M.R. O. 1—22,000—15-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 745 Press Mis.

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Dated 28- 5- ~~19~~ 1929

Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department, from 28th to 31st May 1859.

No. 8. Read the following letter from G. F. FULLERTON, Esq., Deputy Register to the Court of Sudder Udalut; to T. PYCROFT, Esq., Chief Secretary to Government, dated 12th May 1859, No. 45.

1. I am directed by the Judges of the Court of Sudder Udalut to submit the following remarks on "a Bill to provide for the Limitation of Suits" as settled in Committee of the whole Council, and published in the Gazette of the 23rd February 1859.

2. The Bill appears to the Judges complicated to a degree quite unnecessary for its purposes, and to be ill suited to the circumstances of the country, where the utmost simplicity of legislation should prevail, whether the condition of the people be considered, or the agency available for the dispensation of justice.

3. The Judges observe there are no less than twenty Sections particularising different descriptions of claims, the periods of limitation for each of which are laid down, namely, Clauses 1 to 14 of Section I and Sections II, XV, XX, XXI, XXII and XXIII. The periods of limitation to be applied in these instances are no less than eight, ranging from 6 months to 1, 2, 3, 6, 12, 30 and 60 years. Moreover, in one of the species of cases described in Section II, there is to be no limit. Two of these Sections, it is true, namely XXI and XXIII, are of temporary effect. But, again, lest the attempt to define all cases specifically may fail, Clause XV, Section I is thrown in to embrace all omitted cases, and Section III is thrown in to embrace all omitted shorter periods of limitation, which may have force under the existing Law.

4. All these minute circumstantialities of Law will have to be searched out by the suitors and to become familiar to the Courts, and the Judges think much needless labor will be thereby imposed, with proportionate risk of miscarriage.

5. It appears to the Judges a mistake to aim at such minuteness of description, and that it would be quite sufficient for the purposes of the Law, if the claims, the prosecution of which has to be limited, were to be divided into certain broad and easily recognizable classes. They would propose three such, namely, *first*, rights to immoveable property unsecured by decree; *second*, claims on written obligations or decree; *third*, all other claims. The limitation for these they would make 12, 6 and 2 years respectively. They would exclude as at present from the operation of the Law the claims of parties to redeem immoveable property given out on mortgage as the arrangement may be presumed to be one mutually beneficial, and the Law therefore should not step in to put a term to it.

6. The Judges think the utmost pains should be taken to define by illustrations what constitutes an adverse claim, and what interrupts the running of the Statute. Sections IV, VIII, X, XIII and XIV appear to them useful as directed towards these ends.

7. The Judges would further recommend a special restriction in the case of claims founded on alleged forcible dispossession. Such cases at present may be brought before the Collector and disposed of by him summarily. The Judges are in favor of such summary jurisdiction, but think it belongs more naturally to a Magistrate than to a Collector. These complaints are fruitful parents of litigation, and the decision ordinarily turns not on the only legitimate ground of the complaint, namely, dispossession by force, but on the right and title of the parties. To keep such cases within their bounds, the Judges would limit the jurisdiction, where such allegation of forcible dispossession is raised, to the Magistrate alone, and make the case cognizable, only if the complaint be preferred within 30 days of the alleged forcible dispossession.

8. The Judge would only further notice a few details in the Bill. In Clause 9, Section I, the registration of an engagement or contract within 6 months of its date is mentioned. The Judges would suggest that the period be here left unparticularized. The forthcoming Registration Act will contain it, and, until that be settled, it may lead to inconvenience, if the specification be made here. Clause 12, Section I lays down a limit to prosecution of claims to share in family property. At present this sort of claim is excluded from the operation of the Law of limitation, unless demand to enforce the division has been made and refused, when prescription runs from the time of such refusal. The practice is in conformity with the Hindoo and our own Law, possession by the managing member on account of the coparceners not being considered adverse possession. The Judges think the effect of the proposed enactment might be to drive

parties to force on a division before the period limited may expire, and thus promote the division and sub division of Estates, an evil, the prevalence of which already is much to be deplored. They would therefore exclude this Clause.

9. Section XI is based upon the principle of English Law, that where the Statute has once begun to run no subsequent disability is to interrupt it. The Judges must admit they are quite unable to recognize the value or equity of this principle. It seems to them most dangerous to the interests of a minor heir, especially in a country such as this, where those interests are left so unprotected, and where the guardian, if any, is liable to be so ignorant or apathetic, that his claim should be lost by its non-prosecution during his minority by some other party. The Judges are therefore against the enforcement of this principle in this country.

No. 9. ORDER THEREON, 28th May 1859, No. 745.

It is observed that the Bill to provide for the Limitation of Suits has passed.

(Signed) T. PYCROFT,
Chief Secretary.

Ed. F. Cartledge.

Judicial.

Proceedings of the Madras Govt.

Letter from the Court
of Sudder Adalut Enter 12 May 1859 No. 45.

Order thereon 28 May 1859, No. 745.

~~Order that the Letter,~~
~~containing certain observa-~~
~~tions of the Judges of the~~
~~Sudder Adalut, on the~~
Bill to provide for the Limitation of Suits, be communicated to the Members of the Legislative Council.

Has passed Para 2.

Sajee with the Judges
observations - the
Judges to request
Leave laid down
& Weeks last 4 of the
last proviso & moved that
the Bill as passed be
by the Legislative Council

2. The Government agree with the Sudder Judges in their remarks, & in the periods of limitation they propose to lay down — but they think Section 14 of the Bill good, & would not, therefore omit it as suggested

JP

The Judges of the Sudder Adalut.

Judicial. 3

The Honble H. Forbes Esqre.
Member for Madras of the
Legislative Council.

Sir

I am directed to forward to you copy of a letter, 21 May 1859 No. 46 from the Judges of the Sudder Adalut, in which they make certain observations on the Bill to provide for the limitation of Suits.

2. I have to add that Govt. agree with the Sudder Judges in their remarks, & in the periods of limitation they propose to lay down — but they think Section XIV of the Bill good, & would not therefore, omit it as suggested.

JP

Pen of Govt 31st May
Judicial 1859 Depart

No 745

Ord. of Government

28th May 59

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