1905.
May 19.

Present: Sir Charles Peter Layard, Chief Justice, and Mr. Justice Grenier.

KULENDOEVELOE *v.* KANDEPERUMAL.

D. C., Batticaloa, 2,496.

Claim by administrator—Prescription—English law of Executors and Administrators—3 and 4 William IV., c. 27, s. 6—Ordinance No. 22 of 1871.

In Ceylon prescription begins to run against an administrator claiming property on behalf of the estate from the date of the grant of letters of administration and not from the date of the death of the intestate.

Statute 3 and 4 William IV., c. 27, s. 6, is not in force in Ceylon.

THE facts and arguments sufficiently appear in the judgment of Layard C.J.

Walter Pereira, K.C. (with him *Tambimuttu*), for the defendant, appellant.

Bawa (with him *Wadsworth*), for the plaintiff, respondent.

Cur. adv. vult.

19th May, 1905. LAYARD C.J.—

In this case the appellant's counsel points out that the plaint alleges that in the month of September, 1895, shortly after the death of the plaintiff's intestate, the defendant took wrongful possession of certain property belonging to the intestate's estate, and that the administrator of the intestate's estate did not bring this action until the 21st October, 1903, and the appellant's counsel argues that the defendant was in the same position as if letters of administration had been granted immediately after the death of the intestate, and accordingly that, under our Ordinance of Limitations, time began to run as from the date of the death of the intestate, and not from that of the grant of letters of administration to the estate of the intestate. In support of that contention he cites a passage from *Williams on Executors*, which discloses that in England, in view of section 6 of 3 and 4 William IV., c. 27, time begins to run against the administrator claiming personal or other property of the intestate from the date of the death of the intestate, and not from the date of the grant of letters of administration, and he argues that the English Law of Executors and Administrators now being in force in this Island, the provisions of that section are applicable to this Island.

I understand that what has been introduced into Ceylon is the English Law as regards executors and administrators, subject however to the provisions of our local statutes, and I find that our Ordinance of Prescription is silent in respect to executors and administrators, and no mention is made of them. For questions of prescription and of limitation we must look to our own Ordinance, and with regard to executors and administrators we are bound to administer the general law of England which effects them, or any Statute Law dealing generally with the rights of executors or administrators or treating of the manner in which property is vested in them. We are however not bound by the English Law, which lays down the limitation of causes of action in England, unless the Statutes dealing with them have been introduced into this Colony. Now 3 and 4 Will. IV., c. 27, is not in force in this Colony, and none of the provisions for the limitation of actions laid down in that statute are binding on us; consequently section 6 of that statute will not be operative in this Colony, unless it in any way effects the English Law with respect to executors and administrators outside the provisions of 3 and 4 Will. IV., c. 27. We have only to look at the section itself to see what the English Legislature intended. It laid down no general law that letters of administration shall be taken as granted immediately on the death of the intestate; what it did enact was that for the purposes of dealing with limitations provided by that statute "an administrator claiming the estate or interests of a deceased person of whose chattels he shall be appointed administrator shall

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be deemed to claim as if there had been no interval of time between the death of such deceased and the grant of letters of administration, " the words clearly referring merely to limitations of actions provided by the Act itself.

Mr. Pereira for the appellants suggests that if we do not incorporate into our law the provisions of section 6 of 3 and 4 Will. IV., c. 27, hardships will arise, because an administrator might be appointed many years after the death of the intestate and he will still be able to maintain an action under the provisions of our Prescription Ordinance. I do not think we should be justified in incorporating any provisions into our law which are not contained in it to prevent hardships arising. If the Legislature considers it advisable to add the same provisions as are contained in 3 and 4 Will. IV., c. 27, to our law of prescription it is for the members of the Legislative Council to pass an amending Ordinance to Ordinance No. 22 of 1871, but, as long as our law of Limitations is silent, this Court cannot add provisions not enacted by the Ordinance itself.

This was the only point urged before us in this appeal, in view of the fact that the District Judge's finding was one on facts, and it being well recognized that in regard to questions of fact this Court does not interfere unless the finding of the Judge is obviously and clearly wrong. There is no reason for this Court to think that the District Judge has come to a wrong decision in this case.

The appeal consequently must be dismissed with costs.

GRENIER A.P.J.—I agree.