Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Mylapore or Mylay Iyasawmy Vyapoory Moodliar v. *Yeo Kay and others, from the Court of the Recorder of Rangoon; delivered June* 14*th*, 1887.

Present:
LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD BAGGALLAY.
SIR RICHARD COUCH.

THE learned judge in this case has decided that the suit was barred by limitation under the 140th, or the 124th article of the second schedule of the Limitation Act, XV. of 1877. He stated that, in his opinion, it is barred by article 140. Their Lordships are of opinion that the learned judge was right in the conclusion that the suit was barred by article 140 of that Act.

In order to ascertain whether the suit was so barred or not, we must look to what was the nature of the case which the Plaintiff made.

By the Act of 1882, which was the Civil Procedure Code in force when the suit was commenced, the Plaintiff must show the grounds, &c., the cause of action, and when that cause of action accrued.

In the case of *Eshenchunder* v. *Shamachurn Bhutto*, reported in the 11th volume of Moore's Indian Appeals, Lord Westbury, who delivered the judgement, said: "This case is one of con- "siderable importance, and their Lordships "desire to take advantage of it for the purpose "of pointing out the absolute necessity that "the determination in a cause should be "founded upon a case, either to be found in

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" the pleadings, or involved in, or consistent " with, the case thereby made."

Now what is the case made out by the pleadings, or what is involved in, or consistent with, the claim which is thereby made? The Plaintiff alleges in the plaint that Mooroogasum died on the 19th September 1864, having made a will, the 6th paragraph of which was in the words following: " all the rest, residue, and " remainder of all my property, moveable and " immoveable, of which I may die possessed (all " being my own sole earning, and none having " come to me from my father's estate) be divided " equally between my five brothers, share and " share alike." The five brothers included Vyapoory, the present Plaintiff, and Kristnasawmy, another br.ther, to whose interest in the estate Vyapoory, the Plaintiff, claims to have succeeded; he therefore claims to have two of the five shares devised by Mooroogasum. He rests his title upon Mooroogasum's will, and claims that the will gave him a right to recover possession, and to have a declaration of his right to possession of two-fifths of the estate, and also to have a partition. He does not allege in distinct terms that Mooroogasum had an estate in this property, but it is to be implied from, or rather involved in, the statement which he made in the plaint. At paragraph 16 of the plaint he says: " Coomarasawmy and Soobaroy "—those are two of the other brothers—" had no right, " power, or authority, to sell more than their " respective one-fifth shares in the land, set " out in paragraph 7 of this plaint." But when he says that they had no right to sell more than their two shares, it implies that they had the right to sell those two. Then he says, in paragraph 18, " that there remains undivided " the respective one-fifth shares or interests of " Vyapoory "—that is the Plaintiff himself—

"and Kristnasawmy, deceased, in each of the "several pieces or parcels of land set out in "paragraph 7 of this plaint." He could not have been entitled, nor could his brother have been entitled, to one-fifth, unless the testator had the property to dispose of; and then, having made out, or professed to make out, a title under the will, he declares that he is entitled to possession of those two-fifths, and he asks to have it declared that he is entitled to them, and to have a partition of the estate.

Now when did his title arise, assuming that the testator had the estate, and had the power to devise it? It arose on the death of Mooroogasum on 19th of September 1864. The judge in his judgement puts it one year later, and says he must at least have had a title at the expiration of one year from the death of the testator. It appears to their Lordships that according to the Hindoo law he became entitled to his one-fifth on the death of the testator.

The words of article 140 are: "suit by a "remainderman, or a reversioner (other than "a landlord), or devisee for possession of im- "moveable property"—which this is: he is claiming as a devisee of immoveable property. Then it says the suit is to be brought within 12 years from the time when his estate falls into possession. Now, from 1864 he was entitled to possession, but Mr. Bennett had the possession; and it is said now that Mr. Bennett had not an adverse possession, because he was holding as in the nature of a mortgagee, and that the testator was not absolutely entitled to the estate. There is nothing however in the plaint from which anything of that kind can be inferred. It is to be inferred that the case rests upon the title of the testator to devise the estate, and upon that title only.

The issues are: "(1.) Does the plaint disclose "a good or sufficient cause against the Defen- "dants, or any or either of them?" It does not strictly show a good cause of action, for there is no allegation that the testator was entitled; but whatever cause of action it does show is a cause of action, derived from the will of the testator and from the death of the testator, and the title accrued at that time. Then comes the issue No. 2:—"Is the Plaintiff's claim, or any portion thereof, barred by limitation?" Now, if his title accrued in 1864, then it is clear that the judgement of the learned judge was correct, and that the suit which was not brought till the 12th September 1883 is barred.

Then it was contended that by virtue of section 19 of the Limitation Act, an admission had been made which gave a further period from which the right of bringing the action was to be dated. Section 19 is this: "If, before "the expiration of the period prescribed for a "suit or application in respect of any property "or right, an acknowledgment of liability in "respect of such property or right has been "made in writing, signed by the party against "whom such property or right is claimed, or by "some person through whom he derives title "or liability, a new period of limitation, accord- "ing to the nature of the original liability, "shall be computed from the time when the "acknowledgment was so signed." But what liability does this mean? It must mean a liability to the person who is seeking to recover possession, or some person through whom he claims. Was there any admission made in this case by Mr. Bennett at any time, or by any of the Defendants? The admission is said to have been made by Mr. Bennett in the conveyance which was executed in 1874. It is contended that in that conveyance Mr. Bennett admitted that he was liable in respect

of the property. The only admission is that he was acting as agent for one of the executors in selling the estate. He was selling the estate for the purpose of getting paid out of the proceeds of the sale. He does not admit that he was liable to be turned out of possession, or that anyone had a right of possession as against him, nor does he make any admission at all to the Plaintiff or to any one through whom he claims. Under those circumstances the clause does not apply. No liability has been admitted to take the case out of the statute of limitations; and under those circumstances article 140 must prevail, and the decision of the learned judge was correct upon that point.

Under these circumstances their Lordships will humbly advise Her Majesty to affirm the decision of the Court below, and to dismiss the appeal. The Appellant must pay the costs.