1873

LUCHMEE BUKSH ROY v. RAM JEETRAM PANDAY.

defend the action in the best way he can according to the best of his judgment.

It has been said that this case ought to be decided upon an equitable construction, and not upon the strict words of the Statute, but their Lordships think that Statutes of Limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. Statutes of Limitation are in their nature strict and inflexible enactments. The object of the Legislature in passing them is to quiet long possession and to extinguish stale demands. Such legislation has been advisedly adopted in India as it has been in this country, and their Lordships think that in construing these Statutes the ordinary rules of interpretation must prevail.

Their Lordships are therefore of opinion that the judgments of the Courts below are correct, and they must humbly advise Her Majesty to affirm them, and to dismiss this appeal with costs.

Appeal dismissed.

Agents for the appellant: Messrs. *J.H.* and *H. R. Henderson.*

Agents for the respondent: Messrs. *Barrow* and *Barton.*

MIRZA HIMMUT BAHADOOR (PLAINTIFF) *v.* SAHEBZADEE BEGUM AND ANOTHER (DEFENDANTS).

P. C.*
1873
Nov. 27 & 28.

[On appeal from the High Court of Judicature at Fort William in Bengal.]

Mahomedan Law—Illegitimacy—Acknowledgment by a Brother.

The plaintiff, *E*, and *M* were the illegitimate sons and daughter of *B*, a Mahomedan woman. *B* died, and, after his death, the plaintiff sued his widow and *M*, to recover his share of the property of *B* which he claimed as co-heir of *E*. He relied upon a recital in a petition in which *E*, the plaintiff, and *M*, describing themselves as the sons and daughter of *B*, had prayed for a certificate under Act XXVII of 1860. *Held* that this was not such an acknowledg-

* PRESENT: SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH, SIR R. P. COLLIER, AND SIR L. PEEL.

1873

MIRZA HIMMUT BAHADOOR v. SAHEBZADEE BEGUM

ment of the plaintiff by E. as to constitute between them the status of full brotherhood and heirship by Mahomedan law.

Semble.—The acknowledgment by one man of another as his brother is not by Mahomedan law valid, so as to be obligatory on the other heirs, but is binding against the acknowledger.

APPEAL from a decision of the High Court (Kemp and Glover, JJ.), dated the 13th December 1869, reversing a decision of the Subordinate Judge of Gya, dated the 14th September 1868.

The suit was brought by the appellant in the Court of the Subordinate Judge of Gya, to recover possession from the respondents of two out of three shares of the real and personal property of one Mirza Ekbal Bahadoor, a deceased Mahomedan of the Shia sect.

The plaintiff, Ekbal, and Bismullah, the second defendant, were the illegitimate sons and daughter of Modenarain Singh and Baratee, a Mahomedan woman. The respondent Sahebzadee was the widow of Ekbal who died on 15th August 1867. The plaintiff claimed the property sued for as being the brother of Ekbal and co-heir with him of their mother Baratee; and in support of his claim he relied upon an acknowledgment by Ekbal in his lifetime, that the plaintiff was his brother and co-heir. The alleged acknowledgment was contained in a petition presented to the Civil Court of Gya on 20th January 1866, in which it was recited that "Mirza Himmut Bahadoor, Mirza Ekbal Bahadoor, and Mussamut Bismullah Begum, sons and daughter of Mussamut Baratee Begum, deceased, prayed for a certificate under Act XXVII of 1860." It also appeared that Ekbal, the plaintiff, and the defendant Bismullah had in another case obtained some property which they claimed as heirs of an elder sister. The suit was brought on 11th September 1867.

On the 14th September 1868, the Subordinate Judge held that the plaintiff and the deceased were illegitimate, and could not therefore by Mahomedan law be heirs to each other; but that Ekbal had in his lifetime acknowledged the plaintiff as his brother, and that such acknowledgment gave the plaintiff a right of succession.

On the 13th December 1869, the High Court, on appeal by

1873

MIRZA HIMMUT BAHADOOR v. SAHEBZADEE BEGUM.

Sahebzadee Begum, confirmed the finding of the Subordinate Judge as to the illegitimacy, but reversed the finding as to the acknowledgment (1). They held, moreover, that even if such acknowledgment had been made, the appellant would have had no right of inheritance according to the law of the Shia sect, and thereupon dismissed the suit.

The plaintiff then preferred the present appeal to Her Majesty in Council.

Mr. *Doyne* and Mr. *Cutler*, for the appellant, amongst other points, contended that the acknowledgment by Ekbal of the appellant as his brother, and as co-heir with himself of Baratee, legally entitled him to inherit as a brother after the satisfaction of the respondents' claim to a defined share as a widow. The law applicable to the case was admitted to be that of the Shia sect of the Mahomedans under which illegitimate sons were disqualified from inheriting, contrary to the rule which prevailed with the member of the Sunni sect amongst whom illegitimate sons could inherit from their mother. The learned Counsel referred to Macnaghten's Mahomedan Law, ch. i, s. 1, rule 55 :—"He has a right to succeed whom the deceased ancestor acknowledged conditionally or unconditionally as his kinsman; and provided that the acknowledgment was never retracted, and provided that it cannot be established that the person in whose favor the acknowledgment was made belongs to a different family;"—to the Hedaya, Bk, xxv, p. 137, as explaining the meaning of the word *ikrar* or acknowledgment, and also to the Hedaya, Bk. xxv, p. 170; *Mussamut Nawabunnissa* v. *Mussamut Fuzloonissa* (2), and Baillie's Digest of Mahomedan Law (1865), Bk. v, p. 406.

The learned Counsel also submitted that the acknowledgment would be good as against the acknowledger, although it might not operate to the prejudice of a third person, who was a recognized heir; see Macnaghten's Principles of Mahomedan Law, ch. i, s. 1, rule 13, and s. 2, rule 14.

Mr. *Cowie*, Q.C., and Mr. *Williamson*, for the respondents,

(1) 4 B L. R., A. C.,103. (2) Marsh. Rep., 428.

contended that no marriage did in fact take place between him and Baratee Begum, and that consequently their children were illegitimate and incapable by the Shia law of inheriting the estate of the father. By the Shia law acknowledgment of brotherhood is not admissible to confer a title by succession, where the person in whose favor the acknowledgment is made is of known parentage, whether legitimate or illegitimate. They also contended that on the evidence, and having regard to the nature of the proceedings in the Civil Court of Gya, referred to in the judgment given below, there was no proof of any sufficient acknowledgment by the deceased of the appellant's brotherhood so as to constitute the relation of heirship

The judgment of their LORDSHIPS was as follows:—

This was a case in which Mirza Himmut Bahadoor was the plaintiff, and SahebzadeeBegum and Mussamut Bismullah Begum, one being the widow and the other the illegitimate sister of Mirza Ekbal Bahadoor, were defendants. The case of the plaintiff was that he was one of the co-heirs of Mirza Ekbal. If this point were decided in his favor, other questions would arise respecting the title of the widow to dower, and the title of the sister to maintain possession of certain property of Ekbal which she was possessed of; but if the question of heirship be decided against Mirza Himmut, none of these questions arise: and their Lordships are of opinion that the judgment of the High Court is right, which decided this question against him.

In the Court below a question was raised on which a good deal of evidence was given, and which was discussed at great length, whether or not Mirza Himmut and Ekbal were the legitimate sons of their mother Baratee and their father Modenarain Singh; but the Court below, as well as the Court above, have come to the conclusion that there was no marriage between their parents, and it must be taken, and indeed is admitted, that they were illegitimate. The Court below held, however, that notwithstanding this illegitimacy, and notwithstanding therefore that by the law of the Shia sect of the

1873

MIRZA HIMMUT BAHADOOR v. SAHEBZADEE BEGUM

Mahomedans (which by admission of both parties applies to this case), the plaintiff would not be heir of Ekbal, that Ekbal had so acknowledged the plaintiff to be his heir, that the plaintiff acquired that status, and was entitled to succeed to his property as such. The High Court, agreeing with the Court below upon the first question as to the legitimacy, reversed its decision upon the second point, being of opinion that there was no proof of any such acknowledgment on the part of Ekbal; and the sole question before their Lordships now is whether or not there was such an acknowledgment. There is no question that, under the Mahomedan law, acknowledgments may be made of such a kind as to operate not merely as admissions but as actually conferring certain descriptions of status, among others a status of heirshsp, limited or general, as the case may be, upon the persons acknowledged. With respect to acknowledgments of relationships, their Lordships have been referred to Mr. Baillie's "Digest of Mahomedan Law," Part 1, published in 1865, and they find it there thus laid down :—"The acknowledgment of a man is valid in regard to five persons,—his father, mother, child, wife, and *mowla*, because in all these cases he acknowledges an obligation, and it is not valid except for these:" and then, further, after giving cases of those acknowledgments which have been stated to be valid, on p. 406 this is found:—"The acknowledgment of a man is not valid with respect to any other persons than those before-mentioned, such as a brother, or a paternal or maternal uncle, or the like," so that if this passage stood without further explanation, it would lead to the conclusion that by the Mahomedan law an acknowledgment of one person by another as his brother, and as such his heir and successor, would have no validity. However, the passage is further explained thus:—"When it is said that the acknowledgment of a man is not valid with respect to any other than those above-mentioned, it is only meant that it is not obligatory on any other except the acknowledger and the acknowledged; but with regard to such rights as affect them only the acknowledgment is valid. So that if one were to acknowledge a brother, for instance, having other heirs beside who deny the brothership, and the acknowledger should die

the brother would not inherit with the other heirs, nor would he inherit from the acknowledger's father if he deny the descent, but he would be entitled to maintenance as against the acknowledger himself during his life." The acknowledgment contended for consists in this, and this only :—It appears that after the death of the mother a proceeding in the Civil Court of Gya was instituted on the 20th January 1866, in which it is recited that Mirza Himmut Bahadoor, Mirza Ekbal Bahadoor, and Mussamut Bismullah Begum, sons and daughter of Mussamut Baratee Begum, deceased, by their pleaders, prayed for a certificate under the provisions of Act XXVII of 1860, on the proof of heirship to the said Mussamut Baratee Begum. That, coupled with this further fact which appears, that these three did by some means or other obtain possession of some property belonging to an elder sister, apparently in the character of her heirs, is relied upon as such an acknowledgment as to constitute the status of full brotherhood and heirship on the part of the plaintiff to the defendant. Their Lordships are of opinion that it would be carrying the doctrine of heirship constituted by acknowledgment to an extent to which it has never been carried before, and further than the principles of the Mahomedan law as to acknowledgments warrant, if they were to give such an effect as has been contended for to what is but an argumentative or inferential admission at best. All that is directly admitted by the statement in Court (the language being that of the pleader of the parties) is that the plaintiff and the defendant were the sons of Baratee, and as such claimed her property. It is sought to deduce from this that they must therefore necessarily be taken to have declared, not only that they were sons and heirs of Baratee, but that they were to all intents and purposes brothers and heirs to each other,—"full brothers" is the term in the plaint,—and that they were entitled to succeed to each other's property, not only property obtained from Baratee, but any property which may have been obtained by either of them from any source whatever. It appears to their Lordships that it would be very unduly stretching the purport of this document to give it any such interpretation. It does not appear to their Lordships by any necessary implica-

1873

MIRZA HIMMUT BAHADOOR v. SAHEBZADEE BEGUM

tion that they must have intended to constitute each full brother of the other for all intents and purposes as has been contended. It may be that they sought to avail themselves of the Sunni Mahomedan law, whereby, as it was admitted, they would although illegitimate, be heirs of their mother. If that were so, the statement in this document amounts to no admission at all, but simply to a statement of fact, and to the inference which the law would derive from that fact. But, be that as it may, their Lordships are of opinion that it is by no means shown, and no inference can be fairly deduced, that it was the intention of the parties by this document to constitute each brother to the other, so as to make him an heir to his estate.

This being their Lordships' opinion on the question of fact, it is unnecessary for them to consider the question whether the widow. who is generally included with the other sharers in the term " heirs," but is not, like sharers, entitled in the absence of " residuaries" to a " return," is or is not an heir in the sense in which the words is used in the passage above cited, and also in the passages in the Hedaya to which their Lordships were referred in the course of the argument, so that her existence would have destroyed the effect of the acknowledgment, had one been proved.

On these grounds their Lordships are of opinion that the judgment of the High Court is right; and they will humbly advise Her Majesty that it be affirmed, and this appeal dismissed with costs.

Appeal dismissed.

Agents for the appellant: Messrs. *Barrow* and *Barton.*

Agents for the respondent: Messrs. *Watkins* and *Lattey.*