

According to the Crown they had gone to the house in question, being more than five in number, with the intention of committing robbery and had broken into the house night in order to commit robbery. Such being the case, although they had been charged with one offence and it appeared in evidence that they had committed a different offence for which they might be charged, it was not necessary to frame a separate charge in order to justify a conviction. I do not consider that the sentences passed are excessive. I therefore dismiss this appeal.

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MATHURA  
D.  
KING-  
EMPEROR.

Stuart, G. J.

*Appeal dismissed.*

### FULL BENCH.

*Before Sir Louis Stuart, Kt., Chief Judge, Mr. Justice Muhammad Raza and Mr. Justice King.*

GUDAR PAL SINGH (PLAINTIFF-APPELLANT) *v.* NAGESHAR BAKHSH SINGH AND OTHERS (DEFENDANTS-RESPONDENTS).\*

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December.  
3.

*Indian Limitation Act (IX of 1908), section 12, sub-section (2)*  
—Application for copy of judgment returned for insufficiency of copying fee and re-filed after making good the stamp duty—Period between the date on which the application was originally filed and that on which it was re-filed cannot be included in “the time requisite for obtaining copy.”

Where copies of judgment and decree were applied for on a certain date but the application was returned as the folios supplied were insufficient and it was re-filed with the additional stamps made good, held, that it was the duty of the applicant to make the necessary calculation and to file the proper stamp duty and so the delay caused by the error of the applicants in making the computation cannot be said to be included in the time requisite for obtaining the copy according to the words of section 12, sub-section (2) of the Indian

\* Second Civil Appeal No. 176 of 1926, against the decree of Mirza Mohammad Munim Bakht, Additional Subordinate Judge of Sultanpur, dated the 6th of February, 1926, reversing the decree of S. Hasan Irshad, Second Additional Munsif of Sultanpur, dated the 30th of May, 1925.

GUDAR PAL SINGH  
v.  
NAGESHAR BAKESH SINGH.

Limitation Act of 1908. [*Parmatha Nath Roy v. William Arthur Lee* (1), relied upon; *Ganga Dass Dey v. Ramjoy Dey* (2) and *Bechi v. Ahsunullah Khan* (3), referred to.]

Messrs. *Hyder Husain, Rudra Datt Sinha* and *A. C. Mukerji*, for the appellant.

Mr. *Ali Zaheer*, for the respondents.

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October, 1.

THE facts of the case appear fully from the order of *HASAN, J.*, referring the case to a Full Bench, which is as follows:—

*HASAN, J.*:—This is the plaintiff's appeal from the decree of the Additional Subordinate Judge of Sultanpur, dated the 6th of February, 1926, reversing the decree of the Munsif of the same place, dated the 30th of May, 1925.

The plaintiff-appellant's suit for possession of certain plots of land was decreed by the court of first instance. On appeal by the defendants from the decree of that court the learned Additional Subordinate Judge reversed the decree of the court of first instance and dismissed the plaintiff's suit.

At the hearing of the appeal in the lower court the plaintiff raised the question that the appeal in that court was presented beyond the period of limitation prescribed by law. The learned Additional Subordinate Judge decided this question against the plaintiff and held that the appeal was in time. In second appeal before me the plaintiff raises the same question again.

The question involves a few facts, and they are as follows:—The judgment of the trial court was delivered on the 30th of May, 1925 as already stated. On the 1st of June following the defendants made an application for copies of the judgment and the decree. On the 8th of July the application was returned to the defendants by post on the ground that the folios

(1) (1922) L.R., 49 I.A., 307.

(2) (1885) I.L.R., 12 Calc., 30.

(3) (1890) I.L.R., 12 All., 461.

supplied were insufficient. The application thus returned was received by the defendants on the 15th of July. On the 17th of July the application reached back the office with the necessary folios. The question for decision is as to whether "the time requisite for obtaining a copy" within the meaning of sub-section (2) of section 12 of the Indian Limitation Act, 1908, should be computed from the first presentation of the application on the 1st of June or from the 17th of July when it returned to the office with the necessary folios. If the first basis of computation of the period of limitation is correct, the appeal in the lower appellate court was admittedly in time. If, on the other hand, the second date is the right basis for computing the period of limitation, it is equally clear that the appeal in the court below was barred by limitation.

Mr. *Hyder Husain* in support of the contention that the appeal in the court below was barred by time referred to two decisions—*Gunga Dass Dey v. Ramjoy Dey* (1) and *Bechi v. Ahsanullah Khan* (2). It is much to be regretted that the respondents are absent. The question is one of general importance, and as I am going to refer this question to a Full Bench for decision I refrain from expressing my opinion on it at this stage.

Under section 14, sub-section (1) of the Oudh Courts Act, 1925, I refer for decision of a Full Bench the following question:—

In computing the period of limitation prescribed for an appeal, is the time requisite for obtaining a copy of the decree within the meaning of section 12, sub-section (2) of the Indian Limitation Act, 1908, to be reckoned from the 1st of June, 1925 or from the 17th of July, 1925 in the circumstances of this case?

STUART, C. J.:—The question to be decided by

(1) (1885) I.L.R., 12 Calc., 30. (2) (1890) I.L.R., 12 All., 461.

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this Full Bench is as follows:—In computing the period of limitation prescribed for an appeal, is the time requisite for obtaining a copy of the decree within the meaning of section 12, sub-section (2) of the Indian Limitation Act, 1908, to be reckoned from the 1st of June, 1925 or from the 17th of July, 1925 in the circumstances of this case.

*Stuart, C. J.*

The circumstances of the case in question are as follows:—A suit brought by Gudar Pal Singh and others, plaintiffs, against Thakur Nageshar Bakhsh Singh and others, defendants, was decreed in the court of the Second Additional Munsif, Sultanpur on the 30th of May, 1925. On the 1st of June, 1925, the defendants applied for copies of the judgment and the decree, filing with their application stamps to the value of Rs. 1-8. On the 2nd of June, 1925, the copying department closed for the one month's vacation allowed annually in civil courts in Oudh. The office reopened on the 4th of July, 1925. The application for copies was then examined and it was discovered that the fees paid were short by annas 14. The application was returned to the defendants on the 8th of July, 1925, but not received by them till the 15th of July, 1925. On the 17th of July, 1925, the application was sent back to the office with the additional stamps made good. The stamps are always in these applications in the form of folios, that is to say, plain paper with an impressed stamp at the head. Under paragraph 389 of the Oudh Civil Digest an application for such a copy must be accompanied by a sheet or sheets of stamped copying paper equal in value to the charge for the copy, and it is for the applicant himself to compute the necessary charge. It is clear that in this case the applicants could not have applied their minds to the computation, for the fees which they paid were the minimum fees which are charged only in the case of copies of judgments of under

fifteen hundred words. The copy of the judgment which they required is over three thousand and eight hundred words, and a very slight attention to the bulk of the judgment must have shown any person that it was more than fifteen hundred words. The first point which is clear to my mind is this, that it was the duty of the applicants themselves to make the necessary calculation, and that it was not the duty of the office to make the calculation for them, but only to check the calculation which they made. In these circumstances can it be said that a delay caused by the error of the applicants in making the computation is to be included in the time requisite for obtaining the copy according to the words of section 12, sub-section (2) of the Indian Limitation Act of 1908? In my opinion the time in question cannot be considered the time requisite, and this view appears to be supported by the decision of their Lordships of the Judicial Committee in *Parmatha Nath Roy v. William Arthur Lee* (1). Their Lordships say at page 310 :—

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“ In their Lordships’ opinion no period can be regarded as requisite under the Act which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order.”

Applying this principle I would answer the question submitted to the Full Bench that the time requisite for obtaining a copy of the decree, in the circumstances of this case, is to be reckoned from the 17th of July, 1925.

RAZA, J. :—I concur.

KING, J. :—I concur.

BY THE COURT (STUART, C. J., RAZA, J., and KING, J.).—The record is returned to the Hon’ble Mr. Justice HASAN with the above finding.