

his death. The true construction of the section has, in my opinion, been correctly laid down in the note to section 108 in Ameer Ali and Woodroffe's edition of the Evidence Act. The learned authors say :—

"The rule is the same whether only seven years or more than seven years have elapsed. There is no presumption either as to the time of death within the period of seven years, or that the person died at conclusion of the period. * * * The only presumption enacted by the section is that the party is dead at the time of suit, but there is no presumption in any case as to the time of his death."

The weight of authority to which reference has been made by the learned Chief Justice is in support of this view, and I do not think that I can profitably add anything to what he has said. I agree in the order proposed.

TUDBALL, J.—I concur.

BY THE COURT.—The order of the Court will be that the appeal is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Piggott.

KHUB CHAND (DEFENDANT) v. HARMUKH RAI AND ANOTHER (PLAINTIFF).
Act No. IX of 1908 (Indian Limitation Act) section 12—Limitation—Time requisite for obtaining copy—Application for copy made on date the court closed for annual vacation—Notice posted during vacation—Copy received after vacation.

Where an application for copies of a judgement and decree was made on the day when the court rose for its annual vacation, it was held that the applicant was entitled to the benefit of the whole period of the vacation, notwithstanding that the copying department was kept open for some days and a notice posted during the vacation that the applicant's copies were ready.

THE facts of this case were as follows :—

The decision of the first court in a certain case was dated the 30th of September 1909. The appellant applied for a copy of the judgement and decree on the 13th of October, 1909. On the latter date the subordinate courts closed for the annual vacation

* Second Appeal No. 406 of 1910 from a decree of H. M. Smith, Additional Judge of Aligarh, dated the 4th of March, 1910, confirming a decree of Banks Behari Lal, Additional Subordinate Judge of Aligarh, dated the 30th of September, 1909.

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and did not re-open till the 17th of November, 1909. Under the special orders of the District Judge the copying department continued working during the earlier days of the vacation, and accordingly a notice to the effect that the copy required by the appellant was ready, was posted on the notice-board of the court on the 18th of October, 1909. The copy was actually received by the appellant on the 29th of November, 1909, and his petition of appeal was presented to the lower appellate court on the 1st of December, 1909. The District Judge dismissed the appeal as time-barred. The appellant appealed to the High Court urging that he was entitled to the benefit of the whole period of the vacation, notwithstanding the notice above referred to.

Munshi *Gulzari Lal*, for the appellant.

Mr. *Abdul Raoof* and Dr. *Tej Bahadur Sapru*, for the respondents.

BANERJI and PIGGOTT, JJ.—This is a defendant's appeal, and the only point for determination is whether the lower appellate court was justified in dismissing the appeal presented before it by the same defendant, on the ground that it was barred by limitation. The decision of the first court in the case was dated the 30th of September, 1909. This defendant applied for a copy of the judgement and decree on the 13th of October, 1909. On that same date the courts below closed for the annual vacation, and did not re-open until the 17th of November, 1909. It appears that under the special orders of the District Judge the copying department continued working during the earlier days of the vacation, presumably in order to make up arrears. Under these circumstances a notice to the effect that the copy required by the defendant, Khub Chand, was ready, was posted on the notice-board of the court on the 18th of October, 1909. The copy was actually received by Khub Chand on the 29th of November, 1909, and his petition of appeal was presented to the lower appellate court on the 1st of December, 1909. The question we have to determine is what is to be considered the period requisite for obtaining necessary copies in this case. We have it on the affidavit of the appellant, which was not controverted, that he did not actually receive notice that his copy was ready before the date on which the copy was made over to him, namely, the

29th of November, 1909. We have only to consider, therefore, whether he was bound to have taken cognizance of the notice posted on the notice-board of the court on the 18th of October, 1909, at a time when the court was closed on account of the annual vacation. We are of opinion that the appellant should not be considered bound to have taken cognizance of that notice until the date the courts re-opened after the vacation, that is, until the 17th of November, 1909. We hold, therefore, that the period requisite for obtaining the copy in this case extended from the 13th of October to the 17th of November, 1909, and if this period be excluded under the provisions of section 12 of the Limitation Act, the appeal was within time when presented to the lower appellate court on the 1st of December, 1909. We, accordingly, allow this appeal, set aside the order and decree of the lower appellate court and remand the case to that court with directions to re-admit the appeal under its original number in the register and to dispose of it according to law. Costs here and hitherto will abide the event.

Appeal allowed.—Cause remanded.

Before Mr. Justice Tudball and Mr. Justice Piggott.

KULDIP DUBE (PLAINTIFF) v. MAHAUL DUBE AND OTHERS (DEFENDANTS).*

Award—Act No. 1 of 1877 (Specific Relief Act), section 30—Specific performance—Suit to recover money payable under an award—Act No. IX of 1908 (Indian Limitation Act), schedule 1, articles 113, 116, 120—Limitation.

* By the terms of an award it was provided, *inter alia*, that the defendants should pay to the plaintiff the sum of Rs. 350 on or before the 27th of June, 1904, and in default of such payment the plaintiff could recover from the defendants Rs. 350 with interest at 12 per cent. per annum.

Held that a suit to recover on default of payment by the stipulated date, the sum abovenamed with interest was not a suit for specific performance of a contract, and as such governed by article 113 of the first schedule to the Indian Limitation Act, 1908, but was governed by either article 116 or article 120.

Sukho Bivi v. Ram Sukh Das (1), *Raghubar Dial v. Madan Mohan Lal* (2), *Sheo Narain v. Beni Madho* (3), *Sornavalli Ammal v. Muthayya Sastriyal* (4)

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* Second Appeal No. 146 of 1911 from a decree of Guru Prasad Dube, Second Additional Judge of Gorakhpur, dated the 21st of November, 1910, confirming a decree of Lal Gopal Mukerji, city Munsif of Gorakhpur, dated the 20th of March, 1909.

(1) (1883) I. L. R., 5 All., 263. (3) (1901) I. L. R., 23 All., 285.
(2) (1893) I. L. R., 16 All., 3. (4) (1900) I. L. R., 23 Mad., 593.