

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 Causes 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.