Privy Council Appeal No. 27 *of* 1913. *Allahabad Appeal No.* 4 *of* 1911.

Chaudhri Abdul Majid - - - - *Appellant,*

v.

Jawahir Lal and others - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH APRIL 1914.

Present at the Hearing :

LORD MOULTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD MOULTON.]

In this case the relevant facts necessary and sufficient to determine their Lordships' decision on the Appeal are very simple and are undisputed.

The appellant is in the position of mortgagor and the respondents of mortgagees under a mortgage dated 3rd September 1868. In 1889 a suit was commenced before the Subordinate Judge of Allahabad to enforce that mortgage, and on 12th May 1890 a decree was passed by him for the sale of the property unless payment was made on or before 12th August 1890. An appeal was brought from that decree to the High Court and on 8th April 1893 that appeal was dismissed and the decree of the Subordinate

Judge confirmed. The mortgagor obtained leave to appeal to this Board but did not prosecute his appeal, and on 13th May 1901 the appeal was dismissed for want of prosecution.

The present appeal relates to an application to the Subordinate Judge, dated 11th June 1909, for an order absolute to sell the mortgaged properties; in other words, for an order directing enforcement of the order *nisi* which had been confirmed by the decision of the High Court of 8th April 1893. It is not necessary to go into the particulars of this application because their Lordships are of opinion that any such application was barred by the Statute of Limitation, Article 179, at the expiry of three years from the date of the decree, and therefore before the passing of the Code of Civil Procedure of 1908 under which the present proceedings purported to be taken, and their Lordships have no doubt whatever that inasmuch as the right to enforce the decree had once been barred no provisions of the Civil Procedure Code, 1908, operate to revive it.

The chief matter of argument before this Board was a contention that the decree which it is sought to enforce had been constructively turned into a decree of His Majesty in Council and assigned to the date of 13th May 1901 by virtue of the dismissal of the appeal for want of prosecution on that date, and that therefore the period of limitation was 12 years from 13th May 1901 by virtue of Article 180 of the Indian Limitation Act. Their Lordships see no foundation for this contention, which appears to have been the basis of the decision of the Courts below. The order dismissing the appeal for want of prosecution did not deal judicially with the matter of the suit and could in no sense be regarded as an order adopting or confirming the decision appealed from. It merely recognised

authoritatively that the appellant had not complied with the conditions under which the appeal was open to him, and that therefore he was in the same position as if he had not appealed at all. To put it shortly, the only decree for sale that exists is the decree dated 8th April 1893, and that is a decree of the High Court of Allahabad. The operation of this decree has never been stayed, and there is no decree of His Majesty in Council in which it has become merged. The period of limitation applying to the enforcement of it at all material times was therefore a period of three years. The respondents' right is therefore barred by limitation.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, and that the application of 11th June 1909 should be dismissed and that the respondents should pay the costs of that application and of the appeal to the High Court as well as of this appeal.

In the Privy Council.

CHAUDHRI ABDUL MAJID

v.

JAWAHIR LAL AND OTHERS.

DELIVERED BY LORD MOULTON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.

Privy Council Appeal No. 27 *of* 1913. *Allahabad Appeal No.* 4 *of* 1911.

Chaudhri Abdul Majid - - - - *Appellant,*

v.

Jawahir Lal and others - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN PROVINCES, ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 7TH APRIL 1914.

Present at the Hearing :

LORD MOULTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD MOULTON.]

In this case the relevant facts necessary and sufficient to determine their Lordships' decision on the Appeal are very simple and are undisputed.

The appellant is in the position of mortgagor and the respondents of mortgagees under a mortgage dated 3rd September 1868. In 1889 a suit was commenced before the Subordinate Judge of Allahabad to enforce that mortgage, and on 12th May 1890 a decree was passed by him for the sale of the property unless payment was made on or before 12th August 1890. An appeal was brought from that decree to the High Court and on 8th April 1893 that appeal was dismissed and the decree of the Subordinate

Judge confirmed. The mortgagor obtained leave to appeal to this Board but did not prosecute his appeal, and on 13th May 1901 the appeal was dismissed for want of prosecution.

The present appeal relates to an application to the Subordinate Judge, dated 11th June 1909, for an order absolute to sell the mortgaged properties; in other words, for an order directing enforcement of the order *nisi* which had been confirmed by the decision of the High Court of 8th April 1893. It is not necessary to go into the particulars of this application because their Lordships are of opinion that any such application was barred by the Statute of Limitation, Article 179, at the expiry of three years from the date of the decree, and therefore before the passing of the Code of Civil Procedure of 1908 under which the present proceedings purported to be taken, and their Lordships have no doubt whatever that inasmuch as the right to enforce the decree had once been barred no provisions of the Civil Procedure Code, 1908, operate to revive it.

The chief matter of argument before this Board was a contention that the decree which it is sought to enforce had been constructively turned into a decree of His Majesty in Council and assigned to the date of 13th May 1901 by virtue of the dismissal of the appeal for want of prosecution on that date, and that therefore the period of limitation was 12 years from 13th May 1901 by virtue of Article 180 of the Indian Limitation Act. Their Lordships see no foundation for this contention, which appears to have been the basis of the decision of the Courts below. The order dismissing the appeal for want of prosecution did not deal judicially with the matter of the suit and could in no sense be regarded as an order adopting or confirming the decision appealed from. It merely recognised

authoritatively that the appellant had not complied with the conditions under which the appeal was open to him, and that therefore he was in the same position as if he had not appealed at all. To put it shortly, the only decree for sale that exists is the decree dated 8th April 1893, and that is a decree of the High Court of Allahabad. The operation of this decree has never been stayed, and there is no decree of His Majesty in Council in which it has become merged. The period of limitation applying to the enforcement of it at all material times was therefore a period of three years. The respondents' right is therefore barred by limitation.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, and that the application of 11th June 1909 should be dismissed and that the respondents should pay the costs of that application and of the appeal to the High Court as well as of this appeal.

In the Privy Council.

CHAUDHRI ABDUL MAJID

v.

JAWAHIR LAL AND OTHERS.

DELIVERED BY LORD MOULTON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.