

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Saligram and Hurnarayun v. Mirza Azim Ali Beg, from Oudh ; delivered 12th December, 1864.*

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Present :

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

MASTER OF THE ROLLS.

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SIR LAWRENCE PEEL.

SIR JAMES W. COLVILLE.

THERE are some points in this case upon which their Lordships do not think it necessary to give, and do not give, any opinion.

They give no opinion upon the question whether the statute of limitations could or could not be made available without being pleaded ; or upon the question whether this bond ought to be considered as a bond "formally attested" within the meaning of the Circular Order No. 51 ; or upon the question whether there is or is not in force, in the Province of Oude, any period of limitation.

These points may, as their Lordships think, be laid out of the case ; and as to the Circular Order No. 51, they are of opinion that it cannot be resorted to or applied in the present case, because there was a Proclamation on the 31st of July, 1860, before this action was brought, by which that Order was expressly repealed.

The Circular Order No. 51 being then out of the case, the question to be decided must depend upon the Act of the 4th of May, 1859 (No. 14 of 1859), or upon the Circular Order No. 104.

As to the Act of the 4th of May, 1859, it is clear, in their Lordships' judgment, that it cannot affect the question, because it was not to come

into force in any non-regulation province until two years after a period to be fixed by Proclamation, and those two years had not elapsed.

The case, therefore, is reduced to the single point, what is the effect of the Circular Order No. 104?

Now assuming, as their Lordships do (that being the view most favourable to the Respondent), that this Order was in force (and their Lordships observe that it was upon this Order the case appears to have been considered in the Court below to depend) its effect must, in their Lordships' judgment, rest entirely on the 9th and 14th sections of the Order; the 10th section, which was referred to in the argument, relating exclusively to "Suits for money lent for no definite period," and it being clear that this suit was for money lent for a definite period. Let us consider, then, first, the effect of the 9th Section, which has reference to suits in which the period of limitation is to be three years. It is in these terms, "Suits for money lent for a fixed period, or for interest payable on a specified date or dates, or for breach of contract, unless there is a written engagement or contract, and where Registry Offices existed at the time such engagement was registered within six months of its date, and signed by the party to be bound thereby, or his duly authorized agent."

Their Lordships understand this section, especially when contrasted with the 10th Section, to mean that the rule referred to in it is not to apply where there is a written engagement, and where, there being a written engagement, it is registered within six months of its date in cases in which a Registry Office existed at the date of the engagement; and there being, in this case, a written engagement and no Registry Office at the date of the engagement, they think that the section does not affect the case.

Then Section 14, which has reference to suits in which the period of limitation is to be six years, is in these terms, "All suits on bonds registered within six months of their date, or on bonds formally attested when there were no means of registering, and all other suits for which no other limitation is expressly provided by these Rules."

Now, as their Lordships have said, they give no

opinion upon the question whether this is to be considered as a bond "formally attested when there were no means of registering." If, on the one hand, it be so considered, the case clearly falls within the first branch of the section; but if, on the other hand, it be not so considered, the case as clearly falls within the other words of the section, "all other suits for which no other limitation is expressly provided by these Rules."

Upon this ground, therefore, their Lordships are of opinion that the Judgment appealed from ought to be reversed, and that Judgment should be entered for the Plaintiffs in the action. It may be right to add that the Circular Order No. 181 has not been overlooked, but that their Lordships do not consider it effectual to alter the view which they have taken of the case. The Plaintiffs are, in their Lordships' opinion, entitled to Judgment for the debt and costs, and they must have the costs of the Appeal. Their Lordships will humbly recommend Her Majesty to order accordingly.

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