

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the consolidated Appeals
of Ramdin v. Kalka Parshad (ex parte), from
the High Court of Judicature for the North-
Western Provinces, Allahabad; delivered
December 11th, 1884.*

Present:

LORD FITZGERALD.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

This is a suit instituted by the mortgagee against the mortgagor. He seeks to enforce a mortgage not under seal dated the 25th January 1870, by which certain property was pledged to him for a mortgage debt; he alleges that the Defendant has failed to pay both principal and interest, and prays that the principal and interest may be enforced against the mortgaged property, and also by rendering the person of the Defendant and his other property liable. Therefore, although it is a mortgage suit, there are two distinct remedies sought, one against the mortgaged property, and the other by rendering the other property and the person of the Defendant liable. The Defendant does not dispute the mortgage. He raises no question as to the right of the Plaintiff to have the mortgaged property sold, but he says that the remedy sought against him personally, and against his other property, is barred by the operation of the Limitation Act of 1871.

Their Lordships turn then to see what the mortgage transaction was. It is very plain and

very simple. The instrument recites the mortgage of certain property for Rs. 1,300 to the present Plaintiff, that the interest should be at the rate of one per cent. per mensem, and the principal and interest to be repaid at the end of Jeth Sambat 1927. The instrument then says. —“ I have received the mortgage money in full. “ I therefore covenant that if I fail to pay the “ principal with interest on the promised date “ the mortgagees will be at liberty to recover “ through Court their whole money in a lump “ sum from me or the mortgaged property.” The mortgagor thus gives the mortgagee a pledge of certain fixed immoveable property, and also gives as a further security his personal bond or covenant. A period of nearly ten years elapsed from the time at which the mortgage money with interest became payable before the suit was instituted. The question submitted for their Lordships' consideration is, whether the lesser period of limitation, three or six years as the case may be, has barred the personal remedy against the mortgagee, even though the mortgage remains in full force, as against the mortgaged property.

Their Lordships are of opinion that the Judgment of the High Court is correct. The Judge of the Primary Court held that the personal demand was barred. The Judge of the District Court held the contrary—that there could be but one period of limitation, and that was a period of 12 years, applicable to the mortgage of fixed property, which carried with it and gave the same 12 years for the enforcement of the personal security. Their Lordships are of opinion that the District Judge is wrong in point of law. There are two remedies distinctly sought in the Plaintiff's petition, the one against the mortgaged property, the other against the person and against the other property of the Defendant. As

to the mortgaged property there is now no question. Their Lordships are of opinion that the Law of Limitation which says a bond for money must be enforced within a certain date applies to the specific demand here for a personal remedy against the Defendant. The Plaintiff can have no personal remedy—his remedy against the person of mortgagor is barred, but his right remains to enforce his demand against the mortgaged property. As far as personal demands, including simple bonds, are concerned, the language of the Act is plain and clear. Sec. 4 of the Act of 1871 directs that every suit instituted after the period prescribed therefor in the Second Schedule shall be dismissed. The Second Schedule places simple money demands generally under the three years' limitation, and under No. 65 the same limitation is applied to a single bond, and under the same limitation are placed bills of exchange, arrears of rent, and suits by mortgagors to recover surplus from mortgagee. The six years' limit embraces suits on foreign Judgements and some compound registered securities. The 12 years' period is made applicable principally to suits in respect of immoveable property, though it also applies to Judgements and recognizances in India. But the Counsel for the Appellant relied upon the language of the 132nd Article of the Second Schedule, "For money charged upon immoveable property, 12 years." His contention was that that period of 12 years applied to every remedy which the instrument carried with it, and gave 12 years for the personal remedy against the mortgagor as well as against the mortgaged property.

Looking at the previous language with reference to personal suits, and at the language of Article 132, their Lordships think great inconveniences and inconsistencies would arise if they did not

read the latter as having reference only to suits for money charged on immoveable property to raise it out of that property. That seems to their Lordships what the Legislature intended, and they are therefore of opinion that the decision of the High Court was right.

That being so their Lordships will humbly advise Her Majesty to affirm the decree appealed from. There being no appearance for the Respondent here there will be no costs.

Their Lordships desire to add that their opinion on this Appeal also applies to the separate Appeal on the mortgage bond of the 10th June 1871.