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and her sister's illegitimate son Tunu—the husband being entitled to ½. The share of the plaintiff, therefore, will be ½ of Bechun's estate inherited by her through Pir Buksh.

The decree of the Lower Appellate Court must therefore be modified by reducing the share of the plaintiff from ⅔ to ½. The parties will be entitled to costs in proportion.

Decree modified.

30 C. 687.

[687] APPELLATE CIVIL.

AMBICA DAT VYAS *v.* NITYANUND SINGH.*

[6th March, 1903.]

Limitation—Limitation Act (XV of 1877) s. 19, exp. 1, Sch. II, Art. 56—Acknowledgment of debt, unstamped—Stamp Act (I of 1879), Sch. I, Art. 1—Tankha—Stamp-duty—Evidence of debt.

The mere fact of a document being an acknowledgment of a debt within the meaning of s. 19 of the Limitation Act, would not make it liable to a stamp-duty under Sch. I, Art 1 of Act I of 1879. There are other conditions required to be fulfilled, one of which being that it should be intended to supply evidence of a debt.

Binja Ram v. *Rojmohun Roy* (1), *Bishambar Nath* v. *Nand Kishore* (2), and *Mulji Lala* v. *Lingu Makaji* (3) referred to.

[Ref. 18 L. W. 246.]

SECOND APPEAL by the plaintiff, Ambica Dat Vyas.

The suit was for the recovery of the sum of Rs. 1,090-11 from the defendant on account of the costs of printing receipts, etc. It was found by the Court of first instance that the printing work was completed in August 1893, but that the defendant admitted by a writing, dated the 11th June 1896, that a certain sum was due by him on account of the said work and gave a *tankha* or written order to his *tehsildar* to pay the amount to the plaintiff. The said document was addressed to the *tehsildar*. The plaintiff instituted the suit on the 15th October 1898, dating his cause of action from the said 11th June 1896, the date of the *tankha*. The defence was mainly one of limitation.

The Subordinate Judge held that the suit was governed by article 56 of the second schedule to the Limitation Act, and that it was therefore barred by limitation ; and that the *tankha* being on an unstamped paper was inadmissible in evidence as an acknowledgment of the debt by the defendant. The suit was accordingly dismissed. On appeal, that decision was affirmed by the District Judge.

[688] Babu *Baldeo Narain Singh* for the appellant.

Babu *Prasanna Chandra Roy*, for the respondent.

BANERJEE AND HENDERSON, JJ. In this appeal which arises out of a suit brought by the plaintiff-appellant for the price of work done by him for the defendant, the only question raised for determination is whether the Lower Appellate Court was right in holding that a certain letter of acknowledgment called *tankha* was inadmissible in evidence,

* Appeal from Appellate Decree No. 568 of 1900, against the decree of W. H. Vincent, Officiating District Judge of Bhagalpur, dated Jan. 16, 1900, affirming the decree of Kally Coomar Bose, Subordinate Judge of that district, dated July 22, 1899.

(1) (1881) I L. R. 8 Cal. 282.
(2) (1892) I. L. R. 15 All. 56.
(3) (1896) I. L. R. 21 Bom. 201.

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as it was not stamped. The suit was brought more than three years after the time the work was done, and it would be barred by Art. 56 of the second schedule to the Limitation Act unless this acknowledgment can be used as evidence, in which case the suit would, under the provisions of section 19 of the Limitation Act, be saved from being barred.

The Court of Appeal below observes with reference to this letter or *tankha*: "It is quite clear that this *tankha* is an acknowledgment of a debt and it was intended, to act as one in my opinion, and was so understood and taken by the plaintiff. It is not stamped, and so cannot be admitted." The provision of the Stamp Act requiring an acknowledgment to be stamped is Art. 1 of Schedule I to Act I of 1879, which governs this case, and which says that "Acknowledgment of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession," is required to be stamped with the stamp of one anna. The mere fact of a document being an acknowledgment of a debt would not therefore make it liable to a stamp duty. There are other conditions required to be fulfilled, one of which is a very important one, and that is that it should be written or signed on behalf of a debtor in order to supply evidence of a debt. The question is whether that was the intention of this document. It has not been found by the Lower Appellate Court that such was the case. The Lower Appellate Court takes it for granted that if it is an acknowledgment of a debt, and was intended to be an acknowledgment of a debt, it must be stamped. That view in our opinion is not correct. **[689]** The letter after setting out the several items of work done requests the *tehsildar* of the writer to pay the amount to the creditor to whom it is handed. Of course the mere fact of its being addressed not to the creditor will not prevent it from being an acknowledgment under section 19 of the Limitation Act, as explanation 1 of that section would show. And it does not necessarily follow that it was intended to supply evidence of the debt. The question of limitation is one of fact, and is to be determined by the Lower Appellate Court which has to deal with questions of fact. As the document has never been admitted and has been rejected on the ground mentioned by the Judge in the Lower Appellate Court, which in our opinion is wrong, the judgment of that Court ought to be set aside. We may add that the view we take as to the construction of Art. 1 of Schedule I to the same Act is in accordance with that taken by this Court in the case of *Binja Ram* v. *Rajmohun Roy* (1), in which Sir Richard Garth observed "whether an account thus signed by the defendant amounts to such an acknowledgment or not depends in each case upon the form and intention of the entry." And in the case of *Bishambar Nath* v. *Nand Kishore* (2), the Allahabad High Court also took the same view, which was adopted likewise by the Bombay High Court in the case of *Mulji Lala* v. *Lingu Makaji* (3), where Chief Justice Farran in delivering the judgment of the Full Bench observes—

"In each case the instrument of acknowledgment must be carefully

(1) (1881) I. L. R. 8 Cal. 282.
(2) (1892) I. L. R. 15 All. 56.
(3) (1896) I. L. R. 21 Bom. 201.

examined in connection with the surrounding circumstances to ascertain whether it has been signed to supply evidence of a debt."

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The result is that the decree of the Lower Appellate Court is set aside, and the case remanded to that Court in order that it may be disposed of in accordance with the directions contained in this judgment.

The costs of this appeal will abide the result.

30 C. 687.

Appeal allowed; *case remanded.*

30 C. 690 (=7 C. W. N. 634.)

[690] CRIMINAL REVISION.

SURENDRA NATH SARMA *v.* RAI MOHAN DAS.*

[10th March, 1903.]

Appeal—Restoration of property, order for—Criminal Procedure Code (Act V of 1898) ss. 517, 520.

An order by a Magistrate directing the restoration of property, in respect of which no offence has been found to have been committed, to the person in whose possession that property was found, is not an order under s. 517 of the Code of Criminal Procedure and is therefore not open to appeal.

Basudeb Surma Gossain v. *Nasiruddin* (1), *In re Annapurnabai* (2) and *In re Devidin Durgaprasad* (3) referred to

[Diss. 34 Cal. 347=5 Cr. L. J. 48=5 C. L. J. 44. Dist. 9 C. W. N. 549=2 Cr. L. J. 269. Ref 42 M. 9=24 M. L. T. 256=49 I. C. 167.]

RULE granted to the petitioner, Surendra Nath Sarma.

This was a Rule calling upon the Deputy Commissioner of Sylhet to show cause why the order of the Sessions Judge of Sylhet dismissing the appeal of the petitioner should not be set aside and the appeal directed to be heard on the merits.

It appears that the petitioner was the worshipper of the idol *Syam Sundar* in the possession of one Kunjamoni Dassi. The accused Rai Mohan Das was the elder brother of Kunjamoni's deceased husband. Both the accused and Kunjamoni applied for Letters of Administration to the estate of the accused's father Jasmanta, which estate has been dedicated to the idol. While this matter was pending in the High Court, the accused went with a number of men to Kunjamoni's house, and having stated that the High Court had decreed the matter in his favour and that the idol was to be made over to him, compelled the petitioner by threats to carry the idol to his (the accused's) house.

[691] The accused was tried under ss. 384 and 417 of the Penal Code by the Assistant Commissioner of Sylhet, who on the 1st December 1902 acquitted the accused and directed :—

"That the idol, with its appurtenances, be delivered with the help of the police to Rai Mohan Das in whose possession it was found."

The petitioner appealed against that order to the Sessions Judge of Sylhet, who having held that the order was not one passed under s. 517 of the Criminal Procedure Code and that no appeal lay, dismissed the appeal on the 5th January 1903. Thereupon the petitioner moved the High Court and obtained this Rule.

Mr. *P. L. Roy* (Babu *Surendra Nath Ghosal* with him) shewed cause. The Sessions Judge was right in holding that there was no appeal against

* Criminal Revision No. 65 of 1903, against the order of H. L. Thomas, Assistant Commissioner of Sylhet, dated Dec. 1, 1902.

(1) (1887) I. L. R. 14 Cal. 834.
(2) (1877) I. L. R. 1 Bom. 630.
(3) (1897) I. L. R. 22 Bom. 844.