

Proceedings in Error.

43. With respect to the proceedings in Error, although we have proposed for uniformity's sake that the grounds of Error should be tested by the Law of England as it stood in 1840, so as to avoid the necessity for referring, on that subject, to any more recent English Law, we do not recommend that the practice then in existence should be adopted, but we think that a mode of proceeding should be introduced, similar to and taken from that which was made the Law of England by the Common Law Procedure Act of 1852.

By that system, the old Writ of Error was abolished, and the proceedings in Error were made more simple and less dilatory and expensive. There are, however, certain provisions in that Act which refer to the old system, and which it would, therefore, be very inexpedient to retain.

Endeavouring, therefore, to remove such objectionable portions of the new English system and to adapt the other parts of it to the circumstances of the Colony; we proceed to specify the series of provisions which we recommend for introduction into a Court of Appeal Bill, following the order in the Common Law Procedure Act, 1852, secs. 146 to 167 inclusive.

Taken from Common Law Procedure Act, 1852.

Common Law Procedure Act, 1852, s. 146.

Limitation of proceedings.

44. The 146th section of the Act provides a limitation of the time within which error is to be brought in these words:—

(a.) "No judgment in any cause (1) shall be reversed or avoided for any error or defect therein (2) unless Error (3) be commenced, or brought and prosecuted with effect within six years (4) after such judgment signed or entered of record (5).

NOTES (1.) "Cause" is a word used generally rather with reference to the trial than to the record—"Action" seems more correct; and as we have spoken of Error on an award of *venire de novo* it seems as well to add "Award" to "judgment;" but as there may be judgments on matters of record not before the Court in the form of an action, it might be as well to add also the word "Proceeding."

(2.) "Defect therein." These words cannot be intended to mean only errors and defects in the judgment, but must apply to errors and defects in the course of the proceedings, on the face of the record, and such errors or defects as are proper subjects of proceedings in Error.

(3.) The word "Error" here is used in a different sense from that in which it was used immediately before: Semble, "proceedings in Error" would be more proper.

(4.) "Six years." As the English periods of limitation before 1852, are those of New Zealand, also in respect of bar to actions, it may be therefore advisable to follow the English practice as to Error. Before the Common Law Procedure Act, 1852, Error might have been brought at any time within twenty years. But with due regard to the wholesome maxim "*Interest Reipublice ut sit finis litium*," it may be considered doubtful whether even six years is not too long a period for taking proceedings to reverse a judgment.

(5.) "Signed or entered of record": Why this alternative, as judgment must be signed in every case; at all events in New Zealand practice the signature of the judgment by the Registrar is the only entering of it on the record.

Proposed clause.

We therefore propose a clause to the following effect:—

2. "No judgment or award in any action or proceeding shall be reversed or avoided for any error or defect, unless proceedings in Error be commenced and prosecuted with effect, within [] years after such judgment signed, or award made."

Time for bringing Error.

Common Law Procedure Act, 1852, s. 147.

45. The next section of the Procedure Act, No. 147, contains a proviso for disabilities in these terms:—

"If any person that is or shall be entitled to bring Error as aforesaid, is or shall be at the time of such title accrued (2) within the age of 21 years, *feme covert, non compos mentis* or beyond the seas (3), then such person shall be at liberty to bring Error as aforesaid, so as such person commences or brings and prosecutes the same with effect, within six years after coming to, or being of full age, discover, of sound memory, or return (4) from beyond the seas (5), and if the opposite party shall, at the time of the judgment signed or entered of record, be beyond the seas, then Error may be brought, provided the proceedings be commenced and prosecuted with effect, within six years after the return of such party from beyond seas."

Disabilities.

NOTES, (1.) This is taken from the 3rd and 4th W. 4th., ch. 42, sec. 4, and is the law of New Zealand as to disabilities with respect to the limitation of time for bringing actions. Whether the same privileges should be given to persons, who, having been in the Colony personally, or by representative, when the action was brought, were absent when the title to Error accrued, as are given to persons who were absent from the Colony when a right of action accrued, or whether to either class in the Colony the same rule should apply as in England, are questions of policy which might be worthy of consideration. There certainly does not seem to be the same amount of probability of persons having rights of action or right to bring Error in New Zealand returning to the Colony, that there is with regard to Englishmen abroad returning to England; and it does not seem desirable to encourage stale claims.

(2.) "Time of such title accrued": Must not that mean "time of judgment, signed award, &c.," and if so, would it not be better to say so?

(3.) The words "beyond the seas" in an English Act have a specific meaning, which makes them inapplicable directly to a Colony. But the words "out of the Colony" or "out of the jurisdiction of the Supreme Court" would probably give the proper relative effect. In the case of *Her Highness Ruckmaboye Loolobhoy Mottichund* (8 Moore, P.C. 4), it was held that the English Statute of Limitations was applicable to India, and that the words "beyond the seas" in it must be construed as meaning beyond the territory of British India.