Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Government of Bengal v. *Mussumat Shurruffutoonissa and another, from the Sudder Dewanny Adawlut of Calcutta; delivered June* 25, 1860.

Present:

LORD KINGSDOWN.
JUDGE OF THE HIGH COURT OF ADMIRALTY.
SIR EDWARD RYAN.
SIR JOHN TAYLOR COLERIDGE.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILE.

IT will be necessary in this case merely briefly to advert to some of the circumstances which have given rise to the questions discussed at the bar. It appears that there was a suit of very old standing; of such great antiquity that even the parties do not attempt to state at what period an appeal to His late Majesty in Council was lodged against a decision of the Court of Sudder Dewanny Adawlut at Calcutta. Some time prior, however, to the year 1833 an appeal had been preferred by Shah Assud Oollah, the father of one of the present Respondents, against Mussumat Emamun, as Respondent.

In virtue of the statute that was passed, giving authority to the Crown to appoint the East India Company to take charge of appeals and bring them to a hearing, the cause was heard; the Appellant was condemned in costs; and the Decree of the Court below was affirmed. Previous to the hearing it seems that Shah Assud Oollah had died. It does not appear from any of the proceedings in this case that the present Respondent (his son) had anything to do with that appeal whatever individually; but

his father having been condemned in the costs, proceedings were taken against the son, as possessing the property of his father, for the realization of the sum due for costs.

In the year 1837 the first proceedings in the present case were adopted, and the mode of proceeding was this:—the East India Company, in virtue of the rights they had acquired to recover the costs, proceeded against the son, and also against the wife. They proceeded for the purpose of rendering certain property, which was claimed by the wife as having been conveyed to her by deed of gift of her husband, amenable to the payment of those costs. These proceedings went on, and by a Decree of the Zillah Judge, which was made on the 29th December, 1837, a sale of half the real property of Shah Enaet Hossein was directed to be made. But Mussumat Shurrufutoonissa was dissatisfied with this order and appealed to the Court of Sudder Dewanny Adawlut, and on the 31st of January, 1839, the Court reversed the order of the Zillah Court, and ordered all the property comprised in the Decree of the Court below to be released upon the ground that no summary order could, in the existing state of things, disturb her possession.

Now it is important to see what was really the tenour of that order as set forth in the judgment of the Court of Sudder Dewanny Adawlut, which states the facts more particularly. It appears that this property had been registered in the Collectorate in the name of the Respondent; that it had been alleged to have been given up by deed of sale in lieu of dower, and that she had rightly or wrongly obtained a Decree on the 17th May, 1830, in her favour. Now the Sudder Adawlut in that case very clearly intimated what was the state of things, namely, that it was impossible that the order of the Judge of the Court below could be affirmed, because the only mode of proceeding was that which they directed her to adopt, namely, to proceed regularly to bring the property to sale, and no summary order disturbing her possession could be passed.

This took place, as has been stated, on the 31st of January, 1839, and no further proceedings were taken on the part of the Government to realize

the payment of these costs by means of the sale of this particular property, until the year 1852, after the lapse of thirteen years. When this case came to be prosecuted after the year 1852, the only objection we need notice was an objection made on behalf of the present Appellants, that the suit could not be brought on account of its being barred by the Statute of Limitations.

We will address our attention, therefore, to that question at once.

Two Statutes of Limitation have been adverted to by the Counsel for the parties before us, namely, Regulation 3 of 1793, and Regulation 2 of 1805. Assuming that it was possible that this suit might be governed by Regulation 3 of 1793, Mr. Forsyth raised a question that it was excepted, by virtue of certain words found in that Regulation, from the operation of that statute itself, without reference to Regulation 2 of 1805; and he stated that the money had been demanded from the Appellants for the matter in question, and that the Defendant admitted the correctness of the demand. Now, that the money was demanded may be perfectly true, and that the Defendant might have admitted that the demand was claimable from some quarter or other, may be perfectly true: but that, according to the intent and meaning of the words of the Regulation, he admitted that there was a claim as against the property in question, there certainly is not one atom of evidence before their Lordships.

Their Lordships think, therefore, that that clause in the first Regulation can have no operation upon this case.

Let us, then, consider the second question. There is an exception, "when, either from minority or other good and sufficient cause, he had been precluded from obtaining redress." I will not say that "other good and sufficient cause" are not words so comprehensive that they might by possibility extend to anything that may in the ordinary meaning of those words constitute a good and sufficient cause; but is there any good and sufficient cause upon the present occasion? Here, in the month of January 1839, there is an express warning given to the Government, who had then sought to make this property amenable to the costs, that the proper course was to commence a regular suit, and not to

proceed in a summary mode. They had the proper course pointed out to them; they had pointed out to them the only course by which they could make this property amenable; and they neglected for the whole period of thirteen years to take any such measures. It is therefore quite clear, giving the most extensive meaning to the words, "other good and sufficient cause," that it is impossible to say that, "either from minority or other good and sufficient cause," they were precluded from obtaining redress.

We now come to what is certainly a very important point, namely, whether Regulation 2 of 1805 extends to the present case, so as to enable the Government to sue, notwithstanding the lapse of time. Undoubtedly, the great object of that Regulation of 1805 was to prevent vexatious suits, in consequence of the litigiousness that generally prevailed among the natives of India, and, in all probability, it was not intended at that time to embarrass the East India Company, or the Government of India. But, be that as it may, Regulation 2 of 1805 expressly declares that this Statute of Limitations should not be considered applicable to any suit for the recovery of public revenue, or for any public right or claim whatever, which might be instituted by or on behalf of Government, with the sanction of the Governor-General in Council, or by direction of any public officer or officers who might be duly authorized to prosecute the same on the part of Government; or, secondly, to any claims on the part of Government, whether for the assessment of land held exempt from the public revenues without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or *for any other public right whatever*.

Now the question turns on the meaning that ought properly to be attached to these words, "*any other public right whatever*." Perhaps it would be too strict a construction to say that these words shall be construed precisely to be *ejusdem generis* with those matters which are mentioned before, namely, "the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment;" but although they may

not be construed with that degree of strictness, yet they must be taken to depend upon the same principles, otherwise the word "public" would have no meaning.

This brings us to the consideration of the question whether the recovery of these costs does or does not constitute a public claim. The statute has been read, and we need not go through it again; but by virtue of that statute His Majesty in Council might give such directions as he thought fit to the United Company, or other persons, for the prosecution of these suits, and also might make such orders for security for, and for the payment of, the costs as His Majesty in Council should think fit. Accordingly, it appears that an Order in Council was issued, with a view to carry into effect this statute, and that Order in Council directed the East India Company to appoint agents and counsel for the different parties in the appeals then pending, to do all such matters and things as had been usually transacted and done by agents in the prosecution of appeals. Now we are of opinion that these were all private acts between individuals, and that they had not originally in their nature anything of a public character to be ascribed to them. It appears that His Majesty, by another Order in Council, directed that the Company should be entitled to demand payment of their reasonable costs of bringing appeals to hearing by virtue of the Act, to such amount and from such party and parties, and should have a lien for the said costs on all money, lands, goods, and property whatsoever which might be recovered in such appeal, and upon all deposits which might have been made, and all securities which might have been given in respect of such appeal. In other words, that Order in Council placed the East India Company in precisely the same place and position as the winning party would have been in if the appeal had come on in its ordinary course. It appears to their Lordships that the nature of this transaction was originally of a private character. It continued to be of a private character, and the only distinction that can be drawn is this, that the East India Company are the agents to assert the right of the originally successful party to the costs incurred in the appeal.

It has been observed in the course of this discus-

sion that other persons might have been appointed, and nobody can for a moment say that, if it had pleased His Majesty in his wisdom to appoint anybody else to conduct these proceedings and to realize the costs, the parties so appointed would not have sued as private individuals. It pleased His Majesty, however, to appoint the East India Company. Can the appointment of one particular agent change the whole character and nature of the transaction from beginning to end, and convert that which was originally a private transaction, and nothing but a private transaction, into a transaction of a public character so as to bring it within the terms of the Regulation on which we have commented ?

Their Lordships are of opinion that the decision of the Court below was right and legal, and they will, therefore, humbly recommend Her Majesty to affirm that decision, with costs.