Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Navivahoo and others v. *Turner (Official Assignee) and others, from the High Court of Judicature at Bombay; delivered 12th April* 1889.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

On the 19th August 1868 the Insolvency Court of Bombay ordered that a judgement should be entered up in the name of the Official Assignee against the insolvent Candas Navivahoo for a sum exceeding 16 millions of rupees. That judgement was accordingly entered up in the High Court.

It does not appear whether anything was done under the judgement till the 5th April 1886, when the Insolvency Court ordered execution for a sum of nearly five millions to be taken out against certain properties described in the order.

The representatives of the insolvent, being summoned to show cause why the judgement should not be executed, assigned as cause that under the operation of the Indian Limitation Act, 1877, the right to have execution was barred by lapse of time. It will be convenient to state here the effect of the articles in the Schedule of the

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Act of 1877 which have been put forward as applicable to the case, taking them in reverse order. The amendments of this Act by Acts XII. of 1879 and XIV. of 1882 do not affect the present question.

By Article 180 an application to enforce a judgement of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction is barred unless made within 12 years from the time when a present right to enforce the judgement accrues to some person capable of releasing the right. By Article 179 an application for the execution of a decree or order of any Civil Court, not provided for by No. 180 or by the Code of Civil Procedure Section 230, is barred unless made within three years from various points of time. It may be taken for the purpose of the present case that the starting point of time would be in the year 1868. By Article 178 an application for which no period is provided elsewhere in the Schedule to the Act or by the Code of Civil Procedure Section 230, is barred unless made within three years from the time when the right to apply accrues.

The case was heard before Mr. Justice Scott, who held that the application was barred by time. From his judgement it is to be gathered that he thought the case was governed by either Article 179 or Article 180; but it does not appear which. There is a great difference between the two; for Article 179 assigns a fixed starting point of time, whereas Article 180 assigns one that is dependent on the right to enforce the judgement.

On the appeal of the Official Assignee the case was heard before Chief Justice Sargent and Mr. Justice West, who reversed the order of the Court below, and directed that execution should issue. West, J., held that the case falls under

Article 180, and that no present right accrued till the order of the Insolvency Court made on the 5th April 1886. Sargent, C. J., held that the case is not provided for by the Limitation Act at all. From this order of the High Court the present appeal is brought. And the first question is, whether the judgement of 1868 was entered up in exercise of the ordinary original civil jurisdiction of the Supreme Court.

By Section 86 of the Indian Insolvency Act, it is provided that the Insolvency Court may direct a judgment to be entered up in the Supreme Court; that the production of the order of the Insolvency Court shall be sufficient authority to the officer of the Supreme Court for entering up the judgement; that if at any time it shall appear to the satisfaction of the Insolvency Court that the insolvent is of ability, or has left assets, to pay debts, that Court may order execution to be taken out upon the judgement; that such further proceedings may be had upon the judgement as the Insolvency Court may from time to time order, until the debts are fully paid; and that no *scire facias* shall be necessary to revive or to execute the judgment on account of any lapse of time, but execution shall at all times issue thereon by virtue of the order of the Insolvency Court from time to time.

By the High Court Act of 1861 Her Majesty received power to erect High Courts, and Section 11 enacts that all provisions applicable to the Supreme Courts and to their Judges shall be taken as applicable to such High Courts and to their Judges respectively.

The Royal Charter which regulates the Bombay High Court, under the provisions of the High Court Act, is dated the 28th December 1865. Sections 11 to 18 are a group of clauses headed "Civil Jurisdiction of the High Court." Sections 11 and 12 describe the local limits of

the ordinary original civil jurisdiction, which is said to extend to all kinds of suits within those limits except small cause suits. Section 13 gives to the High Court power to remove and to try as a Court of extraordinary original jurisdiction any suit falling within the jurisdiction of any Court subject to its superintendence, when it shall think proper, either on agreement of the parties, or for the purposes of justice. Sections 15 and 16 confer appellate jurisdiction. Section 17 confers authority over infants, idiots, and lunatics. Section 18 ordains that the Court for relief of insolvent debtors shall be held before one of the Judges of the High Court, and that the High Court and any such Judge shall have such powers as are constituted by the laws relating to insolvent debtors in India.

From this brief statement of the material statutes and charters, it appears that, though the Insolvency Court determines the substance of the questions relating to the insolvent's estates, such as the amount of the judgment to be entered up against him, and the propriety of issuing execution upon it, the proceedings in execution are the proceedings of the High Court, and the judgement itself is the judgement of the High Court. And it is clearly entered up in the exercise of civil jurisdiction and of original jurisdiction.

But it was strongly contended at the bar that this jurisdiction, though civil and original, was not ordinary; and Mr. Rigby argued that the passages of the Charter which have just been epitomized divide the jurisdiction into four classes, ordinary original, extraordinary original, appellate, and those special matters which are the subject of special and separate provisions. But their Lordships are of opinion that the expression "ordinary jurisdiction" embraces all such as is exercised in the ordinary course of

law and without any special step being necessary to assume it; and that it is opposed to extraordinary jurisdiction which the Court may assume at its discretion upon special occasions and by special orders. They are confirmed in this view by observing that in the next group of clauses which indicate the law to be applied by the Court to the various classes of cases, there is not a fourfold division of jurisdiction, but a threefold one, into ordinary, extraordinary, and appellate. The judgement of 1868 was entered up by the High Court, not by way of special or discretionary action, but in the ordinary course of the duty cast upon it by law, according to which every other case of the same kind would be dealt with. It was therefore entered up in exercise of the ordinary original civil jurisdiction of the High Court; and no present right accrued to the Official Assignee to move for execution until the order of 5th April 1886 was made.

The order of the High Court, which is appealed from, is dated the 10th December 1886. After the appeal was presented, and on the 2nd March 1888, the High Court amended the order, by remanding the case to the Court below, with a declaration that the application for execution was not barred instead of directing execution at once. Strictly speaking such an alteration of the order appealed from was beyond the competence of the Court, but their Lordships accept the alteration as indicating the opinion of the High Court as to the best form of order. The present order therefore should be that of 1886 as varied by the High Court itself in 1888. Subject to this variation the appeal must be dismissed, and with costs, and their Lordships will humbly advise Her Majesty to this effect.