Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Luchmee Buxsh Roy v. *Runjeet Ram Panday, from the High Court of Judicature at Fort William in Bengal; delivered 3rd July*, 1873.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS is a suit brought by the Appellant, the descendant of Gujraj Roy, who in the year 1790 mortgaged five mouzahs to Motee Ram Panday, the ancestor of the present Respondent. It may be assumed, for the purpose of the present judgment, that the mortgage was a usufructory mortgage or in the nature of one. The defence made to the suit, independently of a defence on the merits, was that it was barred by limitation, and the only question is whether the suit has been so barred or not.

It appears that in the year 1802 the mortgagee had been dispossessed of four of the five mouzahs by the sons of the mortgagor; apparently, it was an unlawful dispossession, and he brought a suit in that year for the restoration of possession, to which suit the then mortgagor set up the defence that the mortgage money had been fully satisfied by the usufruct of the property. An account was taken and it was found that so far from the mortgage debt having been satisfied, interest had accrued upon it to a larger amount than the debt itself, and it was therefore

ordered by the Court that the mortgagee was entitled to a restitution of possession, and it made a declaration, which perhaps was unnecessary, that he was entitled to hold possession until the amount found due was fully paid. That suit and the decree in it do not really affect the question, because the present suit was not brought within 60 years after the decree in 1804. Even if it had been within that period, it might be a question whether that decree at all affected the right of the mortgagee to rely on limitation, for the suit was brought only to recover the possession of the mouzahs which had been unlawfully taken from the mortgagee by the mortgagor or his sons.

The limitation, which applies in this case, is found in section 1 clause 15 of Act XIV. of 1859, and is in these terms: "To suits against a "depositary pawnee or mortgagee of any pro- "perty moveable or immoveable for the recovery "of the same, a period of 30 years if the pro- "perty be moveable, and 60 years if it be im- "moveable, from the time of the deposit pawn "or mortgage; or if in the meantime an acknow- "ledgement of the title of the depositor, pawnor "or mortgagor, or of his right of redemption "shall have been given in writing signed by the "depositary pawnee or mortgagee, or some per- "son claiming under him, from the date of such "acknowledgement in writing." It is clear that a period of 60 years has elapsed since the mortgage.

Two points have been made by Mr. Leith for the Appellant, first, that a usufructory mortgage is not within this clause at all. He pointed out that in usufructory mortgages, the possession was consistent with the original intention of the parties until the mortgage debt was paid off, and contended that a limitation which ran from the time of the mortgage could not apply to them; but

the legislature has enacted this limitation in the most general terms, and in language sufficiently large to embrace every kind of mortgage. There can be no doubt it was deliberately done, and that the provision found in the fourth clause of the third section of Regulation II. of 1805, which excluded cases of mortgages or deposit from the regulations relating to limitation, was designedly set aside, a different policy prevailing with those by whom the recent Act was passed.

Their Lordships therefore think that this mortgage is clearly within Act XIV. of 1859.

The other and the main question is whether, 60 years having elapsed from the date of the mortgage, the right of the mortgagor to bring this suit has been kept alive by such an acknowledgement as is referred to in the statute.

Now, the section requires an acknowledgement of the title of the mortgagor, or of his right of redemption, to be given in writing, signed by the mortgagee. In this case two documents are relied upon which appear in a suit instituted in the year 1847. It seems that in that year a descendant of the mortgagor instituted a suit in the civil court of Lohardugga for an adjustment of accounts. The suit was dismissed on the ground that the court was not competent to entertain it, but in that suit the Respondent, the mortgagee, gave a mooktearnamah to a mooktear to defend it, and the mooktear filed a written statement, which it is alleged contains an acknowledgement of the title of the mortgagor and of his right to redeem. It is plain that neither of the documents by itself satisfies the statute—the mooktearnamah is signed by the mortgagee, but contains no acknowledgement of title; the written statement of the mooktear does contain, or may be assumed to contain, an acknowledgement, but is not signed by the mortgagee—and their Lord-

ships think that it is impossible to put those two documents together so as to satisfy the requirements of this statute.

It was argued that the signature of an agent was sufficient, and that the mooktear being authorized to defend the suit, and to use such arguments as he thought fit, authority was given to him to make an acknowledgement of title, and that such an acknowledgement having been made and signed by him, the statute was complied with. Their Lordships think that is not so. The statute must receive a construction according to its plain words. It requires the signature of the party himself, namely, the mortgagee, and it would be a wrong construction of it to hold that any other signature would satisfy those words.

The same question arose upon Lord Tenterden's Act in England, and was decided in the case of *Hyde* v. *Johnson* (2nd Bingham's New Cases, p. 776). Chief Justice Tyndal, in giving judgment there, says,—"When therefore we find in "the statute now under consideration that it "expressly mentions the signature of the party "only, we think it a safer construction to adhere "to the precise words of the statute, and that "we should be legislating, not interpreting, if we "extended its operation to writings signed not "by the party chargeable thereby, but by his "agent."

Their Lordships entirely adopt that principle of construction, which they think applicable to the present case.

They are also of opinion that the written statement cannot be said to be incorporated into the mooktearnamah so as to make it a part of the document signed by the mortgagee. The mooktearnamah is no more than an authority to the mooktear to defend the action in the best way he can and according to the best of his judgment.

It has been said that this case ought to be decided upon an equitable construction, and not upon the strict words of the statute, but their Lordships think that statutes of limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. Statutes of limitation are in their nature strict and inflexible enactments. The object of the Legislature in passing them is to quiet long possession and to extinguish stale demands. Such legislation has been advisedly adopted in India as it has been in this country, and their Lordships think that in construing these statutes the ordinary rules of interpretation must prevail.

Their Lordships are therefore of opinion that the judgments of the courts below are correct, and they must humbly advise Her Majesty to affirm them, and to dismiss this appeal, with costs.