

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Nehalooddeen v. Ahmud Hossein, from
the Court of the Judicial Commissioner of
Oudh; delivered Tuesday, 30th November
1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships are of opinion that the application for leave to appeal was too late as regards the original decree and the rejection of the first application for review.

The original decree was passed by the Financial Commissioner on the 20th June 1866, and on the 4th October in the same year the Financial Commissioner, after remanding the case to the Commissioner for distinct findings on certain issues (Record, page 65), rejected an application for a review of his former judgment (page 67). The petition of appeal, which is general, was presented on the 24th June 1871 (page 77).

The question then is, whether anything has transpired which justifies the allowance of this appeal.

The Judicial Commissioner, Sir George Couper, on the 23rd April 1871 gave judgment by which he refused an application for review of the judgment of the Financial Commissioner of the 4th October 1866. That application had been made upon the ground of new matter, namely, Act No. 1 of 1869, which, although it was passed

three years after the judgment, it was contended had a retrospective operation. The power of the Judicial Commissioner to interfere with a judgment of the Financial Commissioner depends upon Act 37 of 1867. There can be no ground for appealing or for allowing an appeal against an order of the Judicial Commissioner refusing to review a judgment of the Financial Commissioner if the Judicial Commissioner had no power to review such a judgment and to decide whether it was right or wrong.

Now Act 37 of 1867 recited that it was expedient "to enable appeals"—not applications for review of judgment—but "to enable appeals to be transferred from time to time from the Court of the Financial Commissioner of Oudh to the court of the Judicial Commissioner of that province; and that it was also expedient to provide for the decision of certain questions arising before either of such commissioners by a court composed of both of them." Then section 1 enacted that "Whenever the state of business in the court of the Financial Commissioner of Oudh is such that he cannot dispose of the same with reasonable despatch, he may cause a list of the appeals,"—not of applications for review of judgment,— "whether regular or special, which he may wish to transfer for decision to the court of the Judicial Commissioner of Oudh, to be prepared and sent to the Chief Commissioner of Oudh, and such Chief Commissioner may, if he think fit, order all or any of such appeals to be transferred accordingly." It is their Lordships' opinion that it was never the intention of the Legislature to enable the Chief Commissioner of Oudh to refer to the Judicial Commissioner an application to review the judgment of the Financial Commissioner, and to decide whether the Finan-

cial Commissioner had passed an erroneous judgment or not. Their Lordships are therefore of opinion that the Judicial Commissioner in this case had no authority whatever to interfere and to decide whether or not an application for review of the Financial Commissioner's judgment should be either granted or refused; nor had he the power to allow an appeal to Her Majesty in Council from a decision pronounced by him refusing an application to review such a judgment.

Under these circumstances their Lordships are of opinion that whether the time for appealing is to be reckoned from the 20th June 1866 or from 4th October 1866, the appeal which was presented in 1871 was far beyond the time limited by law.

Under these circumstances their Lordships will humbly advise Her Majesty that the appeal be dismissed, and, the matter coming before them upon a preliminary objection, that there should be no costs.

