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case, had the absence of the original not been accounted for; but here the Judge states that the original is in the possession of the appellants. The objection taken in the memorandum of special appeal is apparently directed to the absolute inadmissibility of a copy of a copy; but this has been somewhat amplified and varied in the course of the argument. We do not find, however, that any error in law has been committed by the lower court, since we are not aware of any law or practice binding on the courts in the Mofussil which prohibits the reception by them of a copy of a copy in evidence.

The judgment of the Privy Council is a sufficient precedent for our decision, that there is no objection to receive in evidence a copy coming out of a public office, and duly certified as a copy of a copy deposited there.

We affirm the lower court's decree with costs.

Decree affirmed.

March 31.

Special Appeal No. 693 *of* 1867.

AMRITRA'V bin YESHVANTRA'V DESHMUKH...*Appellant.*
ANYA'BA' bin ABA'JI DESHMUKH ....*Respondent.*

Limitation—Right to share in a Watan—*Acknowledgment in Writing—Act XIV. of* 1859, *Sec.* I., *Cl.* 13, *and Sec.* IV.

An acknowledgment in writing, signed by the defendant, or the person through whom he claims, of the right of the plaintiff to share in a *watan*, is not sufficient to revive the period of limitation contained in Act XIV. of 1859, Sec. I., Cl. 13, so as to give a new starting-point from the date of such acknowledgment; under that clause, there must be a payment on account of the alleged share by the person in possession of, or having the management of, the *watan*: and Sec. IV. is not applicable to such a case.

THIS was a special appeal from the decision of A. Bosanquet, Acting Judge of the District of Ahmednagar, in Appeal Suit No. 216 of 1867, confirming the decree of the Munsif of Sangamner.

Anyábá brought this action against Rághobá bin Khandoji, Amritráv bin Yeshvantráv, and Vithobá bin Rámbá, to recover a half-share in the proceeds of ten villages, and a

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. certain *inám* lands, representing that he and its were co-equal sharers in the office of Desh-kolá; that the defendants, being members of the h of the family, had been performing the duties of , and drawing the allowance thereof, after deduct-xpenses of the establishment; that a field in which y had an hereditary right of occupancy was allotted he plaintiff, as his share, and that the rent of it was the defendants; that since the Summary Settlement, , the defendants had been allowed the proceeds of the and the *inám* without performing the duties apper-g to the office of Deshmukh; that they refused to the amount with the plaintiff, and had not paid his e for the years 1862-63 and 1863-64; and that the suit , therefore, brought to establish his claim, and to recover share of the land and allowances.

The defendants Rághobá and Amritráv denied the right the plaintiff to recover, and alleged that there had been separation of their family from the plaintiff's family sixty years ago, and that Khandoji, the father of the first defendant, Rághobá, had acquired the estate after such separation; that the plaintiff had never exercised any right over the estate; that he had been a sub-sharer, but never drew any of the allowances of the office since the days of the Peshvá; that their (the defendants') names alone had been on the record; that their ancestors allowed one field, which was in the defendants' names, for the maintenance of the plaintiff; who paid the rent to the defendants, and they paid it to Government; and that upon his omitting to pay the rent the plaintiff relinquished it.

The third defendant, Vithobá, admitted that the plaintiff was a co-sharer, and consented to allow him one-half of all the *inám* lands and other emoluments.

The Munsif, Hari Gangádhar, rejected the claim, on the ground that the plaintiff had never obtained any portion of the emoluments, or of any of the *inám* land of the Deshmukh's estate, except one field, which he cultivated as a tenant, and not as a proprietor.

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In Appeal No. 130 of 1866, the Judge, A. Richardson, found that the plaintiff was the proprietor of half of the emoluments and of half the *inám* lands pertaining to the office and estate of Deshmukh of A'kolá, but that the evidence did not show that the plaintiff had ever held the said half of the lands, or drawn half of the emoluments of the office and estate of Deshmukh.

There was, however, an exhibit (No. 5) in the case, which consisted of a deposition, given on solemn affirmation before the Mámlatdár, by Yeshvantráv, the father of the defendant, Amritráv, and which was as follows :—

"The *Deshmukhi watan*, consisting of ten of the villages in the Turf Rudanvádi, forms one *takshim* or share, and there is but one family passing by the surname of Málonkar. The elder branch is that of Savdoji Deshmukh, and the younger that of Abáji. Savdoji Deshmukh, my grandfather, held the office for many years under (the) Government. Subsequently, however, Rághoji, my father, having declined to take up the office, the *khátá* was not continued in his name, but then it came to be in my name after the resignation of office by Savdoji, and I was appointed, before the Act came into operation, to the office, without any restriction as to its tenure. I have thus held the office up to the present time. I name my son Amritráv for the office, as I am unable to hold it myself, owing to my having run into debt, and trust that he will be appointed accordingly. Anyábá Deshmukh, the sub-sharer to the extent of eight annas (in the rupee), has also consented to the arrangement. Náráyan alone is against it at present. This is given in writing. Dated 1st August 1857.

Dastur of Váman Bábáji Kárkún. Signature of Yeshvantráv bin Rághoji Deshmukh, in his own handwriting."

The Judge was of opinion that this deposition was evidence of admission by the defendants, and that it, being dated the 1st of September 1857, would remove the bar under the statute of limitation. He, therefore, remanded the case to enable the parties to prove, by production of the

receipts for five past years, what were the average amounts of each item of income due or payable to the Deshmukhs.

The Munsif thereupon decreed for the plaintiff as to the half-share of the Deshmukh's emoluments claimed, amounting to Rs. 183-2-9, and also as to the future payment by the defendants of half of the Deshmukh's emoluments to the plaintiff; but he decreed for the defendants as to the share of the *inám* field claimed: and this decision of the Munsif was, on appeal, confirmed by the Acting Judge.

The case came on for hearing this day, before NEWTON, Acting C.J., and GIBBS, J.

Bhairavanáth Mangesh (with him *Dhirajlál Mathurádás*), for the appellant:—The Judge has applied Sec. 4 of the Limitation Act to this case; but that section provides only for the cases of debts and legacies, whereas this suit is to recover a share in family property. To meet the cases of mortgage, deposit, &c., a special provision is made by Cl. 15, Sec. I. of the Act, which requires an acknowledgment in writing of the title of the mortgagor, &c. In the same way a special provision is made in Cl. 13 of the same section for cases like the present one, and nothing less than payment by the person in actual possession or management, on account of the alleged share within twelve years preceding the suit, will satisfy its provisions. Even if the admission here be held sufficient to satisfy Sec. I., Cl. 13, it will bind Yeshvantráv's son Amritráv only. Besides, it was made to the Mámlatdár, and not to the person who seeks to avail himself of it. The Calcutta High Court have held that admission under Sec. 4 must not be to a third party (a).

Shántárám Náráyaṇ for the respondent:—The exhibit No. 5 is more than an admission. The property in dispute is service *watan*, and our right to the enjoyment of a share in it is acknowledged. There is possession here. This court has held that residence in the family house is an enjoyment, under Cl. 13. The present claim is for money received by the opposite party, and the admission No. 5 will be binding

(a) Hyde's Reports, p. 14.

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under Sec. 4, which is a general one for all kinds of debts. [NEWTON, Acting C.J.:—Sec. 7 of Reg. V. of 1827 is differently worded from Sec. 4 of the Limitation Act. The word *debt* in Sec. 4 cannot be construed as *demand* in Sec. 7.] Under the admission in No. 5, the opposite party should be treated as a trustee. We let him in for the first time, and he is our trustee, and represents us. If we had objected, the Collector would not have sanctioned the appointment. If, therefore, he is in possession by virtue of his office, to which he was appointed by our consent, his tenure of holding cannot be adverse to us. We stated in our plaint that the defendants, being elder, have their names on the revenue records, but that we hold one field, and the assessment on it, Rs. 43, was paid by the defendants on our account. This is a *payment*, inasmuch as we received the income directly. The Judge has not gone into this matter, and has not considered whether this was a payment on account of our share.

Bhairavanáth Mangesh, in reply, cited *Kájá Tevara Das* v. *Richardson and others* (b).

PER CURIAM:—The Judge has founded his decision on the admission, No. 5, of Yeshvantráv, the father of the defendant Amritráv. This admission is looked upon by the Judge as sufficient, not only to show the plaintiff Anyábá's title, but also to take the claim out of the law of limitation. Supposing the District Judge to have considered Sec. 4 of the Limitation Act to be applicable (as no other is suggested), we find that that section refers to legacies and debts only; and we are unable to bring within its provisions an alleged acknowledgment of a right to share in a watan, so as to revive the period of limitation within which a suit to establish such right may be brought.

As to whether what is stated in the exhibit No. 5 amounts to an admission of trusteeship, we are of opinion that we cannot give any such effect to the words which have been referred to in it. The person who gave the deposition had his own purpose to serve, and the Court would not be

(b) 2 Mad. H. C. Rep. 84.

justified in giving to a mere statement of consent on the part of Anyábá, made under such circumstances, the force which would be necessary in order to found on them a cause of action not otherwise existing.

The only question to be decided, therefore—as the case comes under the provisions of Cl. 13, Sec. I. of Act XIV. of 1859—is, whether the field, which the plaintiff alleges to have been in his possession down to 1862, or thereabouts, rent-free (the assessment due on it being paid by the defendants), has been so held by him within twelve years preceding the suit, as part payment of the alleged share in the *deshmukhi watan* due to him. On this point the Judge has not recorded a finding, and we, therefore, reverse the decree, and remand the case that this issue may be decided, and a new decree passed. Costs to follow the final decision.

Decree reversed and suit remanded.

Special Appeal No. 213 *of* 1868.

April 2.

NARSINVA'CHA'RYA *et al.* ....*Appellants.*
SVA'MI RA'YA'CHA'RYA ....*Respondent.*

Stamp—Varshásan—*Annual Allowance—Valuation—Stamp Act* (*X. of* 1862), *Schedule A, Sec. 2, and Act XXVI. of* 1867, *Schedule* B, *note* (*b*).

In a suit for a declaration of right to an annuity (*varshásan*), it was held that the stamp for the petition of special appeal should be regulated by the market value of the annuity, and that "*primâ facie*" ten times the amount of the annuity may be assumed to be its market value, as enacted for analogous agreements by Sec. 2, Schedule A, Act X. of 1862.

IN this case the original claim was to establish the respondent's right to a *varshásan* or annual allowance of Rs. 192. In both the original and appeal suits the claim was valued at ten times the amount of one year's allowance, but in the petition of special appeal it was estimated at the amount of a single annual payment.

The Registrar declined to receive the petition without an order from the Court.