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In the view we have taken of the facts it is unnecessary to consider the question how far the District Judge's order in this case fell within the scope of the provisions of the Guardians and Wards Act, VIII of 1890. Mr. Goverdhanram referred to section 43 as authorizing the orders of the District Judge, but that section, which provides for orders regulating the conduct or proceedings of a guardian, must necessarily be read along with and in relation to the sections in which are laid down the duties of a guardian of the person of a minor—sections 24 to 26. These provide only for the support, health and education and advancement of a minor. It is true that besides the specific objects above named there is a general reference to "all such matters as the law to which the minor is subject requires." Whether the marriage of a minor child at or before nine years can be regarded as falling within the scope of these general words, especially when the marriage of a minor female terminates the powers of the guardian of the person (section 41), is, we think, doubtful. It is, however, unnecessary to consider further this view of the question. For the reasons stated above, we reverse the order of the District Judge, and dismiss the application. Respondent to bear all costs.

Order reversed.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

SHANKAR, PLAINTIFF, *v.* MUKTA, DEFENDANT.*

1896. *October* 6.

Account stated or adjusted (ruzukhata)—Cause of action—Such account only evidence of the existing debt, not itself a fresh contract on which a suit may be brought—Interest—Dámdupat—Practice—Procedure.

In June, 1883, the plaintiff's father advanced a loan to the defendant at compound interest. The account of this debt with interest was adjusted and signed from time to time. In June, 1893, it was adjusted and signed, the amount found due being Rs. 28-8-0. In February, 1896, the plaintiff sued to recover this amount.

Held, that the account (*ruzukhata*) was merely an acknowledgment of the debt and of the correctness of the calculation of interest upon it.

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Held, also, that the plaintiff was not entitled to treat the amount so found due as principal and to claim interest upon it. The debt to be sued on was the amount originally advanced, and the interest recoverable was limited by that amount according to the rule of *dâmdupat*.

By English law an account stated could be sued on as implying a promise to pay. Formerly this was the rule also in Bombay (as shown by the earlier cases) where the account was signed. If, however, it was not signed, it could not be sued on as a new contract. The Indian Limitation Act required an acknowledgment or admission of a debt to be signed; and an admission not made in the manner prescribed by law (*i.e.* signed) for the purpose of preventing a debt from becoming barred does not imply a promise to pay it if it should become barred.

According, however, to the later authorities an account stated or adjusted (*ruzukha'ta*) cannot be sued on as a fresh contract. The suit must be brought in respect of the original transaction, and the subsequent stated or adjusted accounts (*ruzukha'ta*) are only evidence of the debt arising from them, and serve to prevent the operation of the Act of Limitation.

REFERENCE by Ráo Sáheb Damodar Govind Gharpure, Subordinate Judge of Málegaon in the Násik District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

Suit on an account stated. The defendant was the widow of one Sankra, who in June, 1883, had borrowed certain juári from the plaintiff's father. The account (*ruzukháta*) of this loan with compound interest was made up from time to time. The last account stated (*ruzukháta*), was dated the 13th March, 1893, and showed a balance of Rs. 28-8-0 due to the plaintiff. On the 15th February, 1896, the plaintiff demanded payment, but the defendant refused to pay. The plaintiff, therefore, brought this suit, claiming Rs. 29 due upon the account.

The account was duly signed by Sankra, and the material part of it was as follows:—

"The 10th of Falgun Vadya—own handwriting.

"28½ on making an account of the last *kha'ta* the amount found due for principal together with interest is Rs. 28½, in letters twenty-eight and a half. The interest payable on this is Re. 1 per cent. per month.

"I admit this to be correct. The handwriting of Damodhar Narayan Mamvadkar, inhabitant of Yedalgav.

"Signature across a receipt stamp of Sankra valad Bhawani Patil—my own handwriting."

As the suit was a small cause suit in which there was no appeal, the Subordinate Judge through the District Judge of Násik referred the following questions to the High Court:—

(1) Is the *ruzukháta* sufficient evidence of the promise alleged by plaintiff?

(2) Can a suit lie on such promise?

(3) Is plaintiff entitled to treat Rs. 28-8 as principal for the rule of *dámdupat*?

Mahadev B. Chaubal (*amicus curiæ*), for the plaintiff:—We contend that a suit lies upon this stated account. It is duly signed and admits the amount with interest to be payable, and implies a promise to pay.

[FARRAN, C. J.:—The question is whether a mere signed statement of account sets aside the rule of *dámdupat* and becomes itself a sufficient basis of suit. Is it not merely an acknowledgment which, being signed, keeps alive the original debt under section 19 of the Limitation Act (XV of 1877)?]

We submit that it contains a stipulation to pay interest on the amount found due, and that implies a promise to pay the whole amount of the *kháta* as principal—*Tribhovan* v. *Amina*[1]; *Vishnav* v. *Dalpat*[2]; *Jodharaj* v. *Raghavgir*[3]. It is, therefore, not a mere acknowledgment, but a new contract upon which a suit lies.

Vasudev G. Bhandarkar (*amicus curiæ*), for the defendant:—The *ruzukháta* in question is merely an account stated, upon which no suit can be brought. It is merely an acknowledgment of a debt already existing. It keeps alive that debt and enables the plaintiff to sue for it, but he cannot sue upon the account stated as on a fresh contract. The promise to pay interest, if there is one, is a promise without consideration. Where there are cross demands in the account, the setting off of the items against each other constitutes a consideration; but where, as here, there is only one item, there is no consideration—*Damodar* v. *Devji*[4]; *Umedchand* v. *Bulakidas*[5]; *Mulchand*

(1) I. L. R., 9 Bom., 516.
(2) P. J., 1890, p. 9.
(3) P. J., 1893, p. 48.
(4) P. J., 1890, p. 314.
(5) 5 Bom. H. C. Rep., 16 (O. C. J.).

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v. *Girdhar*[1]; *Hargopal* v. *Abdul*[2]; *Amritlal* v. *Manikla*[3]; *Nahanibai* v. *Nathu*[4].

FARRAN, C. J.:—We have been much assisted in this case by the learned pleaders, who, as *amici curiæ*, argued the reference. After referring to the numerous decisions which bear upon the question which has been submitted to us, we cannot say that we feel no doubt as to the answer which we should give to the question, though we think that the Subordinate Judge would have been safe in following the latest authorities in this Court.

Under English law, an account stated, even though it amount to nothing more than the totalling up of the items of an account and adding interest and acknowledging their correctness (which a simple *ruzukhát* usually consists in) could have been directly sued on. "The claim upon an account stated lies where there is an absolute acknowledgment made by the defendant to the plaintiff of a debt due from him to the plaintiff and payable at the time of action brought." See Bullen and Leake's Pleadings, Vol. I, p. 33, 4th Ed. (1882), where numerous authorities are cited in support of that view including *Buck* v. *Hurst*[5]. "An account stated alone is not conclusive between the parties, but the debts respecting which it was stated may be examined" (Bullen and Leake, Vol. I, p. 34), and it may be shown that the debt in respect of which the account is stated is not due. These are, however, in the nature of defences to the action. If no defence is established, on mere proof of the defendant's handwriting on the acknowledgment, the plaintiff would be entitled to recover—*Buck* v. *Hurst*[5].

This law was adopted on the Original Side of the High Court in *Umedchand* v. *Bulakidas*[6], and it was assumed in *Dhondu* v. *Narayan*[7]. Where, however, such an acknowledgment was oral or unsigned, the provisions of the Limitation Act rendered it inoperative as an exception to the plea of limitation; and when that Act intervened, such an acknowledgment could not be directly sued upon as a new contract. "An admission of a

(1) 8 Bom. H. C. Rep., 6 (A.C. J.)
(2) 9 Bom. H. C. Rep., 429.
(3) 10 Bom. H. C. Rep., 375.
(4) I. L. R., 7 Bom., 414.
(5) L. R., 1 C. P., 297.
(6) 5 Bom. H. C. Rep., 16 (O. C. J.)
(7) 1 *Ibid.*, p. 47.

debt doubtless" (says Melvill, J.) "implies in law a promise to pay it; but an admission not made in the manner which the law prescribes for the purpose of preventing a debt from becoming barred by time, does not at all imply a promise to pay such debt if it should become barred by time"—*Mulchand* v. *Girdhar*[1]. Accordingly in a long series of decisions—*Hargopal* v. *Abdul*[2]; *Amritlal* v. *Maniklal*[3] *Hanmantmal* v. *Rambabai*[4]; *Ramji* v. *Dharma*[5]; *Nahanibai* v. *Nathu Bhau*[6]; *Chowksi Himutlal* v. *Chowksi Achrutlal*[7]—it was held that an unsigned acknowledgment could not form the basis of a suit when the statute intervened, nor could a signed acknowledgment be sued upon if made in respect of a time-barred debt, unless it contained an express promise to pay. Throughout this series, the judgments for the most part still recognize the principle that from an acknowledgment of a debt the law implies a promise to pay it. The principle is stated with great terseness and lucidity by Melvill, J., in *Amritlal* v. *Maniklal*[3]: "The entry is nothing more than an acknowledgment of an existing debt from which the law implies a contract or promise. The consideration for the contract is expressed in writing, but not the contract itself. The entry is not a contract in writing, but a writing from which an unwritten contract may be inferred."

If the authorities stopped there, we should have no difficulty in applying the English law and holding that *ruzukháta* or adjustment of an account could be sued on as "an account stated" where the Limitation Act did not impose a bar to that being done.

In *Mathur* v. *Krishnashet*[8] the Court intimated an opinion that "the *khâta*" (which in that case seems to have been in the nature of a *ruzukháta*) "might serve as evidence of the existence of that debt" (the debt sued for) "although not as the basis of it." In *Tribhovan* v. *Amina*[9] there does not appear to have been any question of limitation. The Subordinate Judge referred the

(1) 8 Bom. H. C. Rep., 6 (A. C. J.)
(2) 9 Bom. H. C. Rep., 42.
(3) 10 *Ibid.*, p. 375.
(4) I. L. R., 3 Bom., 198.
(5) I. L. R., 6 Bom., 683.
(6) I. L. R., 7 Bom., 414.
(7) I. L. R., 8 Bom., 194.
(8) P. J. for 1883, p. 297.
(9) I. L. R., 9 Bom., 516.

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question whether the suit could be brought on a *ruzukháta*, being of opinion that it could not, as it was not "an account stated" within the narrower and more accurate definition of that expression. The Court expressed its opinion that the Subordinate Judge was right in treating the *kháta* in question as a mere acknowledgment, from which it would appear that they thought the Subordinate Judge was also right in holding that the suit could not be based upon it. The Judges, however, pass that point over. In *Govind* v. *Devchand*[1] it was held by the Court (Sargent, C. J., and Nanabhai Haridas, J.), in second appeal that the acknowledgment in the *kháta* put in evidence in that case could not be made the basis of a suit, though it could serve as evidence of the existence of a debt. The same view was expressed by Birdwood and Parsons, JJ., in *Nasarvanji* v. *Gangadas*[2] following the above decision and following also *Vishnav* v. *Dalpat*[3] to the same effect. In *Damodar* v. *Devji*[4] the learned Judges (Sargent, C.J., and Candy, J.) also express themselves to the effect that the mere existence of a *ruzukháta* is not, unsupported by evidence of a contemporaneous oral contract founded on consideration, sufficient to form the basis of a fresh contract. The case of *Jodharaj* v. *Raghavgir*[5] is not perhaps altogether consistent with the above, but the circumstances of the case were peculiar, and the Court did not consider that the above authorities applied to it. There is thus, we consider, a strong current of later authorities to the effect that a *ruzukháta* cannot form the basis of suit, but that, the original transactions forming the basis of the suit, the subsequent *ruzukhátas* are only evidence of the debt due serving to prevent the operation of the statute of limitation. No reasons are assigned by the Courts for the view which they have adopted in opposition to the view that a *ruzukháta* is an unequivocal admission of a debt, from which the law implies a promise to pay, and thus (except for limitation purposes) contains in itself all the requisites of a valid contract which can form the immediate basis of a suit. The decisions are possibly based on the provisions of section 50 of the Civil Procedure Code, which apparently contemplates that the plaintiff should

(1) P. J. for 1888, p. 129.
(2) P. J. for 1891, p. 102.
(3) P. J. for 1890, p. 9.
(4) P. J. for 1890, p. 314.
(5) P. J. for 1893, p. 48.

state his original cause of action and treat acknowledgments of it as exceptions taking the case out of the range of the limitation law. However that may be, we think that the authorities are so numerous and uniform as to prevent us from following the technical English law upon this subject. It is also, we think, clear that, having regard to the relations between capitalists and borrowers in the mofussil, the rule laid down by these decisions is more likely to result in doing justice between the parties than would be the opposite rule.

Turning to the *ruzukhâta* in this case it is, as translated by our Court Interpreter, as follows :—

"Creditor Shankar Ramkrishna Shet Wani, a minor, by his guardian his mother Bhagirthibai kom Ramkrishna Shet Mâlegaokar.

"The *khâta* of Sankra valad Bhawani Patil, inhabitant of mouja Chandanpuri at present at Mâlegav. The 10th of Falgun Vadya Shak 1814. The 13th of March 1893.

	Cr.	Rs.	Dr.	Rs.
"7.	The 2nd of Jeshta Shudh Shak 1815.		The 10th of Falgun Vadya—own handwriting.	
			On making an account of the last *khâta* the amount found due for principal together with interest is Rs. 28½, in letters twenty-eight and a half. The interest payable on this is Re. 1 per cent. per month.	28¼
			I admit this to be correct. The handwriting of Damodhar Narayan Mamvadkar, inhabitant of Yedalgav.	
			Signature across a receipt stamp of Sankra valad Bhawani Patil—my own handwriting."	

We think that the admission or agreement that the statement is correct refers to the whole entry and is not an agreement as to the interest alone and a promise to pay it at ¾ per cent. In this view the *ruzukhâta* in this case presents no peculiar feature and is an acknowledgment of the correctness of the calculation and of the rate of interest and nothing more.

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The transaction, therefore, amounts to this. There was an original debt advanced on (as the *ruzukhátas* show) compound interest, and the sum now due at the foot of the account is Rs. 28½. How much of this due for prinsipal and how much for interest is a matter of calculation, but the interest recoverable by suit is limited by the amount of principal originally advanced. This decision is in accord with that in *Motilal* v. *Shivram* (Second Appeal No. 43 of 1894) not reported.

The first and second questions should be answered in the negative, the third also in the negative, the amount of interest recoverable by the plaintiff being limited by the principal amount due on the original transactions.

Order accordingly.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

1896. October 13.

BALKRISHNA INDRABHAN (ORIGINAL DEFENDANT), APPLICANT, *v.* MAHADEO BABAJI KULKARNI (ORIGINAL PLAINTIFF), OPPONENT.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), Secs. 12, 13, 53 and 54—Mortgage—Profits in lieu of interest—Loan not secured—Provision that mortgage not to be redeemed until unsecured loan paid off—Mortgage paid off out of profits—Balance of profits applied to interest on loan—Special Judge, power of, to vary decree—Review.

A lent B Rs. 150 for which B gave him a bond, dated 6th July, 1872. Of this loan Rs. 100 were advanced on the mortgage of certain land, and the bond contained the terms of the mortgage, one of which was that the profits of the land were to be taken by the mortgagee in lieu of interest on the Rs. 100. The remaining Rs. 50 of the loan unsecured by the bond were made repayable with compound interest at Re. 1-8-0 per cent. per mensem. The bond further provided that the mortgage should not be redeemed until the latter sum of Rs. 50 with interest should be paid off. B sued for redemption of the mortgage. The first Court found that the mortgage had been paid off, and ordered redemption on the plaintiff paying Rs. 50 with interest, which under the rule of *damdupat* increased the amount to Rs. 100. The plaintiff applied to the Special Judge for review on the ground that he had already paid the Rs. 50. The Special Judge

* Application, No. 174 of 1896, under Extraordinary Jurisdiction.