held that the defendant No. 4 must have been put on inquiry at the time he bought from defendant No. 3.

1895.

GANESH LA'LA v. BA'PU.

It has been contended by Mr. Mánekshâh that the rule of estoppel cannot be applied to a plaintiff asking to rescind a transaction knowingly entered into by him when an infant, even though he may have made statements untrue in fact. The exception of an infant is not made in section 115 of the Evidence Act, nor suggested in the authoritative decision on the meaning of that section by the Privy Council in *Sarat Chunder* v. *Gopál Chunder*(1), nor in *Mills* v. *Fox*(2), where the difference between cases depending on estoppel and contract is explained. Proof of fraud on the part of the infant is not essential. *Wright* v. *Snowe*(3) shows these propositions, and that the infant could not afterwards, as plaintiff, get the aid of a Court to treat his deed as a nullity when the other party had acted upon it. The cases we have cited govern the present and justify the original decree. The Court reverses the decree of the lower Court of Appeal and restores that of the Subordinate Judge. Costs of both appeals on the plaintiff Bápu.

Decree reversed.

(1) I. L. R., 20 Cal., 296. (2) 37 Ch. D., 153.
(3) 2 De Gex and S., 321.

ORIGINAL CIVIL.

FULL BENCH.

Before Sir C. Farran, Kt., Chief Justice, Mr. Justice Strachey and Mr. Justice B. Tyabji.

MULJI LA'LA' AND OTHERS, PLAINTIFFS, *v.* LINGU MAKA'JI AND ANOTHER, DEFENDANTS.*

1896. *February* 14

Limitation—Limitation Act (XV of 1877), Sec. 19—Acknowledgment—Stamp Act (I of 1879), Sch. I, Art. 1, and Sec. 34—Evidence.

An acknowledgment of a debt coming under article 1, Schedule I, of the Stamp Act I of 1879 cannot, if unstamped, be given in evidence for any purpose including the purpose of saving limitation.

REFERENCE by C. M. Cursetji, Third Judge of the Bombay Small Causes Court, under the provisions of section 617 of the Civil

* Small Cause Court Reference, No. 23880 of 1895.

1896.

MULJI LÁLÁ v. LINGU MÁKÁJI.

Procedure Code (Act XIV of 1882) for the opinion of the High Court. The reference was as follows :—

"This suit was filed on the 18th September, 1895, and is for Rs. 102, balance of an account for price of grain sold. The balance is adjusted, written out, and signed in plaintiffs' book by the defendants on the 21st October, 1892. The defendant No. 1 alone appeared. He denied the adjustment and the signing of the account balance acknowledgment. He also pleaded limitation. I have found that the account was adjusted; and the acknowledgment of the balance was signed by the defendants; and on the point of limitation I have found that the claim is barred, as the said acknowledgment on which this suit is brought is not stamped in accordance with law, and is, therefore, inadmissible in evidence.

"3. The accounts between the parties stood as follows :— At the beginning of Samvat 1947 (1890-1), the opening balance brought over from the preceding year was Rs. 105. Further supplies debited up to Kártik Sudh 11th, Rs. 7-2-0, whilst the credit side shows payments Rs. 9-2-0. Since Kártik Sudh 11th, Samvat 1947 (November, 1890), the dealings have ceased entirely. On Kártik Sudh 1st, Samvat 1949 (21st October, 1892), balance Rs. 102 is brought forward, the account is adjusted, and the defendants acknowledge the same by signing the balance entry.

"4. A true copy of the acknowledgment is annexed and is marked A. The following is a correct translation of the same.

"'The account of two persons Kámáti Lingu Makáji and Vithoba Lingu. Samvat 1949.

> Rs. 102. Kártik Sudh 1st, day of the week Friday. The old account being made up, and all the accounts being considered, Rs. 102 (in letters rupees one hundred and two) in full up to the 21st day of October, 1892. After making up all accounts, this writing is made and given.
>
> The signature of KA'MA'TI LINGU MAKA'JI Rs. 102 (in letters), his own hand.

The signature of VITHOBA LINGU Rs. 102 (also in letters), all account being made up, dated 21st October 1892, his own hand.'

"5. This acknowledgment not being stamped, I have held, is not admissible in evidence, and thus this suit must fail, as but for such acknowledgment the claim on the grain account would clearly be time-barred.

"6. The plaintiff's vakil, however, contends that this acknowledgment could be received in evidence under section 19 of the Indian Limitation Act to keep such claim alive, and relies on a recent decision of the Bombay High Court—*Fatechand* v. *Kisan*[1].

"7. But for this ruling I should have had no hesitation in holding the present claim to be barred. A consideration of this decision, however, has left my mind in considerable doubt, and I am, therefore, with the very utmost diffidence I make this reference, and most respectfully submit that the point decided there deserves to be reconsidered."

(The learned Judge after discussing the point continued.)

"With these remarks I beg to submit the following question for the opinion of the Honourable the High Court:—

"Whether an acknowledgment of a debt requiring to be stamped under the Indian Stamp Act I of 1879, and not duly stamped, is admissible in evidence to save the debt from being barred under the provision of section 19 of the present Indian Limitation Act?"

C. H. Setalvad (*amicus curiæ*) for plaintiff argued that the acknowledgment was admissible. He cited *Fatechand* v. *Kisan*[1]; *Venkáji* v. *Shidrámápa*[2]; *Bishambhar* v. *Nand Kishore*[3]; *Morris* v. *Dixon*[4]; Mitra on Limitation, p. 239.

Kázi Kabirudin (*amicus curiæ*) for the defendant. He cited *Ranchhoddas* v. *Jeychand*[5]; *Chowksi Himutlál* v. *Chowksi Achrutlal*[6]; *Fatechand* v. *Kisan*[1].

(1) I. L. R., 18 Bom., 614.
(2) I. L. R., 19 Bom., 663.
(3) I. L. R., 15 All., 56.
(4) 4 Ad. and E., 845.
(5) I. L. R., 8 Bom., 405.
(6) *Ibid.* 194.

1896.

MULJI LÁLÁ v. LINGU MAKÁJI.

FARRAN, C. J.:—We consider that the question submitted to us by this reference is in too general terms. Such questions should be confined to the point of law arising in the particular case before the Court; but as the form of the entry is given in the reference, and it was not disputed in the Small Causes Court that it was "an acknowledgment" within the meaning of article 1, Schedule I, of the Indian Stamp Act I of 1879, we can, we think, treat the question as confined to acknowledgments falling within the scope of that article. As, however, in the arguments addressed to us by the learned counsel who as *amici curiæ* appeared for the plaintiffs and defendants, respectively, to whom our acknowledgments are due, it was contended for the plaintiffs that the acknowledgment which was sought to be put in evidence in the Small Cause Court might be read as not fulfilling the conditions of the article, we should add that the acknowledgment, in our opinion, fulfils all the requirements of an "acknowledgment of a debt" given in the article.

That being so, we are clearly of opinion that an acknowledgment fulfilling the conditions of article 1 of the schedule cannot, if unstamped, be given in evidence "for any purpose." The words of section 34 of Act I of 1879 appear to us to be free from ambiguity, and to prevent an instrument which is chargeable with a one-anna stamp, and which cannot be admitted on payment of a penalty, from being admitted in evidence "*for any purpose*," including the purpose of saving limitation. The insertion of the italicised words in the later Act after it had been held under the former Act XVIII of 1869, section 18 (which did not contain them), that the unstamped documents could be admitted in evidence "for a collateral purpose," renders this, we think, free from doubt; and if the decision in *Futtehand* v. *Kisan*[1] was intended to decide the contrary, we feel unable to agree with it. We are not, however, satisfied that such is the necessary meaning of that decision. It will be seen from a reference to the facts that the Subordinate Judge who heard the case was of opinion that the acknowledgment there in question was not intended to supply evidence of the debt, while it does not appear what view the District Judge took of the

(1) I. L. R., 18 Bom., 614.

document. The decision of the High Court will, in our view, be in accordance with the provisions of the Stamp Act, if it took the same view of the instrument as the Subordinate Judge. There are doubtless expressions in the judgment which tend to show that the Court went further, but the omission of all reference to section 34 of the Stamp Act—"no instrument shall be admitted in evidence for any purpose"—leads to the inference that the judgment does not convey the exact meaning of the learned Chief Justice. In each case, the instrument of acknowledgment must be carefully examined in connection with the surrounding circumstances to ascertain whether it has been signed to supply evidence of a debt—*Binjárám* v. *Raj Mohan Roy*(1); *Bishamber* v. *Naval Kishore*(2). Upon the result the decision as to the admissibility or non-admissibility of the unstamped acknowledgment will depend.

We answer the question proposed to us in the negative.

(1) I. L. R., 8 Cal., 288. (2) I. L. R., 15 All., 56.

ORIGINAL CIVIL.

Before Mr. Justice Strachey.

SARDA'RMAL JAGONA'TH, PLAINTIFF, v. RA'O BAHA'DUR ARANVAYAL SABHAPATHY MOODLIAR, DEFENDANT.

C. AGNEW TURNER, OFFICIAL ASSIGNEE, CLAIMANT.

1896. *July 2.*

Partnership—Insolvency—Insolvency of one partner—Vesting order—Subsequent decree against insolvent, and attachment of the firm's property in execution—Claim by official assignee to set aside attachment—Civil Procedure Code (Act XIV of 1882), Secs. 278 et seq.—Summons taken out in wrong name—Amendment of summons at hearing—Practice—Procedure—Act of insolvency—Jurisdiction of Insolvent Court—Indian Evidence Act (I of 1872), Sec. 44.

The defendant was the manager of a joint Hindu family consisting of himself and two nephews carrying on a family business in Bombay, Madras and other places. In a suit brought in the High Court of Bombay against him as manager of the said joint family a decree was passed on the 11th April, 1896, which was in terms against the defendant alone. On the same day certain property in Bombay, in which (as found by the Judge) the nephews and the defendant were jointly interested, was attached in execution of the decree. Two days previously, however, *viz.*, on the 9th April, 1896, the defendant had been adjudged an insolvent by the Insolvent Court at

* Suit No. 181 of 1896.