

Privy Council Appeal No. 7 of 1918.
Allahabad Appeal No. 29 of 1915.

Raja Braja Sundar Deb - - - - - *Appellant*

v.

Bhola Nath and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 23RD MAY, 1919.

Present at the Hearing :

VISCOUNT HALDANE.

LORD BUCKMASTER.

LORD DUNEDIN.

[*Delivered by* VISCOUNT HALDANE.]

Their Lordships entertain no doubt that the judgment, on the appeal in this suit, of the High Court of Judicature at Allahabad, in favour of the plaintiffs, who are the respondents before the Judicial Committee, was right.

The suit was brought against the appellant, who is Raja of Aul, to recover the price of goods sold and delivered. The first plaintiff, Bhola Nath, was the dealer who supplied the goods, and the second plaintiff, Wahid Ali, was his agent in the transactions in question, and was the person to whom certain promissory notes were given. The claim was for Rs. 14,152.13 and interest. The appellant Raja succeeded to the Raj on the 21st March, 1905. The general manager of his estate, from a date just after his succession down to March, 1900, when the Raja dismissed him, was Prasanna Kumar Sen. A person who is still more important for the purposes of this appeal was Shankar Nath, who was "Kote" manager until his dismissal in December, 1909, with authority from the Raja, independently of the general

manager, to purchase and pay for all things required for the use of the Raja himself and his household. About this there is on the evidence no room for question. Prasanna Kumar Sen stated it in the box, and the Courts below concur in accepting him as a truthful witness, and it is borne out by other evidence. That the goods the price of which is claimed were delivered is not now in serious dispute. They were supplied soon after the accession of the appellant in 1906. They were not paid for in cash, but Shankar Nath gave a note of hand on behalf of the Raja promising to pay the balance then due on the 12th November in that year. This note was not paid, and on the 6th February, 1908, Shankar Nath gave another note promising payment and to the effect that the Raja having purchased goods Rs. 13,394.9.9 were due on account of the price. Both notes were given to the second plaintiff on behalf of the first, and the amount of the second note includes the price of goods now sued for.

The reason why a second note was obtained in February, 1908, was doubtless to exclude the operation of section 19 of the Limitation Act of 1908, which bars such a claim after three years from the delivery of the goods, unless an acknowledgment in writing has been signed by the party to be charged or by some person through whom he derives title or liability. The signature may be that of an agent duly authorised on behalf of the party to be charged. It is clear that the last note or "Ruqqa" was sufficient as such an acknowledgment, and was given in time to exclude the operation of the Limitation Act, provided it was signed by a person duly authorised on behalf of the Raja. The Subordinate Judge of Benares who tried the case thought that in giving the second note Shankar Nath did so in order, without authority from the Raja, to save the plaintiffs' claim from being barred by limitation. This was the real ground on which he dismissed the action. But the High Court made the obvious criticism that, as it had been satisfactorily established by the evidence of Prasanna Kumar Sen that it was within the general authority of Shankar Nath as "Kote" manager to settle the purchase and price of goods of the kind in question, there was no relevance in the point raised by the Subordinate Judge, for if he could pay the amount of the claim, he could plainly also arrange to prevent time from becoming a bar to it.

Their Lordships entirely agree with the conclusions come to in the Court of Appeal as to this point, and as to preponderance in weight of the evidence in the case generally. They will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

RAJA BRAJA SUNDAR DEB

v.

BHOLA NATH AND ANOTHER.

DELIVERED BY VISCOUNT HALDANE.