Appellate Jurisdiction. (a)

Referred Case No. 38 *of* 1869.

LUTCHUMANAN CHETTY

against

MUTTA IBURAKI MARAKKAYER.

To bring a case within the 4th Section of the Act of Limitations the writing must contain within itself an admission that a debt is due, and oral evidence is not admissible to add to its meaning.

1869. *November* 8. *R. C. No.* 38 *of* 1869.

THIS was a case referred for the opinion of the High Court by J. R. Daniel, the Acting Judge of the Court of Small Causes of Madura, in Suit No. 1402 of 1869.

The case stated was as follows:—

The plaintiff in this case sued to recover rupees 468-13-6 due on a bond; the bond was barred by the Statute of Limitations unless the entry of payment of rupees 50 on the bond signed by the defendant be an acknowledgment in writing within the meaning of Section 4, Act XIV of 1859.

The defendant denied both the genuineness of the bond and of the entry.

On 7th September 1869 I dismissed the suit, as I was of opinion that the entry, though signed by the defendant, was not an acknowledgment of the debt; but at the request of plaintiff I made this decision contingent upon the opinion of the High Court on the question:—

Whether the entry is an acknowledgment in writing within Section 4?

The entry is 'mudalidu rupees 50' this merely means 'rupees 50 paid;' it is signed by the defendant; it is urged on behalf of plaintiff that the only reasonable construction to be placed upon this entry is that the money was paid on account of the bond; that up to that date it was the only payment, and therefore the balance must be due; that the payment of the rupees 50 by defendant is a clear admission that at least that rupees 50 (a part of the original debt) was due upon that date; and therefore there is a sufficient acknowledgment to satisfy the section. Now I think that where a man indebted upon a bond enters beneath the bond a certain sum as paid, it raises an almost irresistable

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presumption that it was on account of the debt secured in the bond, and that the sum so entered is all that he has paid, but this presumption arises not from the meaning of the words themselves, (for if written upon a separate paper they could have no such meaning) but from extrinsic probabilities; as that if he had paid money before he would have entered it therein, or if he had paid the whole that he would not have made the entry at all, but would have taken back the bond. The words themselves contain no acknowledgment that anything is due, the payment of the rupees 50 evidenced by writing is an acknowledgment that this rupees 50 (part of original) was due on that date, but I think the acknowledgment must be of a debt due then and still owing, and not a part of the debt due and paid.

In the last decision of the High Court at page 307, Volume II, High Court Reports, it is laid down that Section 4 does not render it necessary that the writing should express in terms a direct admission that the debt or part of the debt is due. It is left for the Court to decide in each case whether the writing, reasonably construed, contains a sufficient admission that the debt or a part thereof is due.

At page 79 the same rule is laid down, "and further that there may be a sufficient acknowledgment in writing though the signature of the party is not formally subjoined or added to the writing."

The memorandum of payment in the case at page 307 is more explicit, and itself shows from the words used that there was a debt due; but in the case to which I am now referring the entry is as vague as possible taken by itself, and if such an entry be held an acknowledgment, every part payment entered on the original bond signed and dated by the debtor must be held to be also an acknowledgment, and under the decision at page 79 it would be equally so if the memorandum were written by the defendant himself but not signed by him.

It is not shown what the entry was in the case at page 79, but it appears that there was no material difference between that and the present one excepting the signature of the defendant which is declared unnecessary.

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In the present case no construction put upon the words themselves could make them mean an acknowledgment of a debt still owing, and I do not think an acknowledgment of the debt paid sufficient, but the words taken together with the probabilities of the case are reasonably capable of such a construction; as however, I understand the two decisions above quoted it is necessary that the words themselves should amount to an acknowledgment, and I have therefore referred the case for the opinion of the High Court.

The questions referred are:—

I. Whether the entry is an acknowledgment in writing within the meaning of Section 4.

II. Whether the plaintiff is entitled to examine the defendant, or any other witnesses so as to explain the meaning of this entry.

No counsel were instructed.

The Court delivered the following

JUDGMENT:—We give our opinion in the negative on both the question submitted in this case. To bring a case within the 4th Section of the Act of Limitations, the writing relied upon must contain within itself an admission that a debt is due. In both the cases referred to by the Judge, the decisions rest on that ground; and in the latter of them the writing contained words which were held to be an admission. Here the writing imports simply the payment of rupees 50, and oral evidence is not admissible to add to its meaning.