

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.

1895.
March 7.
February 25.

THURAI RAJAH (APPELLANT, IN APPEAL No. 23 OF 1884),
PETITIONER,

v.

JAINILABDEEN ROWTHAN (RESPONDENT, IN APPEAL No. 23
OF 1884), RESPONDENT.*

Limitation Act—Act XV of 1877, ss. 7, 12, sched. II, art. 177—Civil Procedure Code—Act XIV of 1882, ss. 596, 598, 599—Application to admit appeal to Privy Council—Disability by reason of minority—Deduction of time.

In 1885 the High Court in appeal passed a decree to which a minor under the Court of Wards was a party. Having attained his majority in 1894 he sought to appeal to Her Majesty in Council and presented an appeal within six months of the date when he attained majority. On an application under Civil Procedure Code, section 598 :

Held, that the application was barred by limitation.

PETITION presented under Civil Procedure Code, section 598, praying for the grant of a certificate to enable the petitioner to appeal to Her Majesty in Council against the decree of the High Court in appeal No. 23 of 1884, modifying the decree of A. J. Mangalam Pillai, Subordinate Judge of Tanjore, in original suit No. 85 of 1882.

The appellant in that case was a minor under the Court of Wards at the date of the decree, namely, the 20th of January 1885, and he did not attain majority until less than six months before the presentation of the appeal to which the present application related. The application was resisted on the sole ground that it was barred by limitation.

Ramachandra Rau Saheb and *Ramakrishna Ayyar* for petitioner.
Bhashyam Ayyangar and *Desikachariar* for respondent.

JUDGMENT.—This is an application to admit an appeal to Her Majesty in Council from the decree of this Court in appeal No. 23 of 1884. The decree was passed on January 20th, 1885. The appellant was at that time a minor under the Court of Wards. No appeal was preferred by the Court of Wards or by any other

* Civil Miscellaneous Petition No. 1272 of 1894.

person on the minor's behalf, but this appeal is presented within six months of the minor's attaining majority. It is objected that the application to admit the appeal is barred, though not denied that in other respects the requirements of section 596, Civil Procedure Code, would be satisfied.

THURAI
RAJAH
v.
JAINLABDEEN
ROWTHAN.

Article 177, schedule II of the Limitation Act prescribes a period of six months for the admission of such an appeal, and the contention of the appellant's pleader is that he is entitled to the benefit of section 7 of the Limitation Act, since in January 1885 the appellant was under a legal disability to make the application in consequence of his minority. To the argument that section 7 grants no indulgence to a minor entitled to prefer an appeal, but only grants the indulgence in the case of suits or applications he urges that the present is an application, and is classed as such in the third division to schedule II of the Limitation Act. We were referred to the decisions in *In the matter of petition of Sita Ram Kesho*(1) and *Moro Sadashiv v. Visaji Raghunath*(2), in support of the contention that the petition should be regarded not as an appeal, but as an application for leave to appeal, and that the general principle that time does not run against a minor should be held to apply.

We are unable to accede to these arguments. The present application is not for leave to appeal, but to declare an appeal admitted.

The admission of the appeal is not a matter as to which the High Court has any discretion, provided that the requirements of the law are satisfied.

All that the High Court has to do is to see that the requirements of section 596 are satisfied. If they are, an appeal lies under section 595 as a matter of right. The application for a certificate that these requirements are satisfied is merely preliminary and ancillary to the admission of the appeal.

It was held in *Anderson v. Periasami*(3) that the provisions of section 12 of the Limitation Act did not apply to an application under article 177 to admit an appeal to Her Majesty in Council, and the same arguments would exclude the applicability of section 7. The same view as to sections 12 and 5 was apparently taken by the Allahabad High Court in *In the matter of petition of Sita Ram*

(1) I.L.R., 15 All., 14. • (2) I.L.R., 16 Bom., 536.

(3) I.L.R., 15 Mad., 169.

THURAI
RAJAH
c.
JAINILABDEEN
ROWTHAN,

Kesho(1) though apparently the learned Judges would have taken a different view as to the applicability of section 7. We can see no reason, however, why the legislature should have intended to allow a minor on attaining majority to appeal to the Privy Council but not to any other appellate tribunal. The omission of appeals in section 7 can hardly have been unintentional.

There is, however, another technical ground on which we must hold the application to be barred. By the old Procedure Code, X of 1877, section 599, it was enacted that an application to appeal to Her Majesty in Council must ordinarily be made within six months from the date of the decree. This section was repealed by the Limitation Act, XV of 1877, in which article 177 was enacted. But the present Code, XIV of 1882, re-enacted the old section 599, but without expressly repealing article 177. This may probably have been a mistake, since the legislature again repealed section 599 by Act VII of 1888, section 57. At the date of this decree, however, January 20th, 1885, and for more than six months afterwards section 599 was in force and we must take it that the later enactment superseded article 177. It follows from this that in 1885 appeals to the Queen in Council were governed by the special rules laid down in chapter XLV of the Civil Procedure Code and were not affected by the general provision of the Limitation Act; hence section 7 could not apply to them—*Vide* the decision of the Full Bench in *Veeramma v. Abbiah*(2).

For the reasons above given we must dismiss the application with costs.

(1) I.L.R., 15 All., 14.

(2) I.L.R., 18 Mad., 99.