

LETTERS PATENT APPEAL.

Before Mr. Justice Ochevis and Mr. Justice Scott-Smith.

DYAL SINGH AND OTHERS (PLAINTIFFS)

Appellants,

versus

BUDHA SINGH AND OTHERS (DEFENDANTS)

Respondents.

Letters Patent Appeal No. 151 of 1920.

Limitation—Letters Patent Appeal—whether any extension of time can be granted under Indian Limitation Act, IX of 1908, sections 4 et seq.

An appeal was filed on the 27th August 1920 from the judgment of a Single Judge dated 5th July 1920. The vacation of the Court began on 17th July 1920 and ended on the 27th September. Under the rules framed by this Court an appeal under section 10 of the Letters Patent cannot be entertained if presented after the expiration of 90 days from the date of the judgment appealed from, unless the Division Bench in their discretion for good cause shown extend the said period.

He'd, that the Letters Patent together with the rules framed thereunder as to limitation for filing appeals are a complete Code in themselves and therefore the general provisions of the Limitation Act, including section 4, do not apply to appeals filed under section 10 of the Letters Patent.

Letters Patent Appeal No. 107 of 1920 (unpublished) followed. Section 29 of the Limitation Act, referred to.

Held also, that the fact that appellant was under the impression that the limitation was 90 days and the holidays could be deducted was no reason for extending the period, and that the appeal was consequently barred by limitation.

Appeal from the decree of Mr. Justice Leslie Jones, dated the 5th July 1920.

D. C. RAJJI, for Appellants.

TEK CHAND, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH, J.—A preliminary objection is raised by counsel for the respondents that the appeal is barred

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by time in that it was filed more than 30 days after the judgment of the judge in Chambers was pronounced. The date of the judgment in question is the 5th of July 1920 and the appeal was filed on the 27th of August 1920. Counsel for the appellant contends that the period of 30 days prescribed by rule IV of the rules framed by this Court for the presentation of appeals expired on a date when the Court was closed owing to vacation and that his client, under section 4 of the Limitation Act, was entitled to file the appeal on the day when the Court reopened after the vacation. Counsel for the respondents, however, contends that the provisions of section 4 *et seq.* of the Indian Limitation Act do not apply to appeals under the Letters Patent. He refers to section 29 of the Limitation Act, which lays down that—

“ Nothing in this Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India.”

It has been held in several decisions of the High Courts that when the special or local law is not in itself a complete Code, the general provisions of the Limitation Act, *e.g.*, sections 4, 5, 12 and so on, are ordinarily applicable to proceedings under it, inasmuch as such general provisions do not affect or alter the period prescribed by the special or local law, but only the manner in which that period is to be computed—See the authorities quoted at page 191 of the Law of Limitation, 2nd Edition, by Rustomji. The rule on the point framed by this Court as amended at a meeting of the Judges on the 7th November 1919 is as follows :—

“ No memorandum of appeal shall be entertained if presented after the expiration of 30 days from the date of the judgment or order appealed from, unless the Division Bench in their discretion for good cause shown shall extend the said period. An application for extension of the said period shall ordinarily be accompanied by an affidavit explaining the cause of delay.”

The Letters Patent together with the rules framed thereunder as to limitation for filing appeals are a complete Code in themselves and therefore the general provisions of the Limitation Act, including section 4, do not apply to appeals filed under section 10 of the Letters Patent. The clear intention of the rule was

that such appeals should be filed promptly and therefore it was laid down that there was no necessity that any copy of the judgment or decree appealed from should accompany the memorandum of appeal. The same view was taken by a Bench of this Court in Letters Patent Appeal No. 107 of 1920 decided on the 21st of the present month. There is an *affidavit* accompanying the memorandum of appeal in which it is stated that the appellant previously was under the impression that the limitation was 90 days, and that holidays could be deducted. Ignorance of law, however, is no excuse.

We, therefore, uphold the objection of the counsel for respondents and dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Okevis and Mr. Justice Scott-Smith.

UMAR DIN—*Appellant,*

versus

THE CROWN—*Respondent.*

Criminal Appeal No. 15 of 1920,

Criminal Procedure Code, Act V of 1898, sections 164 (3) and 342—confessions recorded by Magistrate—without making a memorandum of the enquiry made to satisfy himself that the confession is made voluntarily—examination of accused by the Court—improper questions.

Held, that although it is most advisable that a Magistrate recording a confession under section 164 of the Code of Criminal Procedure should make a memorandum of enquiry showing what steps he has taken to fully satisfy himself that the accused person is confessing voluntarily, a confession otherwise duly recorded, is not inadmissible in evidence merely because no such memorandum has been made.

Nga Shwe Sin v. Emperor (1), and *Queen-Empress v. Narayan*, (2), distinguished.

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