admissible in evidence for the purpose of proving the separate liability under the simple contract in respect of which registration was not required by Section 17.

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The second question submitted in the case admits of no doubt. Registration of the bond executed by the defendant before the passing of Act XVI of 1864 was not necessary to render it a valid instrument.

Appellate Jurisdiction *(a)*

Special Appeal No. 411 *of* 1868.

NIJAMUDIN.....*Special Appellant.*

MAHAMMADALI and another.....*Special Respondents.*

An admission or acknowledgment in writing under Section 4 of the Limitation Act (Act XIV of 1859), is sufficient to give a new period of limitation although a promise to pay on request is not inferrible from it. The word due in the Section means no more than that the debt is owing and that there is an existing obligation to pay it.

An acknowledgment made in writing to a third party and not to the creditor is sufficient under the Section.

Quære.—Whether an acknowledgment to satisfy the Section must be made before suit.

The English and Indian Law of Limitation considered and contrasted.

THIS was a Special Appeal against the decree of Srinivassa Row, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 398 of 1866, reversing the decree of the Court of the District Munsif of Mangalore in Original Suit No. 193 of 1864.

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The plaintiffs brought this suit in order to recover from the defendants the sum of rupees 784-5-4, being the balance of interest and principal due under the document executed by the defendants' deceased father Siyabuddin to Saiyad Abdulrahiman, the deceased maternal uncle of the 1st plaintiff's daughter, the 2nd plaintiff.

(a) Present: Scotland, C. J. and Collett, J.

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The 1st defendant stated that according to the karar executed by the plaintiff's ancestor Abdulrahiman to the defendants' grandfather Mahommad Aminuddin Saheb, the interest due under the disputed document was paid by means of the produce of the land sold conditionally by the 1st defendant's father to the said Abdulrahiman; that consequently there was no reason for the interest being paid separately; that in case of the plaintiff's giving up the said land which was claimed in Suit No. 79 of 1865 brought by the 1st defendant under the karar, the principal amount would be paid.

The Munsif gave the following judgment dismissing the suit:—As it appears from the plaint itself that the term fixed for the payment of disputed money had expired on the 6th April 1845, the plaintiff's claim is barred by the Limitation Rules. The circumstance of the defendants having, after the expiration of the term, paid interest does not remove the bar. Though the 1st defendant maintained that Abdulrahiman executed a karar to the grandfather of the former with a stipulation of relinquishing the land sold by the 1st defendant's father to the said Abdulrahiman in the event of the sale amount thereof as well as the amount of the disputed document being paid within the 21st July 1865, yet the said karar was pleaded by the plaintiffs to be a forgery, and was cancelled in Suit No. 79. The 1st defendant consented to give the disputed debt on the condition that the land sold conditionally by his father to Abdulrahiman should be returned to him (1st defendant), and the Court, having considered the same independently of such condition, comes to the conclusion that the said consent is not to be considered to be of such kind as is necessary under Section 4 of Act XIV of 1859, for the prolongation of the period limited for the demand of debts. Consequently, the plaintiffs' claim has been dismissed with costs.

The plaintiffs appealed, and the Principal Sadr Amin came to the conclusion that the decision of the Lower Court was erroneous for the following reasons:—

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Even though the term fixed for the payment of the amount of the document A, for the recovery of which the present suit has been brought, had expired, and the plea raised by the 1st defendant under the karar No. I was set aside as being false and unfair, still, the Principal Sadr Amin does not accept the conclusion arrived at by the Munsif to the effect that the plaintiff's claim was barred by the Limitation Rules.

The 1st defendant, who is the yajaman of the other defendants, and who opposes the plaintiffs' claim, admits even now that his father had *bonâ fide* executed the document A to the plaintiff's ancestor Saiyad Abdulrahiman, and that the amount thereof is payable. Besides this, the 1st defendant having, prior to the institution of the present suit by the plaintiff's, produced before the Court on the 20th July 1864 the amount of the said document, requesting the same to be caused to be paid to the present plaintiffs and others who are the heirs of the said Abdulrahiman, presented the petition, exhibit XIX of the Appeal Suit No. 312. Moreover, he (the 1st defendant) preferred the suit which gave rise to the Appeal Suit No. 312 setting forth that the amount of this disputed document also should be caused to be paid by him, and the land, &c., for which a deed of sale was passed by his (1st defendant's) father to the said Abdulrahiman, should be directed to be given over to him. Though the 1st defendant got up the karar exhibit No. I of the present suit, and carried on proceedings in support of the same, yet the admission made by him to the effect that the amount of the document A is payable, cannot be set aside, inasmuch as the document A as well as the circumstance of the amount thereof having been payable by the 1st defendant's father to the plaintiff's ancestor Abdulrahiman is true. Though the term of the said document had expired, and the claim may be barred by the Limitation Rules, yet, as the 1st defendant admitted the fact of the money being payable and produced the same before the Court together with a written consent, the period of limitation will run newly from that date under Section 4 of Act XIV of 1859. Consequently, the fact of

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the limitation period having expired already cannot affect the plaintiff's claim.

The defendant appealed specially to the High Court.

Srinivassa Chariyar, for the special appellant, (1st defendant.)

Parthasarathy Aiyangar, for the special respondents, (plaintiffs).

The Court delivered the following

JUDGMENT :—This is an appeal from a decree for the payment by the defendants to the plaintiffs of the principal sum which became payable on the 6th April 1845 under an agreement executed by the defendant's father in favor of the maternal uncle of the 2nd plaintiff together with interest; and the question to be determined is whether there has been a sufficient acknowledgment in writing by the defendants to give a new period of limitation under Section 4 of Act XIV of 1859.

The Lower Appellate Court appears to have decided the case upon the joint effect of the 1st defendant's statements in the Miscellaneous Petition signed by him, and dated the 20th July 1864, and in the written statement put in by him as the yejaman of the other defendants in answer to the plaint. But the documents have been very properly dealt with separately in argument. The petition appears to have been presented to the Court of First Instance a short time prior to the institution of this suit, but not in any pending suit or proceeding, and probably with a view to induce the plaintiffs through the interference of the Court to accept its terms rather than sue on their claims. Nothing, however, appears to have been done upon it.

It sets forth that before the execution of the agreement upon which this suit is brought, certain property had been sold by the defendant's father to the 2nd plaintiff's maternal uncle, Abdulrahiman, for rupees 600, subject to a

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condition of re-sale limited to the 6th April 1845. That the principal sum rupees 500, for which the said agreement was executed, was due to Abdulrahiman independently of the amount of the consideration mentioned in the sale-deed and payable on the same day. That on the death of the defendants' father their grandfather entered into an agreement with Abdulrahiman for the application of the produce of the land sold to the payment of the interest on the said sum, and thereupon Abdulrahiman executed a karar stipulating to return the land with the documents if the purchase money and the rupees 500 were paid by the 21st July 1865. Then after referring to the death of the defendant's grandfather and Abdulrahiman, it further states that as the time for the payment of the fourth instalment was to expire on the next day, the petitioner had produced therewith rupees 1100 " which is the sum due on the whole according to the said karar, and also under the said deed of sale," and concludes with a request that the money might be received and caused to be paid to the true heir of Abdulrahiman, and the land directed to be given up with the documents relating thereto.

The karar stated to have been entered into by the defendant's grandfather has, it appears, been found in another suit, decided since the institution of this suit, to be a forgery, but that can make no difference in the consideration of the point now raised, which is simply one of construction,—does the petition contain such an acknowledgment and admission as Section 4 of the Act of Limitations requires ? It acknowledges in the most distinct terms that the principal sum sued for was an existing debt which the defendant was liable to pay, but not an immediate liability to pay such debt, for the acknowledgment is coupled with the statement that the whole amount would not be payable until the 21st of July in the next year, and the proffer of payment is subject to a condition which the plaintiffs repudiate. It is not therefore such an acknowledgment as would take a case out of the operation of the English Statute of Limitations for the reason that it would not support a promise to pay on request.

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But that is not an objection under the 4th Section of the Indian Act, as it does not in our opinion require an admission evidencing a promise to pay. This point was observed upon in the case of *Kistna Row* v. *Hachapa Sugapa*, 2 *Madras H. C. Reports*, 310, and the Judges who decided the case intimated the opinion that an acknowledgment which contained a distinct admission of a debt due and owing to the creditor would suffice to satisfy the Section, although accompanied with expressions which precluded the inference of a promise to pay on request. That opinion was concurred in and made a ground of decision in the case of *John Young* v. *Mangala Pilly Ramaya*, 3 *Madras H. C. Reports*, 309, and we are satisfied that the Section has in this respect been rightly interpreted. The English rule rests on the grounds that at the time of passing of Lord Tenterden's Act, 9 Geo. 4, Cap. 14, an acknowledgment was sufficient to defeat the Statute of Limitations (21 Jac. 1) only when it expressed or evidenced by implication a promise to pay so as to give a new cause of action, and that 9 Geo 4, Cap. 14 merely substituted proof by writing for verbal testimony. In both these respects there is the wide difference between the 1st Section of 9 Geo. 4, Cap. 14, and the 4th Section of the Indian Act, that the latter was not passed with reference to a state of law at all similar anywhere in India, we believe, and it does not provide for a written acknowledgment as evidence of a new contract, but that a written admission of a debt shall give a fresh period of limitation for a suit to enforce the original liability. The whole language of the Section shows clearly, we think, that the purpose of the Legislature was simply to provide for the renewal of the right to bring the suit which might have been brought but for the bar under one of the other Sections of the Act.

But although the acknowledgment is not objectionable because a promise to pay on request is not inferrible from it, we must consider whether the Section requires an admission that the debt is *payable*, for if so the plaintiff's right to sue was renewed only as to a part of the debt. The words of the Section are—"If the person who but for the

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law of limitation would be liable to pay the same shall have admitted that such a debt or legacy or any part thereof is due by an acknowledgment in writing signed by him." In speaking of a debt, the word "due" is not unfrequently used in the sense of "payable," but its proper signification does not require that it should be understood to mean more than that the debt is owing—that there is an existing obligation to pay it, and we think that this is the sense in which it is used in the Section. It requires in general language that there should be an admission of a liability to pay on the part of the person making the acknowledgment, and there is nothing to show that an admission of liability to an existing ascertained debt payable at a future day was intended to be excluded ; and the word "due" is applicable to such a debt. We think therefore that the statement in the petition as to the date of payment does not affect the admission.

The further point arises in the case whether the admission is inoperative because it was made to the Court of First Instance and not to the plaintiff. We can see nothing in the Section to warrant its being construed to apply only to admissions made to the creditor himself, and if it cannot be so restricted it must have a perfectly general operation. The absence of any express mention of the person to whom the acknowledgment should be made, such as is to be found in the English Limitation Act relating to real property, (3 and 4 William 4, Cap. 27, Section 14,) is of itself strong to show that such a construction was not intended. Again the whole object of the provision being obviously to give the benefit of a fresh period of limitation when the liability to a debt had been admitted in writing, there seems to us to be no good reason why the Legislature should have required the writing to be addressed to the creditor alone, and the language used appears to us to be general in its import.

We have met with a case (*Persaud Doss* v. *Deurnautt Dey* reported in *Hyde's Rep. for* 1862-63, *page* 15), in which it was decided by a late learned Judge of the High Court

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of Bengal that an admission stating that a debt was still due did not amount to an acknowledgment of a liability to the person to whom the debt was due, and was therefore an insufficient admission. But there, according to our understanding of the case, the writing did not state that the admitted debt was due to the creditor, and we infer from the reasons in the judgment that probably the decision would have been different, had the writing contained such a statement. In this view, the case is distinguishable, for here there is a distinct admission of liability to pay the debt to the plaintiff, and we agree that such an admission is necessary.

The English cases in which it has been held that acknowledgments to third persons were not sufficient under Lord Tenterden's Act, and which will be found referred to in *Howcutt* v. *Bonser*, 3. *Exch. Reports*, 491, have, we think, no useful bearing on this question. They rest entirely upon the principle that an acknowledgment to be sufficient under the Act must amount to a promise to pay on request so as to create a fresh cause of action, and necessarily therefore must be made to the creditor suing to recover the debt, but by the construction of the 4th Section of the Indian Act, which we have just laid down, that principle is rendered altogether inapplicable.

For these reasons we decide that the admission contained in the petition addressed to the Court of First Instance was sufficient to give a fresh period of limitation, and this decision makes it unnecessary to consider with reference to the admission in the defendant's written statement whether an acknowledgment to satisfy the 4th Section must be before suit. The decree of the Lower Appellate Court will be affirmed with costs.