It appears to me that full effect may be given to Section 141, and an effect not inconsistent with the other provisions of the Act, if it be construed as declaring the rate-payer's right and the Commissioners' correlative duty, the performance of which the rate-payer has the means of enforcing, and not as importing that the water must be rendered accessible before the liability for the tax can be imposed.

I answer the first question therefore in the affirmative. It is not necessary to answer the second, and I think that properly speaking the only question which the Magistrates were empowered to refer in this case was the liability of Mr. Branson to the tax.

It is to be regretted that there is a conflict of opinion, but, after a careful consideration of Mr. Justice Kernan's construction of the Act, I am reluctantly compelled to dissent from his view.

The majority of the Court being of opinion that the decision of the Magistrates is right, this opinion will be communicated to them, and, under Section 193, they will dispose of the costs.

Attorneys for the Appellant, Messrs. *Branson* and *Branson*.

Attorneys for the Respondents, Messrs. *Barclay* and *Morgan*.

APPELLATE CIVIL.

Before Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.

SABÁPATI CHETTI (PLAINTIFF), APPELLANT, *v.* CHEDUMBARA CHETTI (DEFENDANT), RESPONDENT.*

1879. December 8.

Limitation Act, Section 2—Bond of 1869 payable on demand.

Where a suit was brought upon a registered bond dated 1869, payable on demand, and demand was made in September 1876:

Held, that the period of limitation was in effect curtailed by Act XV of 1877, and that the plaintiff was entitled to two years from 1st October 1877 under the provisions of Section 2, although under Act XIV of 1859 (in force when the bond was executed) the limitation period was six years from the date of the bond.

THIS suit was brought on 14th August 1878 to recover Rupees 6,164 from defendant upon a registered bond dated 27th May

* R.A. 24 of 1879 from the decree of the Subordinate Judge of Cuddalore, dated 16th November 1878.

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1869, payable on demand, and to obtain an order for the sale of the property hypothecated as security for payment.

The Subordinate Judge held that the personal remedy was barred by limitation on the ground that plaintiff had only six years from the time of the loan to bring his suit, and gave a decree against the property hypothecated.

Plaintiff appealed against this decree so far as it negatived his right to a decree against the defendant's person.

Parthasáradi Ayyangár and *Kristnasámi Chetti* for the Appellant.

A. Rámachandráyyar for the Respondent.

The Court (TURNER, C.J., and MUTTUSÁMI ÁYYAR, J.) delivered the following Judgments:—

TURNER, C.J.—On the 14th August 1878 the appellant instituted this suit to recover from the respondent Rupees 6,164, principal and interest due on a bond dated the 27th May 1869, and to obtain an order for the sale of property hypothecated to secure the satisfaction of the bond debt.

The amount secured by the bond was therein declared to be payable on demand.

The respondent pleaded that the claim for a personal decree was barred by limitation, and that the contract was void for want of consideration.

The Court of First Instance allowed the plea of limitation, but found that consideration had been paid, and therefore decreed the relief claimed only to the extent of ordering the sale of the hypothecated property.

The plaintiff has appealed against so much of the decree as disallowed the personal remedy, and the issue to be tried is whether he is debarred of that remedy by the law of limitation.

Act XIV of 1859 was in force when the bond was made, and inasmuch as the bond was registered, the period of limitation prescribed by that Act was six years, calculated according to the decisions passed on the Act, from the date of the bond.

By Act IX of 1871, Section 2, Act XIV of 1859 was repealed, and although it was declared that the repeal would not operate on suits instituted before the 1st April 1873, it was not declared that suits instituted after that date should be governed by any other law of limitation than was thereby enacted, notwithstanding

the period of limitation under Act XIV of 1859 might have commenced to run before that Act was repealed.

In suits brought on instruments payable on demand, Act IX of 1871 prescribed that the period of limitation should be computed from the date of the demand. In effect it extended the time within which suits might be brought on such instruments.

By Act XV of 1877 it was enacted that the period of limitation should be calculated from the date of the instrument; consequently this suit would be barred unless it falls within the scope of Section 2 of the Act. That section provided that any suit (other than a suit to which Article 146, Schedule II, applied) for which the period of limitation prescribed by Act XV of 1877 was shorter than the period of limitation prescribed by the Act of 1871, might be brought within two years after 1st October 1877, on which day the Act of 1877 came into force.

In one sense the period of limitation prescribed by the Act of 1877 is not shorter than the period prescribed by the Act of 1871; but to adopt this construction would, in such cases as that now before the Court, work obvious hardship.

The period of limitation prescribed by Act XIV of 1859 had not expired when the Act of 1871 came into force. Assuming that the law of 1871 remained in force, the plaintiff might have postponed suing until September 1882, or six years from the date when the first demand was made. There are no doubt cases in which the demand was made only a day or two before the Act of 1877 was passed. In these cases, as well as in the case before the Court, the Act of 1877 in effect prescribed a shorter period of limitation than obtained under the Act of 1871.

The intention of the second section of the Act of 1877 was obviously to give to persons possessing rights of action at the time the Act of 1877 came into operation, for a limited period, the benefit of the provisions of the former law. The Court gives effect to that intention by adopting such a construction of the term 'shorter period' as will include cases in which a later starting-point is provided for the calculation of the period, as well as cases in which the period itself is curtailed. This construction has been adopted by the Court in Second Appeal 504 of 1878, and I am of opinion it should prevail. I would reverse so much of the decree of the Court of First Instance as dismissed the claim for

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relief against the defendant personally, and would decree also that portion of the relief asked with costs.

MUTTUSÁMI ÁYYAR, J.—I concur. Although in Referred Case 2 of 1878 I adopted the narrower construction, I am satisfied, on further consideration, that the true construction to be placed on Section 2, Act XV of 1877, is that which is suggested by my Lord the Chief Justice.

APPELLATE CIVIL.

Before Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Muttusámi Áyyar.

1879. December 8.

NALLATAMBI MUDALIAR (PLAINTIFF), APPELLANT, *v.* PONNUSA'MI PILLAI (DEFENDANT), RESPONDENT.*

Foreign judgment, Suit on—Objection to jurisdiction, Estoppel—Not examinable for irregular procedure, or because remedy was barred by Law of Limitation of proper forum.

Where a defendant sued in a foreign tribunal takes no exception to the jurisdiction, he cannot question the jurisdiction afterwards, inasmuch as he has led the plaintiff to believe that the proceedings are allowed by him to be effectual and encouraged the plaintiff to proceed in them instead of withdrawing from them and instituting proceedings elsewhere.

Irregularity of procedure on the part of a foreign tribunal which ordinarily proceeds in accordance with recognised principles of judicial investigation is not a sufficient ground for refusing to give effect to its judgment.

Where limitation bars the remedy, but does not destroy the right, the judgment of a foreign tribunal is not open to the objection that the suit (on a contract) was barred by the Law of Limitation applicable in the country where the contract was made.

THE facts and arguments in this case sufficiently appear in the Judgment of the Court (TURNER, C.J., and MUTTUSA'MI ÁYYAR, J.).

T. Ráma Ráu for Appellant.

Mr. *N. Subramániam* for Respondent.

JUDGMENT:—The Respondent and his father, who were British subjects, residing and domiciled in British India, executed, in favor of the Appellant, a bond covenanting to repay a loan of Rs. 4,000. The bond hypothecated immovable property in British India and was not registered.

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*Second Appeal No. 407 of 1878 against the decree of O. B. Irvine, District Judge of South Arcot, reversing the decree of the Small Cause Court, dated March 16th, 1878.