Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Shah Mukhum Lall and others v. *Nawab Imtiazood Dowlah and another, from the Court of the Judicial Commissioner of the Province of Oude; delivered 16th December.* 1865.

Present:

LORD CHELMSFORD.
SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

SIR LAWRENCE PEEL.

THE printed cases both of the Appellant and Respondent assume that the question upon the Appeal is to be governed by the new law of limitation in the Act XIV of 1859. But the last section of that Act provides that the Act "shall not take effect in any non-regulation province (to which class Oude belongs) until it shall be extended thereto by public notification by the Governor-General in Council, and that whenever it shall be so extended, all suits within such province which shall be pending at the date of such notification or shall be instituted within the period of two years from the date thereof shall be tried and determined as if this Act had not been passed." In a case from Oude which was recently before the Judicial Committee (the case of Saligram and another *v.* Mirza Azim Ali Beg, decided on the 12th November, 1864) it appeared that the Act XIV of 1859 was not extended to Oude till July 1860. As this suit was commenced on the 13th January, 1862, it falls within the exception and must be determined as if the Act had not been passed.

In the case just referred to in which the question arose what law of limitation was to be applied, it appeared that since the annexation of the province various rules of limitation had prevailed. That in 1857 suits of the nature of the present one were subject to a limitation of six years, and to the general provisions of the Punjab Code. That in March 1859 these rules had been modified by a Circular Order No. 51, which had afterwards been repealed by a Circular Order No. 104 dated the 4th July, 1860. And their Lordships held that the case before them was to be governed by the last-mentioned Order. Upon the authority of that decision it appears that this case must fall within the 10th of the Rules then promulgated under that Order. This declares the period of limitation to be three years "in all suits for money lent for no definite period or for interest thereon, unless there is a written engagement, and where registry offices existed at the time such engagement was registered and signed by the party to be bound thereby, or by his duly authorized agent."

The rules which were promulgated under this Circular Order were modifications of the Punjab Code which previously existed, and therefore it may be necessary in this case to resort to that Code for the purpose of determining the time from which the period of limitation is to be calculated, or the circumstances which will take a particular case out of the operation of the limitation. Having ascertained the law to be applied to this case, we proceed to consider the question to be decided.

The suit was instituted by the Appellant, carrying on business as a merchant at Lucknow, to recover a balance of 11,278 rupees 3 annas principal moneys and interest alleged to be due from the first named Respondent on account of advances made to him for the maintenance of his family through his agent, the other Respondent Hajee Ali.

The plaint was filed on the 13th January, 1862, and the last advance was in 1858, consequently more than three years before the commencement of the suit.

Issues were settled by the Judge, the first of them being "limitation," and the case was ultimately decided upon the question whether the Plaintiff had given sufficient evidence of an admis-

sion of the debt by the Respondent to prevent the application of the period of limitation to his claim.

In order to prove such an admission, the Plaintiff produced three letters marked respectively B, D, and F. B appearing by its own date, and the other two letters by the post-marks upon their envelopes, to have been written in the year 1860. The letter F purports to be signed by the Nawab, but has no seal. The other two letters have neither signature nor seal, but the envelope of D bears to have been "dispatched by Imtiazood-dowla Bahadur from Khizzirpoor in Calcutta." Letter F is stated to have been filed with the plaint, but no attempt was made to prove that it was signed by the Nawab. No other evidence was given of the letters B and D, except by Hajee Ali who was called by the Plaintiff, and said "B came to the Plaintiff, not through me, D ditto." This was perhaps scarcely sufficient to admit them to proof, but the Judge received them, and then the question arose whether being admitted they did not carry with them internal evidence of their genuineness. There can be no doubt that when the Nawab left Lucknow his family remained behind, and would require to be maintained during his absence. Hajee Ali was appointed his agent by a mokhtarnamah sealed with his seal, in which it is contemplated that money would be borrowed from the Appellant's firm, and Hajee Ali besides this authority was armed with blank pieces of paper impressed with the Nawab's seal, to be used when required. It is not pretended that the family were maintained out of the funds of the Nawab, and no other source of supply was ever suggested, except that which was derived from the Appellant. Under these circumstances the debt to the Appellant was incurred. His claim is for nothing else than advances made to meet the wants of the Nawab's family, with interest upon these advances. The Nawab was examined upon interrogatories. He denied all knowledge of the Appellant. Asserted that he never had himself, nor permitted any one to have, any money transactions with him. That he was not aware that money had been advanced by the Appellant, and that nothing was due to him for principal or interest. It is impossible not to agree with the observations of the Civil Judge upon

these answers of the Nawab. "That Defendant was largely indebted to Plaintiff through his old Karindah, Hajee Ali, there can be no doubt, and there is much perjury on that score in the Defendant's deposition."

But if the Respondent was indebted to the Appellant through his agent, is it at all credible that he should have been ignorant of the fact, and that knowing that his own funds had not been applied to the maintenance of his family, he should never have had the curiosity to inquire from what source the supplies were drawn? It is clear that he must have known that he was indebted to the Appellant for the means of support of his family, and it is most improbable that when the debt had grown to a large amount, and his own affairs had suffered considerably from the annexation of the province of Oude, no communication should have taken place between him and his creditor. Assuming the probability, in this state of things, that something would have passed between them, it will be found that the letters in question are precisely those which might have been expected to be written under the circumstances. They are in the following terms:

"TRANSLATION of a LETTER to the address of SAHJEE.

"Suit 77 of 1862. B.

"Dear Sir,

"(After compliments.) I beg to inform you that I have received the account through your gomashta (agent), Lalla Sham Soonder, and become acquainted with its content. But, dear Sahjee, it is known to the world how we have been ruined; and you also are well aware of my circumstances, that no private property has been left to me, and I am obliged to manage my expenses (out of the salary which is allowed to me) the best way I can.

"A friendly intercourse and money transactions have been carried on between you and me for a long time, and there never took place any disagreement of any kind, and even now, please God, no difference will arise. I am every way willing to pay off your money, and have no objection on that head. But I wish you will, under present circumstances, receive from me the principal due to you by instalments; any* means do not enable me to pay you the interest, and I will not be able to pay it. I have no hesitation or objection to pay you the principal sum. I shall suffer inconvenience, but, please God, I will pay you your debt by instalments; but I certainly demur to pay the interest, because I do not know how to pay it. Under such circumstances it becomes you also to give up your claim to interest, because you and I having been on friendly terms for a long time, it is nothing but proper that you should show me such consideration.

* *Sic.*

After the revolution that has taken place in our affairs, may God enable me to pay off your principal debt. I will consider myself very fortunate, and thank God if I succeed in liquidating it.

"Dated 20th Suffer, 1277 Hijree.

"Postscript.—Having stated above that I am ready to pay you by instalments, I take this opportunity to let you know that I can arrange to liquidate your debt by monthly instalments of 200 rupees each, to be paid to you, please God, monthly, through your agent, when I receive my allowance from the British Government."

"TRANSLATION of a LETTER to the address of SAH MAKHUN LALL.

"Suit 77. D.

"Dear Sir,

"(After compliments.) I beg to inform you that, before this, I wrote to you that I could pay the principal by instalments, but that you would excuse me for the interest, but you have not yet sent me any satisfactory answer. I therefore write to you again that a friendly communication and money dealings have existed between you and me for a long time, and that no disagreement ever arose, nor did I make any objection in my dealings with you. I did whatever you told me. But my objection to pay you the interest now arises from my being involved in ruined circumstances, which is known to the world, and even you yourself are well aware that I have been robbed of all the private property I had, and that nothing is left to me. My salary was stopped for a long time; but as it is now allowed, I am ready to pay off your principal without any hesitation, although I shall suffer much inconvenience, even by paying your principal money, because God knows how I manage my expenses in so small a sum. Hence, under the present state of affairs, when times have been so much changed, it is nothing but proper that you should have a regard to the friendly intercourse which has subsisted for a long time between you and me, and not demand the interest. You should show me some consideration, and receive the principal due to you by instalments. Pray do not withhold your kindness in this respect, and, under present circumstances, consider it a booty if you have your principal debt liquidated. I am unable to pay the interest, and can by no means pay it. Otherwise I would have made no objection to discharge the interest, and would have paid it. You should send me an early answer."

"TRANSLATION of a LETTER to the Address of SHAHJEE.

"Suit 77. F.

"Dear Sir,

"I wrote to you frequently asking you to return me the whole of my bonds, and to have one drawn in lieu of them; that I can pay you interest at the rate of 8 annas per cent.; that you should

make up your account, and have one bond executed for the aggregate sum, and that you should receive payment from me by monthly instalments of 200 rupees each, and I told the same to your agent; but I am surprised to find that neither you have written to me anything on the subject up to this time, nor has your agent given me any answer.

"I am, therefore, under the necessity of writing to you again, and request you will send all my papers, consisting of bonds, &c., which you have in your possession, to your agent here, who may return them to me, and have one bond executed in lieu of all of them. I also wish that your agent may be allowed to receive from me the instalments of 200 rupees a month promised by me, which I am ready to pay. Please send me without any hesitation, an immediate and complete reply as soon as you receive this letter.

(Signed) "IMTIAZOOD-DOWLAH BAADUR."

Assuming, then, the genuineness of these letters to be thus established, the question arises whether they contain a sufficient admission of the debt to prevent the application of the period of limitation to the Appellant's suit. As the Judges below seemed to regard the letter F as probably not genuine, and some suspicion may rest upon it, it will be better to confine the consideration of this question to the letters B and D. Their Lordships entertain no doubt that if the question were to be tried by the rules of English law before Lord Tenterden's Act, these letters offering to pay the principal money by instalments, and praying to be excused from the payment of the interest, would be an ample acknowledgment to take the case out of the statute of limitations, and they are not aware of anything in the Punjab Code which would lead to a different construction. The Judges in the Courts below dealt with the questions rather summarily, and disposed of the case without affording the Appellant an opportunity of supplying any deficiency which they found in his proof. But if they proceeded upon the Act for the limitation of suits No. 14 of 1859, and both the Civil Judge and the Judicial Commissioner thought that letter F was out of the question, their conclusion was right, because letters B and D being without signature, there was no acknowledgment in writing signed by the party to be charged. But that Act not being applicable, and an admission of the debt being all that was requisite to save the limitation, even if letter F were put aside, the letters B and D being before the Judges, they ought to have considered them and determined

whether they were sufficient to prevent the Plaintiff's remedy being barred. To this consideration their minds were never applied, and in dealing with another point which arose in the case, there seems to have been a miscarriage. It was proved by Hajee Ali that the Nawab's brother Hadee Ali Khan paid the Appellant 1,700 rupees in two sums after he became agent. The Civil Judge appears to have entirely overlooked this fact. But the Judicial Commissioner, dealing with the argument that the period of limitation should be calculated from the last of these payments, which was made on the 14th July, 1859, observed that "a period of limitation cannot now be renewed by a payment unless it be made at a time specifically conditioned." It is difficult to understand to what Code the Judicial Commissioner was referring when he made this observation. In the Act XIV of 1859 there seems to be no provision giving effect to a payment on account, or partial satisfaction. The Punjab Code, Part II, section 1, clause 6, limits suits to a certain time after the cause of action shall have arisen, unless (amongst other things) the complainant has "obtained an admission or partial satisfaction of his demand from the opposite party."

But from clause 7 it appears that it is not every part payment which will amount to "a partial satisfaction of demand" within the meaning of the rule. It must be a payment according to a regular and continuous course of dealing, "something tantamount to a running account." It was this qualification which the Judicial Commissioner probably had in his mind when he made the observation; but if he meant to apply this code, and had turned to the words of it, he probably would have thought that the payments made by the Defendant's agent upon an account, continued monthly for several months, ought to be regarded as tantamount (at least) to a running account, if not itself correctly described as a running account.

The case has not been properly dealt with, nor fully and sufficiently considered in the Courts below, and in their Lordships' opinion it ought to be submitted to further and more careful investigation. They will, therefore, recommend to Her Majesty that the Decrees be reversed, and the case remitted to the Court below for trial of the issues between the parties.