

of it by the Civil Courts. By this decision the matter in issue did not become a *res judicata*. Nor indeed do the provisions of s. 13, Act X of 1877, apply to applications such as those under s. 39 of the Rent Act. The lower appellate Court has found as a matter of fact upon the evidence that the land in suit has been cultivated by the defendant in virtue not of a tenant-right, but of his position as a lessee, and is wrongfully retained by him after the expiry of the term of his lease. Upon that finding the plaintiffs were entitled to a decree; and we accordingly decree the claim and appeal with costs by reversal of the decrees of the lower Courts.

Appeal allowed.

Before Mr. Justice Pearson and Mr. Justice Oulfield.

KHUSHIALO (DEFENDANT) *v.* BEHARI LAL AND ANOTHER (PLAINTIFFS).*

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Acknowledgment of debt contained in unregistered document—Admissibility of document as evidence of acknowledgment—Act XV of 1877 (Limitation Act), s. 19 and sch. ii, Nos. 57, 85.

The nature of the pecuniary transactions between *B* and *G* were such that sometimes a balance was due to the one and sometimes to the other. On the 1st October, 1875, there was a balance due to *B*. During the ensuing year, as computed in the account, *G* made payments to *B* exceeding such balance. On the 19th November, 1876, a balance of Rs. 3,500 was found to be due from *G* to *B*. On the 11th December, 1876, *G* executed a conveyance of certain land to *B*, for which such debt was partly the consideration. In such conveyance *G* acknowledged his liability in respect of such debt. He died before such conveyance was registered and it did not operate. On the 18th November, 1879, *B* sued *G*'s widow for such debt. *Held* that such conveyance was admissible as evidence of the acknowledgment by *G* of his liability for such debt, notwithstanding such conveyance was not registered; that, applying No. 85, sch. ii of Act XV of 1877, such debt was not barred by limitation when such acknowledgment was made; and that, if that article was not applicable, but the period of limitation began to run from the time each item composing such debt became a debt, still such debt would not have been barred when such acknowledgment was made, as the debt with which the year computed from the 1st October, 1875, opened was extinguished by payments made by *G* in the course of that year.

THE plaintiffs, who were by occupation money-lenders, stated in their plaint that Gulzari Lal, the deceased husband of the defendant, had had pecuniary dealings with them for a long time; that on the 19th November, 1876, the accounts between them and Gulzari Lal were stated and a balance was found due to them of,

* First Appeal, No. 38 of 1880, from a decree of Munsif Abdul Qayum Khan, Subordinate Judge, of Bareilly, dated the 30th January, 1880.

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principal with interest, Rs. 3,500, which Gulzari Lal promised to pay on demand; that on the 11th December, 1876, Gulzari Lal executed a conveyance to them of certain land for Rs. 10,000, such conveyance being signed on his behalf by the defendant his wife, as he was too infirm to sign the same himself; that Rs. 3,500 of the purchase-money was credited to Gulzari Lal, and it was proposed that the balance should be retained by them as a deposit; that Gulzari Lal died shortly after this, and the defendant refused to procure the registration of the conveyance; that after the balance above-mentioned had been found to be due to them Gulzari Lal, and after his death the defendant, borrowed, on different occasions, up to the 4th October, 1877, sums amounting to Rs. 2,250-12-0; that Gulzari Lal, and after him the defendant, paid to them on different occasions up to the 20th August, 1877, sums amounting to Rs. 1,321-12-6, after which date the defendant had paid nothing; and that the cause of action had arisen on the 1st March, 1878, the date of demand and of the defendant's default. The plaintiff claimed accordingly to recover, with interest, the balance found due to them on the 19th November, 1876, and the further advances made by them subsequently to that date. The suit was instituted on the 18th November, 1879. The conveyance mentioned in the plaint purported to be signed for Gulzari Lal by the defendant his wife, "with her husband's permission." It contained the following recital amongst others: "And having received all the said purchase-money in full, with this detail, that a credit is given of Rs. 3,500 due by me according to accounts to the said *kothi*, or firm, up to date, and having received from the vendees Rs. 6,500 the balance of the consideration-money in cash through Lala Hira Lal, gomash-ta of the said firm, I have given the vendees such possession and occupancy as was held by myself." It appeared from the account-books of the plaintiffs that on the 8th October, 1867, a balance of Rs. 157-11-6 was found due to the plaintiffs by Gulzari Lal; on the 26th September, 1868, a balance of Rs. 520-9-9: on the 14th October, 1869, a balance of Rs. 1,708-5-6: on the 4th October, 1870, a balance of Rs. 1,572-6-0: on the 3rd September, 1871, a balance of Rs. 867-9-0: on the 23rd October, 1871, a balance of Rs. 707-10-3: on the 1st October, 1875, a balance of Rs. 2,106-8-3. Between the last date and the 19th November, 1876, the payments

made by Gulzari Lal to the plaintiffs amounted to a sum of Rs. 4,000 odd. The defendant set up as a defence, *inter alia*, that the claim for the item of Rs. 3,500 was not barred by limitation. The Court of first instance held, on grounds which it is not material to state, that such claim was not barred by limitation; and gave the plaintiffs a decree as claimed. The defendant appealed to the High Court impugning the grounds on which the Court of first instance had held that such claim was not barred by limitation.

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

Mr. *Conlan* and the *Junior Government Pleader* (*Babu Dwarika Nath Banarji*), for the respondents.

The judgment of the Court (PEARSON, J., and OLDFIELD, J.,) was delivered by

OLDFIELD, J.—The plaintiffs' case is that the defendant's husband, Munshi Gulzari Lal, had a banking account with their firm, depositing sums of money with them on which he drew; that on the 19th November, 1876, the account was adjusted, and the balance against Gulzari Lal was Rs. 2,158-4-0, principal, and Rs. 1,341-12-0, interest, total, Rs. 3,500, which was admitted at the time; that an acknowledgment of this balance appears in a deed of sale dated the 11th December, 1876, executed by Gulzari Lal in favour of plaintiffs in respect of certain property, the said sum being given in the deed as part of the sale-consideration; the sale, however, fell through; that after Gulzari Lal's death the defendant borrowed Rs. 2,250-12-0, on different occasions; and that, after deducting certain sums paid in satisfaction, a sum of Rs. 4,476-15-6, with interest, Rs. 1,263-5-6, is due; and the plaintiffs sue to recover. The defendant's reply is that Gulzari Lal did not owe anything to plaintiffs, nor is anything due by her, and that the item of Rs. 3,500 is barred by limitation. The lower Court has decreed the claim. The first question we have to deal with in appeal is whether the item of Rs. 3,500 or any part is barred by limitation. The acknowledgment of Gulzari Lal's liability for this sum contained in the deed of sale dated 11th December, 1876, will give a new period of limitation computed from that date, and will make the suit within time, and the fact that the deed is not

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registered will not make it inadmissible as evidence of the acknowledgment of the debt. We find no reason to doubt that this deed of sale was executed by Gulzari Lal and signed on his behalf by the defendant as his agent. This is sufficiently shown by the evidence of the writer of the deed and Hira Lal the manager of plaintiffs' firm, the reason for the wife putting his name to the deed being that he was at the time in a feeble state of health, and in fact died three days after. At the time this acknowledgment was made the debt was not barred by limitation, so as to deprive this acknowledgment of effect to extend the period. The nature of the transactions between plaintiffs and Gulzari Lal were such that sometimes a balance was in favour of plaintiffs and sometimes of Gulzari Lal, and we are disposed to hold that art. 85, sch. ii of the Limitation Act, would apply, and the limitation for the recovery of the debt would run from the close of the year in which the last item admitted or proved is entered in the account; but if the limitation is to run from the time each item composing the sum became a debt due to the plaintiffs, still it would not have been barred when the acknowledgment was written, for the accounts show that the payments made by Gulzari Lal in 1875 extinguished the debt of Rs. 2,108-8-3 with which that year opened. The correctness of the accounts and the liability of Gulzari Lal for the sum of Rs. 3,500 are testified by the plaintiffs' books, by the acknowledgment in the sale-deed, and by an entry in a memorandum-book of Gulzari Lal's which is not disputed, that on the 19th November, 1876, the above sum was due, and this fact favours the belief that the acknowledgment in the deed of sale which was executed three weeks later was made at the instance of Gulzari Lal. With regard to the claim in respect of the item of Rs. 2,250, we see no reason to distrust the evidence. It was orally contended that plaintiffs have no right to debit against defendant payments they made for expenses of Kuttra as it is not defendant's property, but we do not find that this objection was taken in the Court below, and it has not been supported. Although we take a different view of the limitation applicable, we affirm the decree of the lower Court and dismiss the appeal with costs.

Appeal dismissed.