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31 C. 1036=8 C. W. N. 880.

under section 58, at the highest amount bid. When we take these circumstances alone with the fact that only a few months before when this very property had been put up to auction, the Collector had increased his bids from Re. 1 to Rs. 800, it is only natural that the agent of the defaulter should be misled and completely taken by surprise at the action of the Collector who began with a bid of 1 Re., and as soon as this was followed by a bid of 10 Rs. on behalf of the defaulter, turned round, and without any notice or warning, closed the sale under section 58 of the Revenue Sale Law. We entirely agree with the observation of the learned [1042] District Judge that the circumstances are ugly and that between the astuteness of the Collector and the folly of her agent, the plaintiff has suffered real hardship. It is of the utmost importance that sales under Act XI of 1859, the provisions of which in the interest of the State have a character of unusual stringency, should be conducted with all possible fairness and impartiality. We hold without any hesitation that the sale which is now impeached before us is not of this description ; it has been brought about by what must be regarded as an abuse of the provisions of section 58, if indeed it may be regarded as a colourable compliance therewith ; the consequence has been that a valuable property has passed into the hands of the Government for a nominal sum, while the defaulting proprietor still continues liable for the unsatisfied arrears. We must further observe that the evidence discloses that purchases are made by the Collector on behalf of the Government systematically in the district of Noakhali, which practice is hardly to be regarded as satisfactory or one contemplated by the Law. As pointed out in paragraph 4, section VI of the rules made by the Board of Revenue under Act XI of 1859, the power vested in the Collector by section 58 must be exercised with discretion. It seems to us to be hardly desirable that purchases should be systematically made on behalf of the Government by the Collector who himself has the conduct of the sale and whose duty it is to see that it is conducted with absolute fairness and impartiality.

The result therefore is that this appeal must be allowed, the decree of the Court below reversed, and the sale annulled under section 33 of Act XI of 1859 on the ground that it has been made contrary to the provisions of section 58 of that Act. The plaintiff's suit is accordingly decreed with costs in both Courts.

Appeal allowed.

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31 C. 1043 (=9 C. W. N. 83.)

[1043] APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Mookerjee.

SADASOOK AGARWALLA *v.* BAIKANTA NATH BASUNIA.*

[11th July, 1904].

Limitation—Acknowledgment in writing—"Signing," what amounts to—Limitation (Act XV of 1877) s. 19—Hatchitta—Interest.

Money was lent on a *hatchitta* which bore at the head of it the name and signature of the debtor. Under an entry of a certain date on the debit side

* Appeal from Appellate Decree, No. 500 of 1902, against the decree of Benode Bihari Mitter, Subordinate Judge of Jalpaiguri, dated Sept. 25, 1901, affirming the decree of Behari Lal Chatterjee, Munsif of that district dated Nov. 19, 1900.

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written by the debtor himself and stating that a certain amount was due as interest on the principal sum, occurred the words "*likkitan khod*" or "writer self," also written by the debtor himself :—

Held, that this amounted to the signing of an acknowledgment within the meaning of s. 19 of the Limitation Act, and was sufficient to save a suit based on the *hatchitta* from being barred by limitation.

Andarji Kalyanji v. *Dulabh Jeevan* (1), *Jekisan Bapuji* v. *Bhowsar Bhoga Jetha* (2) and *Gangadharrao Venkatesh* v. *Shidramapa Balapa Desai* (3) followed.

Brojender Coomar v. *Bromomoye Chowdhrani* (4) referred to.

[Ref. 132 P. R. 1907 ; 60 I. C. 746.]

SECOND APPEAL by the plaintiff, Sadasook Agarwalla.

The plaintiff sued the defendant, Baikanta Nath Basunia, for the recovery of Rs. 949, being the amount due on a *hatchitta khatta* book. The *khatta*, which was filed, contained accounts of several persons, and the page containing the defendant's account ran as follows :—

To the High in dignity Srijukta Babu Sadasook Agarwalla,

Stamp of one anna.

Sri Baikanta Nath Basunia.

[1044] ACCOUNT—Sri Baikanta Nath Basunia of Kharija Fazali.

Credit.	Rs.	*Debit.*	Rs.	A.
9th Jaistha 1305, thirteen hundred and five *sal*, through self, in the account of the money taken on the 7th Asar, in cash Company's ...	9	6th Asar 1302 *sal*, through self, in cash Company's ...	300	0
Total nine Rupees only. Writer self.		Total three hundred Company's Rupees only. On this sum I will pay interest at the rate of 2¼, two rupees and four annas, per cent. per mensem.		
		7th Asar, through Beni Madhub	25	0
		12th Jay, through Beni Madhub	5	0
		Total thirty Company's Rupees only. ...		
		The interest on this sum from the year 1302 *sal* up to the 9th Jaistha 1305 *sal*, on settlement of account ...	267	12
		Total amount of interest two hundred and sixty-seven Rupees and twelve annas only. Writer self.		

The total of Rs. 949 is obtained by adding to the amount stated in the *hatchitta* the sum of Rs. 360-4-0, being the interest due thereon from the 10th Jaistha 1305 to Bhadra 1307, the suit having been instituted on the 20th September 1900.

The defendant, while admitting the *hatchitta*, pleaded that the suit was barred by limitation. He admitted to have himself written the entire account both on the debit and credit sides, including the portion in which the amount of interest was stated on settlement of accounts, and to have signed it himself at the top and written the words "writer self" at the bottom both on the debit and credit sides ; but he contended that the portion containing the amount of interest or settlement of

(1) (1877) I. L. R. 5 Bom. 88.
(2) (1880) I. L. R. 5 Bom. 89.
(3) (1898) I. L. R. 18 Bom. 586.
(4) (1878) I. L. R. 4 Cal. 885.

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accounts was not an acknowledgment within the meaning of section 19 of Act XV of 1877, and not being stamped, was inadmissible in evidence.

The Munsif held that the statement of interest due made on the 9th Jaistha 1305, was an acknowledgment within the meaning of section 19 of Act XV of 1877, but was not admissible in [1045] evidence as it was not duly stamped ; and that therefore the claim was barred by limitation with the exception of Rs. 25, lent on the 7th Assar 1302. The suit was accordingly decreed for this sum only.

On appeal by the plaintiff, the Subordinate Judge held that the words constituting the adjustment of interest were not *signed* by the defendant ; and being of opinion that the whole claim was barred by limitation, he dismissed the appeal.

Babu *Kritanta Kumar Bose* (Babu *Binode Behary Mukerjee* with him), for the appellant, contended that the debtor's signature at the top of the *hatchitta*, together with the words " writer self " written by the debtor at the foot, constituted an acknowledgment which satisfied the requirements under section 19 of Act XV of 1877 : see *Andarji Kalyanji* v. *Dulabh Jeevan* (1) and *Jekisan Bapuji* v. *Bhowsar Bhoga Jetha* (2). See also *David Yule* v. *Ramkhelwan Sahai* (3). The case of *Gangadharrao Venkatesh* v. *Shidramapa Balapa Desai* (4) is in my favour. The nature of a *hatchitta* is discussed in *Brojendar Coomar* v. *Bromomoye Chowdhrani* (5) and *Brojo Gobind Shaha* v. *Goluk Chunder Shaha* (6).

Babu *Kisori Lal Sarkar* (Babu *Debendra Nath Bagchi* with him), for the respondent, contended that the words " writer self " did not amount to a signature : see *Abdul Gafur* v. *Queen-Empress* (7) and Darby and Bosanquet on Limitation, p. 108.

BRETT AND MOOKERJEE, JJ. The plaintiff-appellant in this appeal brought a suit to recover from the defendant-respondent the sum of Rs. 949 on a *hatchitta*.

The plaintiff's case was that the defendant had borrowed Rs. 300 from him on the 6th Assar 1302 corresponding to the 19th June 1895, Rs. 25 on the 7th Assar, and Rs. 5 on the 12th Assar, thus making a total of Rs. 330 ; that on the 9th Jaistha 1305 corresponding to 22nd May 1898, the defendant had acknowledged [1046] that that sum was due together with interest thereon from the 19th of June 1895 up to that date, amounting to Rs. 267-12, and on the same date he had paid a sum of Rs. 9 in part payment of the loan taken on the 7th Assar. The present suit was instituted on the 20th September 1900, and the plaintiff's case was that by reason of the acknowledgment, made by the defendant on the 22nd May 1898, the suit was within time.

The main defence taken in the case was that the suit was barred by limitation. The suit was brought on the *hatchitta* which has been translated and has been placed before us. That document sets out the facts already mentioned. It bears at the head of it the name and signature of the defendant. Under the entry of the 22nd May 1898, which the plaintiff states is an acknowledgment of indebtedness on the part of the defendant, there are written the words " *likhitan khod*" (" writer self ") and on the credit side under the payment are written the same words " writer self."

The case for the defence was that the acknowledgment on the debit

(1) (1877) I. L. R. 5 Bom. 88.
(2) (1880) I. L. R. 5 Bom. 89.
(3) (1901) 6 C. W. N. 329.
(4) (1893) I. L. R. 18 Bom. 586.
(5) (1878) I. L. R. 4 Cal. 885.
(6) (1882) I. L. R. 9 Cal. 127.
(7) (1896) I. L. R. 23 Cal. 896.

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side did not comply with the provisions of section 19 of the Limitation Act so as to save the debt from being barred by limitation. The entry on the credit side, it is also alleged as it did not specify that it was made on account of interest, must be taken to be a payment of part of the principal only of the loan taken on the 7th Assar 1302, that is to say, the 20th of June 1895.

The Munsif held that, so far as the debt of the Rs. 300 was concerned and the interest thereon, the suit was barred by limitation. He also held that the suit, so far as the plaintiff sought to recover the sum of Rs. 5 borrowed on the 12th Assar 1302 was concerned, was also barred ; but he held that the balance of the loan of Rs. 25 taken on the 7th Assar 1302 was not barred by reason of the payment of a part of the principal made on the 9th Jaistha 1305 corresponding to the 22nd May 1898.

The plaintiff appealed against the decision of the Munsif and his appeal was dismissed. He has in consequence preferred this appeal to this Court.

The only question which has been argued before us, and which we have to decide, is whether the plaintiff was not barred from **[1047]** recovering the sum of Rs. 300 lent on the 6th Assar 1302 corresponding to the 19th June 1895, and the other two sums borrowed from him on the 7th Assar and 12th Assar, by reason of the fact that on the 22nd May 1898 the defendant acknowledged his indebtedness for those sums and for the interest due on those sums up to that date, amounting to Rs. 267-12.

After hearing the learned vakils on both sides we are of opinion that the suit was not barred. We have been referred to two decisions of the Judges of the Bombay High Court, *viz.*, *Andarji Kalyanji* v. *Dulabh Jeevan* (1) and *Jekisan Bapuji* v. *Bhowsar Bhoga Jetha* (2). In those two cases the Bombay High Court held in two accounts, similar to the *hatchitta* in the present case, in which the debtor had signed his name on the top and then had afterwards made entries, and, at the foot of the entries, had written in one the words "by his own hand" and in the other the words "*dustakat khod*," that those two documents were sufficiently signed within the meaning of section 19 of Act XV of 1877, and section 4 of Act XIV of 1859 (the previous Limitation Act).

This Court in the case of *Brojendar Coomar* v. *Bromomoye Chowdhrani* (3) has held that when an account in a *hatchitta* has two sides to it, the one headed "amount advanced" and the other headed "amount received" and the amount actually due on such account varies from time to time and depends upon the relation of the amount advanced to the amount received, it is not necessary that each entry shall be stamped in order to constitute it an acknowledgment against the debtor. It was also held that, in a document of that kind, what the Court has to look to is the intention of the parties, and whether the entries are such that, they cannot be detached from one another because they all form part of one account, and, that if those conditions are fulfilled, the document must for the purpose of being validly stamped be treated as a whole, and that each entry in it need not be separately considered. The *hatchitta* relied on in the present case is similar to that considered by this Court in the case mentioned above. **[1048]** The *hatchitta* represents the account between the present defendant and the present plaintiff ; the entries in

(1) (1877) I. L. R. 5 Bom. 88.
(2) (1880) I. L. R. 5. Bom. 89.
(3) (1878) I. L. R. 4 Cal. 885.

31 C. 1043=9 C. W. N. 83.

this account were admitted by the defendant, practically in his written statement, and certainly specifically by his pleader in the Court of first instance to be all in his handwriting. The entry on the debit side, dated the 9th Jaistha 1305, corresponding to the 22nd May 1898, which is the important entry for the purpose of determining the question of limitation in this appeal, is admittedly in the handwriting of the defendant. In fact, the defendant's pleader before the Munsif referred specifically to the entry, and admitted that it was written by the defendant. All then we have to consider is whether the words " *likhitan khod* " at the bottom of that entry, coupled with the fact that at the top of the page appears the name of the defendant, are sufficient to amount to a signing of the acknowledgment within the meaning of section 19 of the Limitation Act. In our opinion in such a case it is necessary to consider the intention of the parties, and, whether it can be taken that the words " *likhitan khod* " were the form of words adopted by the defendant for the purpose of affixing his signature to such documents.

The Bombay High Court in the case of *Gangadharrao Venkatesh* v. *Sidramapa Balapa Desai* (1) held that where certain words had been used at the commencement of a letter and certain other words at the end of it, neither of which was an actual signature of the name of the writer; still when it was shown that the writing of these specified words by persons of the class to which the defendant in that case belonged at the top and bottom of letters was the usual way amongst such persons of authenticating letters, the writing of those words was a signing within section 19 of the Limitation Act. In their judgment they state, referring to a previous case which they followed, that "the ground of that decision must be that the 'signing' in such manner as is usually adopted by the debtor with the view of showing that he intended to be bound by the document, renders the document effective as an acknowledgment under the section." They go on to say: "It is on this ground indeed that it has also been held [1049] that the 'signing' may be by writing the name in any other part of the document provided it be intended to operate as an acknowledgment by the party that it is his instrument. "

We think that the principle adopted by the Bombay High Court should be held to apply to the present case. We hold that the words " *likhitan khod* " at the foot of the two entries in this account indicate that it was the usual method adopted by the debtor of signing *hatchittas* when his name appeared at the top of them as the debtor, and we may observe that this is not an unusual method of signing adopted in such documents. We are also satisfied, and in fact it has not been seriously disputed, that it was the intention of the debtor when he made the entry on the 22nd May 1898 to acknowledge his indebtedness.

We therefore think that the acknowledgment bearing at the foot the word " *likhitan khod* " was a sufficient acknowledgment within the meaning of section 19 of the Limitation Act, to save the debt from being barred by limitation. It has been suggested to us that the acknowledgment only applies to the interest. But reading the words of the acknowledgment and having regard to the form of the entry in the *hatchitta*, we are satisfied that it was intended to acknowledge not merely the interest due, but also the debt on which that interest had been calculated.

We therefore hold that, so far as the whole claim of the plaintiff is concerned, the acknowledgment of the 22nd May 1898 is sufficient to

(1) (1893) I. L. R. 18 Bom. 586.

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save it from being barred by limitation. We must therefore set aside the judgments and decrees of both the Courts below and in lieu thereof decree the plaintiff's claim in full with costs.

Appeal allowed.

31 C. 1043=9 C. W. N. 83.

31 C. 1050 (=8 C. W. N. 528=1 Cr. L. J. 451.)

[1050] ORIGINAL CRIMINAL.

Before Mr. Justice Geidt.

EMPEROR *v.* ROBERT STEWART.*

[10th May, 1904.]

Reply, Prosecutor's right of—Depositions of witnesses before committing Magistrate—Evidence adduced by accused—Criminal Procedure Code (*Act V of* 1898), *ss.* 162, 288, 289, 292.

In a sessions trial before the High Court, the accused, before he was asked by the Court under s. 289 of the Criminal Procedure Code whether he meant to adduce evidence, put in as evidence on his own behalf the depositions of certain witnesses taken before the committing Magistrate which formed part of the record sent up by the Magistrate;—

Held, that this could not be said to be 'evidence adduced by the accused' after the case for the prosecution had been closed, and that the prosecution was therefore not entitled to reply under s 292.

[Ref. 15 Cr. L. J. 241=23 I. C. 193=7 L. B. R. 84=4 Cr. L. R. 123=4 L. B. R. 5 Dist. 10 Cr. L. J. 24.]

IN this case the accused, Robert Stewart, was tried at the Sessions under ss. 307 and 326 of the Penal Code for an attempt to commit murder and voluntarily causing grievous hurt by a dangerous weapon.

During the trial, while a Sub-Inspector of Police was being cross-examined, Mr. Garth, who appeared for the accused, put in a statement made by the accused to a head constable on the day of the occurrence, which formed part of the record sent up by the committing Magistrate. Immediately after the case for the prosecution was closed, Mr. Garth, before he was asked by the Court whether he meant to adduce evidence, put in the depositions of nine witnesses for the prosecution taken by the committing Magistrate, all of whom had given evidence at the trial then proceeding, for the purpose of contradicting them.

Mr. *Garth* (Mr. *Remfry* with him) for the accused. The mere fact that the statement made by the accused and the depositions of the nine witnesses put in as evidence on his behalf, does not [1051] entitle the prosecution to reply. Section 288 of the Criminal Procedure Code deals with the evidence taken before the committing Magistrate. The word "evidence" in s. 289 of the Code must therefore mean evidence other than the depositions taken before the committing Magistrate. When, therefore, the accused put in such depositions he could not be said to have adduced evidence so as to come within the purview of s. 292. The same argument applies to the statement of the accused to the head constable.

The Standing Counsel (Mr. *S. P. Sinha*) (Mr. *K. S. Bonerjee* with him) for the Crown. The deposition of a witness taken before the committing Magistrate when put in by the accused to contradict the evidence given by that witness is undoubtedly evidence; and full weight should

* Original Criminal.