Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gourmonee Dassee v. Jogutindronarian Chowdhry and others, from the High Court of Judicature at Fort William in Bengal; delivered 6th July 1872.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

IN this case the sole question was whether an execution of a judgment taken out in January 1862 was or was not barred by the statutes of limitations applicable to India. Those limitations depend, in the first place, upon the third Bengal regulation of 1793, section 14, whereby "The "Zillah and City Courts are prohibited hearing, "trying, or determining the merits of any suit "whatever, against any person or persons, if the "cause of action shall have arisen 12 years "before any suit shall have been commenced," which regulation has by subsequent constructions been applied to decrees. The construction of April 1802 is to the effect that, "a decree "not carried into execution at the time of its "being passed, or within a year from that "time, may be executed on application being "made for that purpose within 12 years from "its date, after the opposite party has been "called upon to show cause," and so on. "12 years from its date" has been further construed to mean 12 years from the date of the last application made to a proper Court to enforce it. Again, by construction 136 of the 28th

October 1813, it was laid down by analogy to the 12 years rule of limitation that, "If the "application be not made within 12 years it "cannot be entertained unless the Applicant "satisfies the Court that there has been good "and sufficient cause for the delay."

By a statute passed in the year 1859, number 14, it was enacted that, "No process of execution "shall issue from any Court not established by "Royal Charter to enforce any judgment, "decree, or order of such Court, unless some "proceeding shall have been taken to enforce "such judgment, decree, or order, or to keep "the same in force within three years next "preceding the application for such execution."

Section 21 is:—"Nothing in the preceding "section shall apply to any judgment, decree, "or order in force at the time of the passing "of this Act, but process of execution may be "issued either within the time now limited by "law for issuing process of execution thereon, "or within three years next after the passing "of this Act, which ever shall first expire." The application in January 1862 was within three years of the passing of the Act, and the only question is whether it was within 12 years of the application to a Court having jurisdiction to enforce the decree.

The facts material to the decision of this case may be very shortly stated. The decree in the original suit was obtained on the 26th June 1837, in the Court of the Judge of the Zillah Rungpore. On the 10th November 1838 this decree was referred by the Judge of Rungpore to the Principal Sudder Ameen of the Zillah Rungpore, to be executed in pursuance of Act 5 of 1836, which is in these terms:—"It is hereby "enacted that it shall be competent to the Zillah "and City Judges, within the presidency of Fort "William in Bengal, to refer to the Principal "Sudder Ameens subordinate to them, applica-

" tions for the enforcement of decrees, to be " executed by the said Principal Sudder Ameens, " under the rules prescribed in the general " regulations applicable to such cases."

It appears that an order was made in pursuance of this section directing the Principal Sudder Ameen to execute this decree. The order is not before their Lordships; but it must be assumed, in the absence of any impeachment of it on the part of the Appellants, to have been regularly and properly made upon the proper petition and proper application, whatever that may have been, to the Judge of the Zillah Court.

It appears that various applications have been made to the Principal Sudder Ameen in pursuance of this order for execution of this decree. One appears to have been made in 1839, another appears to have been made in 1849, one in 1853, and another in 1861, and, possibly, there may have been others. Their Lordships infer, though it is not very clearly stated, that some of these executions have been partially successful in levying the goods of the Defendants, but to what extent does not very distinctly appear.

It would seem that the Principal Sudder Ameen has, as it is called, struck this case off his file on several occasions. He struck the case off the file in the year 1839, after the application for execution at that time; and it appears from the copy of his order on the 2nd June 1864 that he struck it off on several occasions, for he says it was " executed and struck off " consecutively on the 2nd June 1849, 7th January 1853, 2nd May 1861, 2nd January 1862, and so on. As far as their Lordships are able to infer, in the absence of any information on this subject, which the Appellants were bound to furnish if they relied upon it, the Principal Sudder Ameen appears from time to time when an application has been made for execution of this decree and that execution has been issued

and whatever was leviable has been levied, to have struck the case off the list of the current business before him, and on a fresh application being made for execution to have restored it.

The contention of the Appellants, and their sole contention is this, that when he first struck off this proceeding from his file (as it is called) in 1839, thereupon his jurisdiction to deal with the decree altogether ceased, and that he could not deal with it again until a subsequent order had been made by the Judge of the Zillah Court, sending it back to him again. On that ground they say that these applications were made to a Court altogether without jurisdiction.

The Appellants have not shown what this striking off the file amounts to. They have not shown the grounds on which the case was struck off the file, whether for non-prosecution, whether for some default on the part of the decree holders, whether from inadventure, or whether from the business of the Court being so conducted that causes which are not immediately before it are not kept upon the paper. Without affording any information on these subjects they have called upon their Lordships to infer that by the proceeding of the Principal Sudder Ameen in 1839, striking off the case from the file, without any explanation of the meaning of this proceeding or the cause of it, the order of the Court referring the decree to the Principal Sudder Ameen for execution was got rid of.

The order having been in force it is for the Appellants to satisfy their Lordships that for some good reason it has ceased to be so. Their Lordships are not disposed to infer that a valid order has ceased to be valid, or that a Court of competent jurisdiction having jurisdiction over this subject-matter has ceased to have it unless some clear proof is given of those propositions.

In the absence of such proof, their Lordships

have come to the conclusion that the applications to the Principal Sudder Ameen, including that of 1862, were to a Court of competent jurisdiction, and, therefore, that the execution was valid.

Taking this view it becomes unnecessary to determine another question which was raised, viz., whether assuming the Principal Sudder Ameen not to have jurisdiction in 1862, that jurisdiction could be conferred on him by the retrospective effect of an order made by the Judge in 1864.

For these reasons their Lordships will humbly advise Her Majesty that the judgment of the High Court be affirmed, and that this Appeal be dismissed, with costs.