

## APPELLATE CIVIL.

## FULL BENCH.

Before Sir Charles Sargent, Knight, Chief Justice, Mr. Justice Melvill, and Mr. Justice Kemball.

1883  
February 19.

CHOWKSI HIMUTLA'L HARIVULUBHDA'S (PLAINTIFF), v. CHOWKSI ACHRUTLA'L HARIVULUBHDAS (DEFENDANT).\*

*Kháta or account stated—Acknowledgment—Promise in writing—Contract—Contract Act, IX of 1872, Sec. 25, Cl. 3, and Sec. 62, III. (a).*

A *kháta*, or account stated, bearing a stamp of one auna, but containing no promise in writing, held to be a mere acknowledgment sufficiently stamped, and not a contract within the meaning of section 25, cl. 3 of Act IX of 1872.

UNDER section 49 of Act I of 1879 this case was referred for the opinion of the High Court by Ráo Bahádúr Mukundrái Manirái, First Class Subordinate Judge of Ahmedabad.

The plaintiff and defendant were brothers. The suit was brought upon a *kháta* (account stated) passed by the defendant to the plaintiff on the 19th August, 1881. The claim originally referred to the amount of a dowry which was deposited, about sixteen years ago, with the father of the parties, who died subsequently. The money was entered in the books of the father to the credit of the plaintiff. It appeared that the defendants undertook to pay it, and passed the *kháta* to the plaintiff.

The following is a translation of it:—

“Sonee Wania Achrutlal Harivulubhdas, Samvat 1934, Shráwan Wud 11th (19th August 1881).

<i>Credit.</i>	<i>Debit.</i>
537½ 14 Balance due struck after adjusting the account.	451 Shráwan Wud 11th; 451 cash Bombay currency, those which were of dowry, written by Achrutlal Harivulubhdás—signature written by himself.
537½ 14	86½ 14 Interest up to Shráwan Wud 10.
	537½ 14”

The question referred to the High Court was whether the document should be held to be an acknowledgment, a promissory note, or a contract. The Subordinate Judge was of opinion that it

\*Civil Reference, No. 4 of 1883.

was an agreement, and should be stamped as such. The following are his reasons :—

“As the defendant was not a party to the original transaction, and as, according to the plaintiff's statement, he was a member of a joint family, and, as such, he alone was not responsible for the dowry, the above *kháta* was a new contract under section 62 of the Indian Contract Act, Illustration (a). The wording of the *kháta* is such that it may be held to be a bare statement of an account, and not to be a promissory note, as ruled in *Rámji v. Tharner* (1). But as in this case the contracting party was a new man, who by passing the *kháta* undertook to pay the money, it is a contract under the definition given in Illustration (a) of section 62, and not a promissory note, or an acknowledgment of the old debt. If it be held to be a promissory note, it is inadmissible in evidence under section 34 of Act I of 1879, and if an acknowledgment, it is of no use, because it was passed after the old debt had become void by lapse of time. In either case the plaintiff loses his claim.”

There was no appearance of parties in the High Court.

*Per Curiam*.—The document in question is nothing more than an acknowledgment in writing. It is not a contract within the meaning of section 25, cl. 3 of the Indian Contract Act, there being no promise made in writing. We, therefore, are of opinion that the stamp of one anna is sufficient. In regard to the Subordinate Judge's view, that the case may be taken out of the Statute of Limitations by treating the account stated as a new contract, the attention of the Subordinate Judge is directed to *Mulchand v. Girdhar* (2), and particularly to the remarks at pages 8 and 9 of the report.

(1) I. L. R., 6 Bom., 683.

(2) 8 Bom. H. C. Rep., 6, A. C. J.

1883

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