

The Weekly Reporter.

APPELLATE HIGH COURT.

The 1st June 1867.

Present :

The Hon'ble Sir Barnes Peacock, *Kt.*, *Chief Justice*, and the Hon'ble C. P. Hobhouse, *Judge*.

**Limitation—Section 4, Act XIV of 1859—
Acknowledgment in writing.**

Reference to the High Court by Mr. W. W. Linton, Judge of the Court of Small Causes at Kooshtea.

Budoobhoosun Rose, *Plaintiff*,

versus

Enaet Moonshiee, *Defendant*.

Section 4, Act XIV of 1859 is confined to an acknowledgment in writing signed by the debtor himself and not by his agent.

Case.—THE action has been brought by the plaintiff to recover the sum of rupees 22-11 on an account stated, alleged to have been acknowledged and signed by the defendant through the plaintiff's gomastah.

The plaintiff's pleader admits that, but for the account stated, the plaintiff's claim would be barred by the Statute of Limitation. The defendant pleads not indebted, and denies having given any authority to the plaintiff's gomastah to acknowledge and sign the account on his behalf.

I am of opinion that the plaintiff's claim is barred by limitation, there being no acknowledgment in writing signed by the defendant. Section 4 of Act XIV of 1859 enacts : " If, in respect of any legacy or debt, " the person who, but for the Law of Limitation, would be liable to pay the same, shall " have admitted that such debt, legacy, or " any part thereof is due by an acknowledgment in writing signed by him, a new " period of limitation according to the " nature of the original liability shall be

" computed from the date of such admission."

Looking at the words of the Section above alluded to, it is confined in terms to an acknowledgment signed by the debtor and not by his agent ; and I would be legislating, not interpreting, if I extended its operation to acknowledgments signed, not by the party chargeable thereof, but by his agent. The safer course, therefore, would be to confine myself to the plain and unambiguous meaning of the words contained in Section 4.

The judgment of the High Court was delivered as follows by—

Peacock, C. J.—We concur in the view expressed by the Judge of the Small Cause Court, and think that there is nothing sufficient to take the case out of the Statute of Limitation.

The 1st June 1867.

Present :

The Hon'ble Sir Barnes Peacock, *Kt.*, *Chief Justice*, and the Hon'ble C. P. Hobhouse, *Judge*.

Certificate under Act XXVII of 1860.

Reference made to the High Court by Mr. J. Coryton, Recorder of Moulmein, under Section 22, Act XXI of 1863.

Awkinfee, representative of the estate of the late Mewsoon, *Plaintiff*,

versus

Mee Nay, *Defendant*.

A certificate under Act XXVII of 1860 authorizes the holder of it to collect debts due to the deceased, but not to recover property which belonged to the deceased from a person wrongfully in possession.

Case.—THE present plaintiff Awkinfee is the eldest son of the late Mewsoon, a Chinaman, by one Tan Nan Nyoung, who is still living. The defendant was a subsequently married wife of the said Mewsoon.

On Mewsoon's death, litigation ensued with reference to the grant of a certificate under Act XXVII of 1860. The result of such litigation was that a certificate issued to Awkinfee. Awkinfee now sues Mee Nay to recover certain gold leaf, property belonging to the testator's estate.

The Recorder submits for the opinion of the High Court the question whether, under Act XXVII of 1860, the holder of a certificate is entitled to recover other property than money-debts due to the deceased at the time of his death.

The judgment of the High Court was delivered as follows by—

Peacock, C. J.—A certificate under Act XXVII of 1860 authorizes the holder of it merely to collect debts due to the deceased. It does not entitle him to recover property, either moveable or immoveable, which belonged to the deceased from a person wrongfully in possession. The person seeking to recover such property must prove his title independently of such certificate.

The 1st June 1867.

Present :

The Hon'ble Sir Barnes Peacock, *Kt.*, Chief Justice, and the Hon'ble C. P. Hobhouse, *Judge.*

Hindoo widow—Continuance of suit for immoveable property by—Certificate under Act XXVII of 1860.

Reference made to the High Court by Mr. J. Coryton, Recorder of Moulmein, under Section 22, Act XXI of 1863.

Sevinthia Pillay, *Plaintiff,*
versus

Mootoosawmy and another, *Defendants.*

A Hindoo widow, as holder of a certificate under Act XXVII of 1860, is not necessarily the proper person to continue a suit for the recovery of immoveable property; though she is entitled to do so as heir of the deceased if he died without issue and was the sole owner of the property.

Case.—SEVINTHIA PILLAY, the plaintiff in this suit (a Hindoo), has died. This suit has been revived by the holder of a certificate to his estate under Act XXVII of 1860. The certificate holder is widow of the

deceased, and not, therefore, entitled to the whole of the beneficial interest in the estate of the said Sevinthia Pillay. An objection is taken by the defendant that the widow is not such a legal representative as is contemplated by Section 103 of Act VIII of 1859.

The Recorder submits for the opinion of the High Court the question whether the widow, either in her capacity of widow or as certificate holder under Act XXVII of 1860, is entitled to continue the suit for the recovery of immoveable property.

The judgment of the High Court was delivered as follows by—

Peacock, C. J.—We are of opinion that a widow, as holder of a certificate under Act XXVII of 1860, is not necessarily the proper person to continue a suit for the recovery of immoveable property. The certificate confers no right to sue for immoveable property, but only to collect or sue for debts. But as the widow, according to Hindoo Law, was the heir of the deceased if he died without issue, she as widow was the proper person to continue the suit. The fact whether the deceased died without issue is not stated in the case; and, as the deceased is not stated to be a co-sharer, we assume that he was the sole owner of the property.

The case of Kattama Nancheer *versus* the Raja of Shivgunga in the Privy Council (reported in Vol. II, p. 31, of the Weekly Reporter, Privy Council Cases) shews (*see* page 37) what is the power of a widow of a Hindoo dying without issue as regards suits for immoveable property.

The 1st June 1867.

Present :

The Hon'ble J. P. Norman and W. S. Seton-Karr, *Judges.*

Pre-emption (by right of vicinage).

Case No. 163 of 1867.

Special Appeal from a decision passed by Mr. Ainslie, Judge of Patna, dated the 30th January 1867, reversing a decision passed by the Sudder Ameen of that district, dated the 25th April 1866.

Nirput Muhtoon and others (Defendants),
Appellants,

versus

Mussamut Deep Koonwar (Plaintiff)
Respondent.