

The learned Advocate for the appellant drew our attention to a decision of a Bench of the late Court of the Judicial Commissioner of Oudh in *Sardar Singh v. The Collector of Shahjahanpur* (1). On the construction of the deed before them the learned Judicial Commissioners held that the personal covenant to pay on the part of the mortgagor implied a right in the mortgagee to sue for sale of the mortgaged property. This decision may be perfectly correct on the facts of that case, and one of the important facts found was that the mortgage in question in that case was an anomalous mortgage.

Accordingly we allow the appeal, set aside the decree of the court below and restore the decree of the court of first instance with costs in all courts. In the preliminary decree to be prepared under order XXXIV, rule 4 of the Code of Civil Procedure, a period of six months from today will be allowed to the defendants for payment of the mortgage money.

*Appeal allowed.*

## APPELLATE CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge, and  
Mr. Justice Bisheshwar Nath Srivastava*

BABU RAM CHAUBE (PLAINTIFF-APPELLANT) v. SHEO  
HARAKH TEWARI (DEFENDANT-RESPONDENT) \*

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November, 1

*Limitation Act (IX of 1908), section 19—Money borrowed and a pronote and receipt executed—Another receipt of the amount of the original debt executed within three years—Receipt, whether forms an acknowledgment under section 19—Evidence Act (I of 1872), section 95—Evidence to show the true meaning of the acknowledgment, admissibility of.*

Where the defendant borrowed a sum of money from the plaintiff and executed a pronote and a receipt therefor and again executed a receipt for the amount of the old loan within

\*Second Civil Appeal No. 352 of 1931, against the decree of Pandit Kishen Lal Kaul, Subordinate Judge of Fyzabad, dated the 24th of August, 1931, upholding the decree of Pandit Hari Kishen Kaul, Munsif, Haveli, Fyzabad, dated the 30th of March, 1931.

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three years of the date of the original pronote, held, that the latter receipt is a sufficient acknowledgment of his liability to repay the original loan within the meaning of section 19 of the Indian Limitation Act.

The question as to whether a document does or does not contain an acknowledgment is always a question of interpretation and rules of evidence applicable to such a question must therefore apply to such a document also.

Where the language of a document containing an acknowledgment is on the face of it unmeaning in reference to existing facts extrinsic evidence is permissible to show the true meaning of the language used in it under the provisions of section 95 of the Indian Evidence Act, 1872. *Balkishen Das v. Legge* (1), *Sukhamoni Chowdhurani v. Ishan Chunder Roy* (2), *Maniram v. Seth Rupchand* (3), and *Ejaz Husain v. Ram Sarup* (4), referred to.

Mr. *Rajeshwari Prasad*, for the appellant.

Mr. *B. P. Misra*, holding brief of Mr. *Hyder Husain*, for the respondent.

HASAN, C. J., and SRIVASTAVA, J. :—This is the plaintiff's appeal from the decree of the Subordinate Judge of Fyzabad, dated the 24th of August, 1931, affirming the decree of the Munsif of the same place, dated the 30th of March, 1931.

In the suit, out of which this appeal arises, the plaintiff seeks to obtain a decree for the recovery of a sum of Rs.564 against the defendant on the ground that on the 3rd of July, 1927, the defendant borrowed a sum of Rs.531 from the plaintiff and executed a pronote and a receipt therefor on the same date in favour of the plaintiff and that again on the 10th of June, 1930, the defendant executed a receipt for the old loan of Rs.531 and thereby promised to repay it with interest at the rate of Rs.12-8-0 per cent. per annum. It was also stated in the plaint of the suit that on the date of the receipt just now mentioned the defendant also executed a pronote for the sum of Rs.531, but for the reason that the pronote is inadmissible in evidence the claim was founded on the original debt of the 3rd of July, 1927,

(1) (1899) L. R., 27 I. A., 58.  
(3) (1906) L. R., 33 I. A., 165.

(2) (1898) L. R., 25 I. A., 95.  
(4) (1930) 7 O. W. N., 1195.

and the receipt of the 10th of June, 1930, being an acknowledgment, saved the suit from the bar of limitation.

At the trial only two documents were admitted in evidence in proof of the plaintiff's claim (exhibit 3), dated the 10th of June, 1930. Both these documents evidence the receipt of the consideration of the contract of loan.

The courts below have dismissed the plaintiff's suit as barred by limitation. They have held that the receipt of the 10th of June, 1930 (exhibit 2), did not amount to an acknowledgment within the meaning of section 19 of the Indian Limitation Act, 1908. The alternative case of the plaintiff that the receipt evidences a fresh contract of loan was rejected by the lower appellate court on the ground that that case was not set upon the plaint.

The court of first instance has found that the plaintiff did as a matter of fact advance the sum of Rs.531 to the defendant on the 3rd of July, 1927, by way of a loan and the finding has been accepted by the lower appellate court. It is clear that on this finding the plaintiff is entitled to a decree for the recovery of the sum of Rs.531 if his suit is not barred by limitation.

We are of opinion that the receipt of the 10th of June, 1930 (exhibit 2), is a sufficient acknowledgment of the defendant's liability to repay the loan of the 3rd of July, 1927. It clearly recites the receipt of Rs.531 by the defendant and it is agreed that on the date of exhibit 2, that is the 10th of June, 1930, nothing was paid by the plaintiff to the defendant. Therefore the language of the receipt is on the face of it unmeaning in reference to existing facts. In these circumstances extrinsic evidence is permissible to show the true meaning of the language used in the receipt under the provisions of section 95 of the Indian Evidence Act, 1872. In *Balkishen Das v. Legge* (1) Lord DAVEY, in delivering

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the judgment of their Lordships of the Judicial Committee said: "Their Lordships do not think that oral evidence of intention was admissible for the purpose of construing the deeds or ascertaining the intention of the parties . . . The case must therefore be decided on a consideration of the contents of the documents themselves, with such extrinsic evidence of surrounding circumstances as may be required to show in what manner the language of the document is related to existing facts."

The question as to whether a document does or does not contain an acknowledgment is always, in our opinion, a question of interpretation and rules of evidence applicable to such a question must therefore apply to such a document also. This is clear from the decisions of their Lordships of the Judicial Committee in *Sukhamoni Chowdhurani v. Ishan Chunder Roy* (1) and *Maniram v. Seth Rupchand* (2). In *Ejaz Husain v. Ram Sarup* (3), decided by us, we held that parole evidence was permissible to show that the name of A was written by mistake for that of B in the document produced in proof of acknowledgment in that case. On these grounds we must hold that the acknowledgment of receipt of the sum of Rs.531 contained in exhibit 2, dated the 10th of June, 1930, was an acknowledgment of the loan of the 3rd of July, 1927.

On the above grounds the appeal succeeds and it is unnecessary to decide the other ground urged in support of it that exhibit 2 evidenced a fresh contract of loan and that the plaint contained sufficient averments to cover such a case.

Accordingly we allow the appeal, set aside the decree of the court below and decree the plaintiff's suit for a sum of Rs.531 only. He will be entitled to his costs in all the three courts on the sum decreed from the defendant.

*Appeal allowed.*

(1) (1898) L. R., 25 I. A., 95.

(2) (1906) L. R., 33 I. A., 165.

(3) (1930) 7 O. W. N., 1195.