

I think it may at once be dismissed as altogether unfounded.

The result is that we have come to the conclusion that the charge in this case has been made out. It is essential that people in the position of Tax Collectors, who are always very unpopular, should not be subjected to insults and annoyance by those who are by law bound to pay their taxes and we think therefore that some punishment should be inflicted upon the accused. Fortunately no damage was done and although the complainant was threatened he was not in fact beaten. We think in the circumstances of the case the accused should be fined a sum of Rs. 50 or in default one month's simple imprisonment for the offence under section 504. We also consider him guilty under the other section but we do not pass any separate sentence under that section.

Ross, J.—I agree.

Order reversed.

APPELLATE CIVIL.

Before Dawson Miller, C. J., and Ross, J.

MAHABIR PRASAD TEWARI

v.

JAMUNA SINGH.*

1922.

March, 16.

*Limitation Act (IX of 1908), Schedule 1, Article 179—
Appeal to His Majesty in Council—exclusion of time spent in
obtaining copy of judgment.*

In computing the period of limitation prescribed by Article 179 of the Limitation Act, 1908, for an application for leave to appeal to His Majesty in Council, the time spent in obtaining a copy of the judgment sought to be appealed from should be excluded under section 12(3).

Ram Sarup v. Jaswant Rai (1), approved.

* Privy Council Appeal No. 54 of 1921.

(1) (1915) 31 Ind. Cas. 906.

GOVERNMENT
ADVOCATE,
B. & O.
v.
GANGA
PRASAD.

DAWSON
MILLER,
C. J.

1922.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

Ram Prasad, for the appellant.

Purnendu Narayan Sinha, for the respondent.

MAHABIR
PRASAD
TEWARI
V.
JANUNA
SINGH.

DAWSON
MILLER,
C. J.

DAWSON MILLER, C. J.—This is an application for leave to appeal to His Majesty in Council from a decision of this Court dated the 12th April 1921. The judgment which it is sought to appeal from is a judgment of reversal and the value of the matter in dispute is over Rs. 10,000 but the respondents contend that the application for leave to appeal was out of time. The period of limitation under Article 179 of the Limitation Act, as now amended, is 90 days for a person desiring to appeal under the Civil Procedure Code to His Majesty in Council. The judgment of this Court was dated the 12th April, 1921, and the 90 days allowed would expire on the 11th July. The petitioner applied for a copy of the judgment appealed from on the 9th July and did not obtain that until the 25th and two days later, on the 27th, the application for leave to appeal was filed. It is quite obvious that if the period occupied in obtaining a copy of the judgment is excluded the application is in time. Even if one only excludes the two days of that period from the 9th to the 11th July still, as the application was filed two days after the copy was obtained, I think that the application was clearly in time. It has been contended, however, by the learned Vakil who appears for the respondents that we ought not to exclude the period which was occupied in obtaining a copy of the judgment and that section 12 of the Limitation Act does not apply to cases of appeals to His Majesty in Council. In my opinion this contention is not well-founded. The question of whether section 12 applies to applications for leave to appeal to His Majesty in Council has no doubt been the subject of somewhat conflicting decisions in the different High Courts in India but the matter was considered by the Chief Justice and Mr. Justice Rafique in the Allahabad High Court in

the case of *Ram Sarup v. Jaswant Rai*⁽¹⁾ and the learned Judges in that case came to the conclusion that in computing the period of limitation under Article 179 of the Limitation Act the applicant was entitled under section 12, sub-section (2), of the Limitation Act to exclude the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree. They arrived at this conclusion on the ground that section 12, sub-section (2), of the Limitation Act was general in its terms and applied to all applications for leave to appeal whereas formerly under the previous Act it had been restricted to applications for leave to appeal as a pauper. In my opinion that decision expresses properly the interpretation of section 12. Sub-section (2), however, of section 12 only deals with obtaining copies of the decree, sentence or order appealed from and therefore does not in terms cover the present case where the time sought to be deducted is the time occupied in obtaining a copy of the judgment. A copy of the decree was applied for sometime between the 9th July and the 25th July and it does not appear that any further time was occupied in applying for a copy of the decree. I think however, that sub-section (3) of section 12 of the Limitation Act applies to the present case and that the time requisite for obtaining a copy of the judgment ought also to be deducted in cases of application for leave to appeal to His Majesty in Council. I think that the provisions of sub-section (3) are meant to apply generally to cases covered by sub-section (2) and the reason seems to me to be this, that if the appeal in question is from a decree then it is generally necessary that the judgment on which that decree is based should also be obtained in order that the parties may satisfy themselves by reference to it exactly what its terms are and further in order that they may, as is provided in the Civil Procedure Code and under the rules of most High Courts, file a copy of the judgment with the application for

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leave to appeal. Under the practice in this Court it is necessary that a copy of the judgment from which it is sought to appeal should always be filed with the petition applying for leave. The Court insists upon that because in some cases it is absolutely necessary that the judgment itself should be considered, notably in cases where the question is whether a substantial question of law arises for consideration by their Lordships of the Judicial Committee. In my opinion therefore the time occupied in obtaining a copy of the judgment ought to be deducted in this case. If that is done then the application for leave to appeal was in time and I think a certificate should issue that the case complies with the provisions of section 110 of the Civil Procedure Code. As this application has been opposed by the respondents I think the petitioner is entitled to his costs of the application.

Ross, J.—I agree.

Certificate issued.

APPELLATE CIVIL.

Before Coutts and Das, J.J.

KILBY

v.

MUSSAMMAT BAHURIA SHEORATAN KUAR.*

Guardian and Wards Act, 1890 (Act VIII of 1890), section 7—minor shebait, whether guardian may be appointed to manage debuttar properties.

A guardian cannot be appointed under section 7 of the Guardian and Wards Act, 1890, to manager the *debuttar* properties of an idol on behalf of a minor *shebait*.

Obla Venkatachalapathi Aiyar v. Thirugnana Sambanda Pandara Samadhi(¹), approved.

Raghoo Pandey v. Kassy Parey(²) and *Sukh Lal v. Bishambhar*(³), distinguished.

* Appeal from Original Order No. 196 of 1921.

(¹) (1917) 42 Ind. Cas. 273.

(²) (1884) I. L. R. 10 Cal. 73.

(³) (1917) I. L. R. 39 All. 196.

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