

*Special Appeal No. 61 of 1863.*1863.
July 21.

DATTA'JI bin NA'RA'YAN.....*Appellant.*
VA'MANRA'V and BHA'URA'V.....*Respondents.*

*Limitation—Objection of Limitation not raised by Defendant—Act XIV.
of 1859.*

If a defendant does not raise the objection of the Statute of Limitations, but merely disputes the amount of the claim, the Court ought not in its decision to allow the statute to affect the case.*

THIS action was brought to recover the sum of Rs. 120, the amount of a certain *hak* or money payment, due to the plaintiff from the defendants, Vámanráv and Bháuráv, for the six years preceding the suit, at twenty rupees per annum.

The defendants contended that the plaintiff was entitled to ten rupees only per annum, which they were willing to pay.

The Munsif of Nevásá, J. Hansom, who tried the case, awarded the plaintiff the full amount of his claim, as he found he was entitled to the *hak* at the higher rate, as sued for.

On appeal by the original defendants, Vámanráv and Bháuráv, the Assistant Judge of Ahmednagar held that the plaintiff's claim was barred by the Act for the limitation of suits; but as the defendants had offered to pay him the *hak* at ten rupees per annum, he amended the Munsif's decree by awarding Dattáji half the amount claimed only.

Dattáji thereupon preferred a special appeal to the High Court, on the ground, among others, that as the defendants, Vámanráv and Bháuráv, had not pleaded the statute of limitations, the Assistant Judge was in error in throwing out a portion of the claim, on the ground that it was barred by lapse of time.

The appeal was heard by FORBES and TUCKER, JJ.

Dhirajál Mathurádás for the appellant.

Ganesh Hari Patvardhan for the respondents.

The Court delivered the following judgment:—The appellant's claim is one to recover a *deshmukhi hak* for six years: the existence of the *hak* is admitted by the respondents, but the amount of it disputed. As the defence of the Act for the limitation of suits was not raised by the defendants, the Court below should have decided whether the appel-

* See *vide* 2 Bom. H. C. Rep., 2nd edn., 162; and 4 Bom. H. C. Rep., A. C. J. 197.

1868.
 DATTAJI
 NARRAYAN
 v.
 VAMANRAV
 et al.

lant was entitled to the *hak* at the rate of Rupees twenty or that of Rupees ten on the evidence recorded. The decree of the Assistant Judge is, therefore, reversed, and the case remanded that a new decision may be recorded on the above points, and a new decree passed upon the merits.

Decree reversed.

Crown Cases.

July 22.

In the matter of the Petition of SHEK DA'DA'BHA'I
 valad Shek Muhammad.

Prisoner—Vakálatnámá.

Prisoners and others are to have the fullest opportunity for giving *Vakálatnámás* to whomsoever they please.

THE petitioner, Shek Dádábháí valad Shek Muhammad, having represented to the High Court that the Sessions Judge of Sátará had refused to permit the petitioner's son, who was under sentence of transportation for life, to execute a power of attorney in his (the petitioner's) name, the Judges called on the Sessions Judge to report upon the truth of this fact in the petition, and, if correct, to explain his reasons for the refusal.

The Sessions Judge reported that he had refused the permission, as stated in the petition, and alleged, as his reason for so doing, that as the papers in the prisoner's case had been forwarded to the High Court, it was not considered necessary for the prisoner to execute a power of attorney in his father's name, and more particularly as the prisoner had only expressed a wish to do so after he was informed that the High Court had sent for the papers in his case, and in consequence of some letters received by him from his friends outside the jail, and as he had not previously expressed any wish to appoint a *vakíl*.

The Court (SAUSSE, C. J., FORBES and NEWTON, JJ.) passed the following order:— That the fullest opportunity be given to prisoners to execute *vakálatnámás*, to whomsoever they please, and without reference to the mode in, or circumstances by, which they may be influenced to do so.