proper steps to have the Government Paper put into their names as survivors. Any order which is required could have been made upon an application under Act XXVII of 1866. But no such application has been made. Therefore, I do not think the trustees can save their costs by any reference to the objection of the Bank of Bombay.

I, therefore, dismiss the petition, ordering the trustees personally to pay the costs of the Advocate-General as between attorney and client.

Attorneys for the applicants: Messrs. *Edgelow, Gulabchand, Wadia & Co.*

Attorneys for the opponents: Messrs. *Little & Co.*

Application dismissed.

B. N. L.

ORIGINAL CIVIL.

Before Mr. Justice Beaman.

CHOBEY SHRIGOPAL CHIRANJILAL AND OTHERS, PLAINTIFFS, *v.* DHANALAL GHASIRAM, DEFENDANT.*

1910. *December* 23.

Limitation—Debt entered in schedule filed by Insolvent—Acknowledgment—Limitation Act (IX of 1908), section 19.

Where an Insolvent has written down a debt in his schedule, as owing that debt to a named person, and has signed the schedule, that is a sufficient acknowledgment, under section 19 of the Indian Limitation Act (IX of 1908), to extend the period of limitation.

THE defendant firm drew four hundies on Mansaram Chajulal, one for Rs. 2,500, dated 26th December 1906 and payable 31 days after date, and three for Rs. 2,500, Rs. 2,000 and Rs. 1,500 respectively, dated 20th January 1907 and payable at sight. All these were negotiated by the plaintiffs, in whose favour they were drawn, but subsequently, in consequence of the drawee dishonouring the hundies, the plaintiffs had to pay the amounts

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thereof to their indorsees. These amounts they endeavoured to recover from the defendant firm, but without success. On 4th March 1907, the partners in the defendant firm filed their petition in insolvency, and a vesting order was made. On 18th March 1907, the insolvents filed their schedule, in which (*inter alia*) they entered a debt of Rs. 7,679-9-0 as due to the plaintiffs in respect of the aforementioned hundies.

The plaintiffs filed this suit on 16th March 1910 to recover the sum of Rs. 7,679-9-0 from the defendants. The question of limitation was raised, but the plaintiffs contended that the entry of the debt in the schedule was a sufficient acknowledgment within section 19 of the Limitation Act, and that the suit was not barred.

Jinnah appeared for the plaintiffs.

Jafferbhai appeared for the defendant.

BEAMAN, J. :—An interesting and as far as India is concerned, I believe, an entirely new point has been raised in this case. The defendant contends that the inclusion by him of the debt sued for in his schedule, while seeking the benefit of the Insolvency Act, is not an acknowledgment within the meaning of section 19 of the Indian Limitation Act, and does not extend the period within which the plaintiff can bring this suit.

Mr. Jaffer has cited four English cases (*Everett* v. *Robertson*[1]; *Ex parte Topping*[2]; *Davies* v. *Edwards*[3]; *Courtney* v. *Williams*[4]) which appear to be exactly in point. The English Courts seem to have felt no hesitation in deciding that the mere inclusion of a debt in a Bankrupt's schedule was not such an acknowledgment as the law required and would not operate to extend the period of limitation. The reason of those decisions seems to be that in England the law requires such an acknowledgment to be a legal, and a legally enforceable, promise to pay. The learned Judges do not appear to have founded their conclusions upon a proposition to be found in the text-book writers (*vide* Banning on the Limitation of

(1) (1858) 28 L. J. Q. B. 23.
(2) (1865) 34 L. J. Bank. 44.
(3) (1851) 7 Exch. 22.
(4) (1844) 13 L. J. Ch. 461.

Actions, 3rd Edition, p. 250) that a Bankrupt cannot give a valid acknowledgment, and a perusal of the cases cited in support of that proposition suggests that the point is different. Had this formed any part of the ground of decision in the four cases mentioned, the Judges would surely have adverted to it.

The English Courts were administering the law contained in the Statutes of 21 James, c. 16, s. 3 and 9 Geo. IV, c. 14, s. 1. The language of those Statutes is much narrower than, and easily distinguishable from, the language of the Indian Statute of Limitations. Section 19 is couched in much wider and more comprehensive terms, and is advisedly made to embrace every case in which a debtor has acknowledged and signed or has made in writing and signed an acknowledgment of a debt, although the acknowledgment may not have been to the creditor, or may have been accompanied by a refusal to pay. In such cases the reasoning of the English Judges would not apply. Reading the language of our Statute in its natural sense, I do not see how it can be successfully argued that when a debtor puts a debt down in his schedule, which he signs, this is not an acknowledgment in writing duly signed, of that debt, although it is not made directly to the creditor, and might not be a legal promise to pay. Our Statute advisedly contemplates a much larger class of cases, and seems to rest upon quite a different principle from that which the Courts in England have applied to the more restricted language of their Statutes. Broadly the Indian law on this point is that when a debtor has deliberately (this is guaranteed by the conditions that he must have used writing and signed it) acknowledged a debt, he will not be allowed to repudiate it, as from its moment of incidence, but only as from the moment of that confession. This is something like estoppel, though it is not estoppel. It might be difficult to place the underlying policy of section 19 of the Limitation Act, exactly among our legal principles. But it is plainly different from the narrow ground of the English cases, refusing any extension of the period of limitation, except upon what is a legal and legally enforceable later promise to pay. And I am quite clear that where an Insolvent has written down a debt in his schedule, as owing that debt to a named person, and has signed the

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schedule, that is a sufficient acknowledgment under section 19 of the Indian Limitation Act, to extend the period of limitation.

I may observe in passing, that in England time would not run against an Insolvent after the vesting order, for the reason that all his assets thereupon vest in the Official Assignee as trustee for the creditors. But there does not appear to be anything in our Statute of Limitation, to stop time running once it had begun to run, for any such reason.

K. McI. K.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1911. *April* 3.

HUSSEINKHAN SARDARKHAN (ORIGINAL DEFENDANT), APPELLANT, *v.* GULAB KHATUM, WIFE OF HUSSEINKHAN SARDARKHAN (ORIGINAL PLAINTIFF), RESPONDENT.*

Mahomedan law—Dower—Prompt dower—Payment of—Restitution of conjugal rights—Consummation of marriage—Suit for prompt dower not premature before consummation.

Under Mahomedan law, the Court may hold that the whole of the dower is exigible, in cases where no specific amount of the dower has been declared exigible and there has been no evidence of what is customary.

Fatma v. *Sadruddin*(1), followed.

Prompt dower (*i. e., muajjal*) is payable immediately on the marriage taking place, and it must be paid on demand. It is only by payment of the prompt dower that the husband is entitled to consummate the marriage or enforce his conjugal rights. Therefore the right to restitution, so far from being a condition precedent to the payment of prompt dower, arises only after the dower has been paid.

Ranee Khejoorunissa v. *Ranee Ryeesunissa*(2), followed.

SECOND appeal from the decision of G. D. Madgavkar, District Judge of Surat, confirming the decree passed by N. R. Majmundar, Joint Subordinate Judge at Surat.

* Second Appeal No. 135 of 1910.

(1) (1865) 2 Bom. H. C. R. 291. (2) (1870) 13 W. R. 371 (Civ.).