this appeal, set aside the decree of the lower appellate Court, and dismiss this application for execution with costs in all three Courts.

Appeal decreed.

1901
July 9.

Before Mr. Justice Burkitt and Mr. Justice Chamier.

GANGA PRASAD (PLAINTIFF) *v.* RAM DAYAL (DEFENDANT).*

Suit for balance of account—Evidence—Account stated—Acknowledgment—Act No XV of 1877 *(Indian Limitation Act), Sch. ii, Art.* 64.

A mere acknowledgment signed by a debtor in the account-book of his creditor showing a balance standing against the debtor on an account, which is not a mutual account, is neither an account stated, to which article 64 of the second schedule to the Indian Limitation Act, 1877, applies, nor is it evidence of a new contract which can be the basis of a suit. *Jamun* v. *Nand Lal* (1), and *Shankar* v. *Mukta* (2) followed. *Nand Ram* v. *Ram Prasad* (3), *Thakurya* v. *Sheo Singh Rai* (4), *Zulfikar Husain* v. *Munna Lal* (5), *Sital Prasad* v. *Imam Bakhsh* (6), *Kanhaya Lal* v. *Stowell* (7), *Ghasita* v. *Panchore* (8), *Kunhaya Lall* v. *Bunsee* (9), *Hirada* v. *Gadigi* (10) and *Dukhi Sahu* v. *Mahomed Bikhu* (11) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Maulvi *Muhammad Ishaq*, for the appellant.

The respondent was not represented.

BURKITT and CHAMIER, JJ.—The plaintiff's case, as stated in the plaint, is that on July 20th, 1897, the defendant having examined his account acknowledged a balance of Rs. 549-11 to be due by him, and affixed his signature to the plaintiff's account-book. Allowing for sums since received and adding interest to the balance, the plaintiff claims Rs. 508-11, stating that the cause of action accrued on July 21st, 1897. The defendant denied all the allegations made in the plaint, and the parties went to trial on the single issue whether or not the defendant had signed

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* Second Appeal No. 696 of 1899 from a decree of Babu Prag Das, Subordinate Judge of Saharanpur, dated the 31st May 1899, reversing a decree of Munshi Shiva Sahai, Munsif of Kairana, dated the 16th August 1898.

(1) (1892) I. L. R., 15 All., 1.
(2) (1896) I. L. R., 22 Bom., 513.
(3) (1880) I. L. R., 2 All., 641.
(4) (1880) I. L. R., 2 All., 872.
(5) (1880) I. L. R., 3 All., 148.
(6) Weekly Notes, 1883, p. 47.
(7) (1881) I. L. R., 3 All., 581.
(8) Weekly Notes, 1881, p. 65.
(9) (1867) Agra F. B., p. 94.
(10) (1871) 6 Mad. H. C. Rep., 197.
(11) (1883) I. L. R., 10 Calc., 284.

the plaintiff's account book as alleged, no evidence being given regarding the transactions recorded in the book.

The first Court found in favour of the plaintiff and decreed the claim. On appeal the Subordinate Judge dismissed the suit, holding on the authority of *Shankar* v. *Mukta* (1), that the entry in the plaintiff's book was a mere acknowledgment, and could not alone be the basis of a suit. The plaintiff has appealed to this Court.

It is contended that what the plaintiff is suing upon is not a mere acknowledgment, but is an "account stated," on which a suit may be based, and reference was made to art. 64 of sch. ii of the Limitation Act, which provides for a suit upon an account stated.

An "account stated" in the true sense is where several cross claims are brought into account on either side, and are set off against each other and a balance is struck. The consideration for the payment of the balance is the discharge on each side. Such an account stated certainly evidences a new contract on which a suit can be based. It was held in *Jamun* v. *Nand Lal* (2), that art. 64 of sch. ii of the Limitation Act applied only to such an account stated, and not to a case like the present, where there were no demands to be set off against each other, but only debts on one side of the account and payments made by the debtor on the other.

The earlier decisions of this Court are conflicting. In *Nand Ram* v. *Ram Prasad* (3), *Thakurya* v. *Sheo Singh* (*ib.* 872), *Zulfikar Husain* v. *Munna Lal* (4), and *Sital Prasad* v. *Imam Bakhsh* (5), it seems to have been assumed, rather than held, that a mere acknowledgment of a balance struck in the plaintiff's books was an account stated within the meaning of art. 62 of sch. ii of the Limitation Act of 1871, or of art. 64 of sch. ii of the present Limitation Act. The Court's attention does not in any of those cases seem to have been directed to the precise meaning of an account stated.

On the other hand, in *Kanhaiya Lal* v. *Stowell* (6), a settlement of accounts, such as we have in the present case, seems to have been considered a mere acknowledgment; and in *Ghasita* v. *Ranchore* (7) the Court declined to uphold a decree which was based entirely

(1) (1896) I. L. R., 22 Bom., 513.
(2) (1892) I. L. R., 15 All., 1.
(3) (1880) I. L. R., 2 All., 641.
(4) (1880) I. L. R., 3 All., 148.
(5) Weekly Notes, 1883, p. 47.
(6) (1880) I. L. R., 3 All., 581.
(7) Weekly Notes, 1881, p. 65.

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on an acknowledgment of this kind. In this state of the authorities in this Court we consider that we are free to follow the decision in *Jamun* v. *Nand Lal* (1), and hold that what is sued upon in the present case is not an account stated, but a mere acknowledgment. Then it was contended that upon an unconditional acknowledgment of this kind, a promise to pay ought to be implied, and that such an implication may be the basis of a suit. If such an acknowledgment can form the basis of a suit, it must be on the ground that it amounts to a new contract; but in *Kanhaiya Lal* v. *Bunsi* (2), it was held that a mere acknowledgment did not create a new obligation; in *Hirada* v. *Gadigi* (3) it was held that a mere acknowledgment could not alone be the basis of a suit. In *Dukhi Sahu* v. *Mahomed Bikhu* (4), Mitter and Wilkinson, JJ., considered that an acknowledgment of this kind did not amount to a new contract: to the same effect is the decision in *Shankar* v. *Mukta* (5). Thus it seems that there is a consensus of opinion that a mere acknowledgment does not amount to a new contract. In all these cases the question for decision was really one of limitation; but if an acknowledgment does not amount to a new contract for the purpose of giving a fresh period of limitation, it does not amount to a contract which can be sued upon. No doubt, as pointed out in the Bombay case, in England an acknowledgment, if unconditional, is held to be sufficient evidence of a new contract which can be sued upon, but there no difficulty arises with reference to the law of limitation, because an unconditional acknowledgment takes a case out of the statute of Limitation, whether it is made before or after the period of limitation expires. In India it is otherwise. An acknowledgment in writing signed by a debtor provides a fresh period of limitation, only if it is made before the period of limitation expires. After the period expires, nothing short of a fresh contract will revive the debt and provide a fresh period of limitation. If it were held that an acknowledgment of a debt is an account stated within the meaning of art. 64 of sch. ii of the Limitation Act, or is evidence of a new contract which may be sued upon, then section 19 of that Act would be a dead letter. It would be unnecessary to inquire

(1) (1892) I. L. R., 15 All., 1.
(2) (1867) Agra F. B., p. 94.
(3) (1871) 6 Mad. H. C. Rep., 197.
(4) (1883) I. L. R., 10 Calc., 284.
(5) (1896) I. L. R., 22 Bom., 513.

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whether an acknowledgment was in writing, or was signed by the debtor, or was made within the period of limitation, and even an oral acknowledgment would revive a time-barred debt. The only way of avoiding such a result is to hold that an acknowledgment of the kind which we have here is neither an account stated, to which art. 64 applies, nor evidence of a new contract, which can be the basis of a suit. As shown above, there is ample authority for such a conclusion.

For these reasons we are of opinion that the plaintiff's suit as brought was not maintainable, and that the decision of the lower appellate Court is correct. We therefore dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Burkitt and Mr. Justice Chamier.

1901
July 12.

KESHO DAS AND OTHERS (PLAINTIFFS) *v.* NARAIN SINGH (DEFENDANT).*

Act No. III of 1878 *(Local Rates Act)—Act No. IX of* 1889 *(Kanungo and Patwaris Act—Cess—Assignment of Government revenue—Assignees not entitled to cesses.*

Held that an assignee of the Government revenue assessed on a certain patti was not entitled to receive patwari rates and local cesses from the zamindar, such rates and cesses have to be paid by the zamindar to the Government.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *D. N. Banerji*, Pandit *Sundar Lal*, and Dr. *Satish Chandra Banerji*, for the appellants.

Pandit *Madan Mohan Malaviya*, for the respondent.

BURKITT and CHAMIER, JJ.—The matter at issue in this appeal refers to the patwari rates and other cesses payable on account of patti Hardeo in mauza Birahu. In that village it appears that at settlement the zamindar, Narain Singh, accepted the terms offered by the Settlement Officer for patti Hardeo, and the settlement was accordingly made with him, and at the same time the Government revenue assessed on that patti was assigned to the present plaintiffs appellants. As to the rest of the mahal the zamindars refused the terms offered by the Settlement Officer,

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* Second Appeal No. 163 of 1900 from a decree of W. F. Wells, Esq., District Judge of Agra, dated the 28th November, 1899, modifying a decree of Munshi Muhammad Ali Khan, Assistant Collector of Agra, dated the 11th September, 1899.