QUEEN-EMPRESS v. RAMASAMI.

crop and were charged with theft. Their defence was that they knew nothing of the distraint, that they cut and carried away their own crop, and that no one objected to their doing so. The Deputy Magistrate acquitted the accused on the ground that no demand was served upon them and that no list of distrained property was furnished to them. The District Magistrate considers that as section 8 of Act II of 1864 requires the service of a demand in writing only on the defaulter and the delivery of the list of distrained property only to him, the acquittal is wrong and refers the case for the orders of this Court.

The Deputy Magistrate relied on the decision in criminal revision case 321 of 1882, but that decision proceeds on the view that the demand should be served on, and the list of attached property delivered to, the tenant in possession. As pointed out by the District Magistrate, section 8 refers only to the defaulter who is the pattadar or registered proprietor.

The Deputy Magistrate was, therefore, clearly in error in acquitting the accused on the ground that notice of demand and a list of distrained property should have been given to them.

There is no distinct finding as to whether they were in fact aware of the distraint, and with such knowledge dishonestly removed the crop.

We must set aside the order of acquittal and direct a retrial.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1893. January 11.

UPPI HAJI (PLAINTIFF), APPELLANT,

v.

MAMMAVAN (DEFENDANT No. 1), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 19—Acknowledgment of liability—Requirements of the section.

In a suit to redeem a kanom of 1805 the paintiff set up in bar of limitation an acknowledgment contained in the will of the deceased mortgagee, who thereby devised to his son lands therein described as held by him on kanom. The mortgagor's name was not mentioned nor the date of the kanom, nor was there any

* Second Appeal No. 438 of 1892.

further description of the land which, however, was admitted to be the land in question in the suit :

Held, that the will constituted an acknowledgment under s. 19.

SECOND APPEAL against the decree of A. Thompson, District Judge of North Malabar, in appeal suit No. 460 of 1891, reversing the decree of A. Venkataramana Pai, District Munsif of Tellicherry, in original suit No. 96 of 1891.

The plaintiff sued to redeem a kanom of 1805–06. Defendant pleaded that the suit was barred by limitation. To meet this plea, the plaintiff filed the will of the mortgagee, dated in July 1833, whereby he devised to his son lands "demised to me on kanom." There was no dispute as to the identity of the land and the kanom mentioned in the will with the land and kanom in question in the suit, but the name of the mortgagor was not mentioned in the will, and also there was no further description of the land. The District Munsif held that the passage in the will above referred to constituted a good acknowledgment under Limitation Act, s. 19. He accordingly passed a decree as prayed. The District Judge on appeal, after referring to *Padmanabhan Nambudri* v. *Kunhi Kolendan*(1), *Narraina Tantri* v. *Ukkoma*(2), *Venkataramanayya* v. *Srinivasa*(3), *Mylapore Iyasawmy Vyapoory Moodliar* v. *Yeo Kay*(4), held that the requirements of section 19 were not satisfied, he thereupon dismissed the suit as barred by limitation.

The plaintiff preferred this second appeal.

Sankaran Nayar for appellant.

Govinda Menon for respondent.

JUDGMENT.—Relying on *Mylapore Iyasawmy Vyapoory Moodliar* v. *Yeo Kay*(4) the lower Appellate Court has held that the acknowledgment in exhibit A is not sufficient to remove the bar of limitation. Exhibit A was a will executed by the mortgagee, the predecessor in title of the defendants. The testator therein described the plaint lands as "demised to me on kanom." The question is whether this is such an acknowledgment of liability in respect of the property as to bring it within the requirements of section 19 of the Limitation Act. There can be no doubt that it was an acknowledgment by the testator that he then held

(1) 5 M.H.C.R, 320.
(2) 6 M.H.C.R., 267.
(3) I.L.R., 6 Mad., 182.
(4) I.L.R., 14 Cal., 801.

UPPI HAJI v. MAMMAVAN.

the estate on kanom title. The defendant in this suit admitted that the mortgage of 1805 was true, but relied on the Act of Limitations. He failed to show that there was any other mortgage to which the acknowledgment of the testator could have referred. Under these circumstances the decision of the Munsif that the acknowledgment is sufficient must be upheld, unless we are prepared to hold that the absence of the name of the mortgagor and of the date of the mortgage are sufficient to deprive the acknowledgment of validity. Section 19 does not provide for the mention of the name of the mortgagor, but lays down that the acknowledgment is sufficient, though it omits to specify the exact nature of the right. Under the Act of 1871 an acknowledgment of the mortgagor's title or right of redemption was required, and if it had been the intention of the Legislature that the name of the mortgagor should appear, the alteration was unnecessary. On the contrary the intention of the Legislature appears to have been to adopt the principles laid down in the English cases, *e.g.*, *Stansfield* v. *Hobson*(1) and *Anon*(2) decided by Sir J. Jekyll. As to the decision of the Privy Council on which the Judge relies, we observe that the admission made by Bennet on which the plaintiff relied had no reference to the title set up by the plaintiff in the suit, whereas in the present case the admission of the testator Kutiyatha that he held the property under a subsisting kanom amounted to an acknowledgment of the title of the mortgagor, and that title is in the plaintiff. We reverse the decree of the District Judge and restore that of the Munsif with cost in this and the lower Appellate Court.

(1) 16 Beav., 236 ; affirmed on appeal 3 De G., M. & G., 620.
(2) 3 Atkyn's Rep., 314.