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taken, unless the 3rd and 4th defendants are able to show by evidence that this debt ought not to be charged upon them.

They must of course have ample opportunity for the purpose, and this judgment of course does not determine against them either the existence of the debt or its chargeability upon the private property of deceased. Their dismissal from the suit has prevented the proceedings up to the present stage from binding them. The 2nd defendant is of course bound to the extent of the private property taken, and, between him and the plaintiff, the taking and the amount taken are the only questions.

The costs of this appeal, except those of 1st defendant which will be paid by the plaintiff, will be provided for in the Civil Judge's decree.

Suit remanded.

APPELLATE JURISDICTION (*a*)

Regular Appeal No. 24 *of* 1867.

JOHN YOUNG.....*Appellant.*

MANGALAPILLY RÁMAIYA and others...*Respondents.*

An admission of a debt with the appended averment that it is not yet payable in point of time may be an acknowledgment of a debt under Section 4 of Act XIV of 1859. An assertion that a sum of money will be payable on the happening of an event future and uncertain is not an acknowledgment of a debt, but the allegation of incidents out of which a debt may at some time arise.

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THIS was a Regular Appeal from the decision of J. G. Thompson, Civil Judge of Vizagapatam, in Original Suit No. 25 of 1865.

This suit was before in appeal before the Court (in Regular Appeal No. 6 of 1866, reported at page 125 of this volume) and was remanded to the Lower Court for re-investigation. The Civil Judge dismissed the suit as bar-

(*a*) Present :—Holloway and Ellis, J. J.

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red by the Limitation Act. The only point taken in the present appeal was that the document B, a letter from the defendants to the plaintiffs, was a sufficient acknowledgment in writing to take the case out of the Act.

B ran as follows :—With reference to the agreement by myself (Mangalapilly) Jaganatha Charulu, and Gumpathi Kurmia to the effect that we will pay off within two instalments the amount of the two deeds of sale executed by Bhagavan Bukhta of Seetapuram attached to the taluq of Purla Kimidy in your favor, in respect of the 1½ vritti of land held by him in the said Seethapuram Agraharam for the balance previously found due by him to you in the matter of the jaggery supply ; and that we will take the said deeds of sale endorsed, Gnyathri Naraya Pantulu is greatly annoying us, stating that you have both before and at present written to him to collect from us the sum of money due by us to exclusion of the amount already paid. Until you have written your late letter I had been ill and suffering much from cold and fever for a period of three months, I am now cured of the fever but still very weak. I shall call over to you within a fortnight hence, explain to you what has been verbally agreed to at the time of our executing the sannad in your favor, and behave to your satisfaction. I therefore request you will write to Naraya Pantulu Garu not to tease us until the said time.

1*st April* 1860.

Advocate General and *Prichard*, for the appellant, the plaintiff.

Mills for *Miller*, for the 1st respondent, the 1st defendant.

The Court delivered the following

JUDGMENT :—It is conceded that unless by an admission of the defendants, a new period of limitation has been given, under Section IV of the Act, the suit is barred.

We quite agree with the observation at 2, M. H. C. R. 310 that the admission will not be inoperative because accompanied with expressions which prevent the inference of a promise to pay on request. This results from the language of the section. It does not give a new action upon the new promise, but by virtue of the admission extends

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the period of limitation upon the old promise. To have this effect, however, there must be a distinct admission of a debt. B the letter of 1st April 1860, complains of an attempt of plaintiff's agent to collect money without giving credit for what has been already paid, and if the amount only was in dispute, we of course do not say that a debt being admitted in writing, the exact amount might not be proved by oral evidence. The letter, however, so far from making an unqualified admission of any debt, treats the matter as one for discussion and refers to a verbal agreement at the time of the execution of the sunnud. That verbal agreement might be such as to prevent operation of the document, or it might be altogether inoperative, but the very fact that the defendants treat the liability as dependent upon it, will, whether their opinion is well or ill founded, prevent the letter from barring the operation of the statute. The section clearly requires that there be an unqualified admission that a debt or part of a debt is due.

With respect to the answer in the present suit, it is unnecessary to consider whether an admission after action brought will do. Looking however to the grounds upon which *Bateman* v. *Pindar* (3 Q. B. 574) was decided, it is clear that it is not an authority for saying on the present section that an admission in writing after action brought will not bar the operation of the statute. The ground of that decision was that, *Tanner* v. *Smart* having determined that the new acknowledgment gave rise to a fresh cause of action, the acknowledgment after action brought could not sustain that action. *Thornton* v. *Illingworth* (11 Barn. and Cr. 824) explaining *Yea* v. *Fouraker* (2 Burr. 1099) seems to be very applicable to cases upon the present section, and it is probably the better opinion that such an admission will suffice. It is however another question whether such an admission in the answer in the actual suit will suffice. It was once thought, although the opinion has been long overruled, that a statement of a verbal agreement in the answer was a sufficient memorandum of the agreement to satisfy the Statute of Frauds, although the statute is set up in the same answer.

An answer in our Courts, too, will only resemble an answer in Equity, if the Court has exercised the power of

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interrogating the defendant. Here, too, the statute is not set up by the defendants, but, seeing the objection on the face of the plaint, we felt bound in remanding the suit to follow several decisions of this Court and call attention to it. We will assume therefore for the present purpose that an acknowledgment in the answer will do, and we still arrive at the conclusion that there is no such acknowledgment in writing as to bar the operation of the statute. The effect of the answer is, you will be entitled to recover a portion of what you claim when you have fulfilled the condition of delivering to us, or declaring your readiness to deliver to us, certain land. It is clear that this is no acknowledgment of a debt but of a transaction which would give rise to a debt, on the performance of a condition. There may be a present debt although there is not a present liability to pay, but there is no debt where the liability is depended upon a condition.

An admission therefore of a debt with the appended averment that it is not yet payable in point of time may be an acknowledgment of a debt. An assertion that a sum of money will be payable on the accomplishment of a condition, that is on the happening of an event future and uncertain is not an acknowledgment of a debt, but the allegation of incidents out of which a debt may at some time arise. Ulpian (*a*) says " cedere diem significat, incipere deberi pecuniam, venire diem significat, eum diem venisse, quo pecunia peti potest. Ubi ergo pure quis stipulatus fuerit, et cessit et venit dies ubi in diem, cessit dies, sed nondum venit, ubi sub conditione neque cessit neque venit dies, pendente adhuc conditione." That the defendant in this answer alleges that the money has not begun to be due inasmuch as there was an agreement " sub conditione" is clear. That, in opposition to the opinion of a very learned Judge, we held that contention to be unfounded in no way affects the question. There is no admission of a debt because there is an averment that the money was only payable upon a condition which had not been fulfilled. We concur with the conclusion of the Civil Judge and confirm his decree with costs.

Appeal dismissed.

(*a*) Dig. Lib. 50—Tit. XVI. 1. 213.