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In re MA YIN MYA AND ONE *v.* TAN YAUK PU AND TWO.

MAUNG BA, J.

the form of marriage—whether it should be according to the law of the woman or it should be according to the customary law of the Chinamen in China. As pointed out above the form recognised under Private International Law is to be according to the *lex loci contractus*, that is, the form according to the law of the place where the contract takes place. So far as I know, the *lex loci contractus* of the Buddhists in Burma is the one to be found in the *Dhammathats* known as Burmese Buddhist Law. Of course it is but right to allow the Chinese Buddhist to show that that law is opposed to any custom having the force of law, provided that it works no injustice to the Buddhist women, and it should be on him to establish that contention.

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MAUNG SIN *v.* MA TOK.

(On Appeal from the High Court at Rangoon.)

Execution of decree—Limitation—Decree for annual payments and for possession on default—Time at which right to possession arose—Construction of decree—Indian Limitation Act (IX of 1908), Sch. I, arts. 181, 182, cl. 7.

In 1916 the respondent obtained against the appellant, her husband, a decree in the terms of an award. The decree provided that certain properties were to remain in the possession of the defendant "who will pay to the plaintiff annually the sum of Rs. 2 000 in the month of Kason, on default of payment of the same (Rs. 2,000 annually) the said properties will be made over to the plaintiff." The payments for 1923 and 1924 not having been made the respondent applied in 1924 to execute the decree in respect of them, also by delivery of possession of the properties on the default so made. There was no certification under Order XXI, r. 2 of any payments for the years before 1923.

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* PRESENT :—LORD ATKINSON, LORD CARSON, SIR JOHN WALLIS AND SIR LANCELOT SANDERSON.

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By the Indian Limitation Act, 1908, Sch. I, art. 182, the period of limitation for executing a decree is three years from the date of the decree, but, by clause 7, where any payment is directed to be made at a certain date, from that date. By art. 181, the period for any application not otherwise provided for, is three years from the date when the right to apply accrues.

Held, that the application was not barred as to the payments for 1923 and 1924 having regard to cl. 7, of art. 182; nor as to delivery of possession since upon the true construction of the decree the right to possession arose on a default in making any annual payment.

It therefore became unnecessary to consider whether there was any time limit for certifying under Order XXI, r. 2 and the effect of an absence of certification.

Decree of the High Court affirmed on a different ground.

Appeal (No. 68 of 1926) from a decree of the High Court, sitting at Mandalay (July 20, 1925) reversing a decree of the District Court of Sagaing.

The appeal arose out of an application by the respondent in 1924 to execute a decree made in 1916.

The facts appear from the judgment of the Judicial Committee.

The District Judge held that the application was barred by the Indian Limitation Act, 1908.

On appeal to the High Court the decision was reversed. The learned Judges (Heald and Pratt, JJ.) held that having regard to the Indian Limitation Act, 1908, Schedule I, Article 182, Clause 7, the application as to the annual payments clearly was not barred. With regard to the claim for possession they held that during the years before 1923 the appellant had incurred expenses which the respondent was entitled to accept as payments under the decree. They held that having regard to *Tukaram Babaji* (1) and other decisions those payments could be certified under Order XXI Rule 2 at any time, and that the applicant was entitled to have them certified. On that view there was no default until 1923 and the claim to execute arose then only.

(1) (1895) I.L.R. 21 Bom. 122.

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Dunne, K.C. and *L. R. Dunne* for the appellant. The article of the Limitation Act governing the application for possession was art. 181, not art. 182, and the period was three years from the date when the right to possession first accrued. No payments for the years before 1923, were proved, consequently the right accrued in 1917, and that part of the application was barred even if under art. 182, cl. 7 the application as to the two annual payments was not barred. The High Court was wrong in holding that there could be a certification under Order XXI, r. 2, at any time ; it is submitted that having regard to the Indian Limitation Act, 1908, Sch. I, Art. 181 it can be only within three years of the payment. Under the last clause of the rule the applicant could not rely on the earlier payments even if made.

Their Lordships intimated that they desired that the true construction of the decree should first be argued.

The decree cannot be read as a series of decrees operating in each successive year. The first default in payment gave rise to the right to possession given by the decree. To construe the decree otherwise would be to read into it words which are not there.

S. Moses for the respondent was not called upon.

The judgment of their Lordships was delivered by—

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LORD CARSON.—The respondent, who is the wife of the appellant, on the 30th September, 1916, obtained a decree in the District Court of Sagaing in terms of an award which had been previously made by which certain properties contained in a list attached to the award and the decree were to be left in possession of the appellant (defendant), who was to

pay to the respondent (plaintiff) annually a sum of Rs. 2,000 in the month Kason, or in default of payment of the same (Rs. 2,000 annually) the said property contained in the said list would be made over to the plaintiff-respondent. It appears that after the making of the decree the parties lived together until the year 1923, when they separated.

On the 8th October, 1924, the respondent filed an application in the District Court of Sagaing for execution of the decree against the appellant in default of payment of two instalments of Rs. 2,000 each for the years 1923 and 1924 respectively, and claimed, as the judgment-debtor had failed to pay according to the decree, that the Court might direct the delivery of the lands in the said list by the judgment-debtor to the decree-holder, the respondent.

The respondent also filed an application rendering an account of the sums alleged to have been received by her, in pursuance of the decree, up to May, 1922 and requesting that this might be noted in Court. The appellant, however, denied that he had ever made any annual payments, and pleaded that the execution of the decree was time-barred, and also alleged that even if the payments had been made, they could not be recognised by the Court because they had not been certified within the time limit of the Court under Order XXI, Rule 2.

The learned District Judge before whom the case was first tried held that as the payments alleged, even if made, had not been certified, they could not be recognised by the Court, and that therefore, as no payment had been made from the date of the decree to the date of the claim for execution, the claim was barred by the Indian Limitation Act.

The High Court, however, decided that, having regard to the provision of clause 7 of Article 182 of

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the First Schedule of the Act, no question of limitation could possibly arise as to instalments, and that as failure to pay these two instalments was admitted, the respondent was entitled to execution in respect of them. It was also held that the respondent was entitled to execute the decree for the two annual payments, Rs. 2,000 each, and also, as she claimed, possession of the property to which the decree referred. The question whether the alleged payments during the intervening years between 1916 and 1923 were, in fact, paid, or were to have taken as paid according to the evidence given, was discussed and considered at some length in the High Court, as was also the question whether the claim of the respondent to have such payments certified was barred by time-limit. In the view, however, which this Board takes of the construction of the original decree, their Lordships think that it is unnecessary to pronounce any opinion upon the question of the application of the Limitation Act to the certification of the payments, or as to the effect of the absence of such certification.

Their Lordships are of opinion that upon the true construction of the decree each instalment as it became due was a claim originating under the decree from the date when such claim arose, and that the provisions of clause 7 of Article 182 of the First Schedule to the Limitation Act therefore applied.

It was contended, however, on behalf of the appellant at the hearing before their Lordships that even if a decree could be made for the annual payments due in 1923 and 1924, nevertheless the respondent was not entitled in default of each payment to have the property mentioned in the decree made over to the respondent, the argument being that as no claim was made to the possession of the property on default of payment during the early years after the

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decree, time commenced to run from the date of the earliest default, and the claim to the land was therefore time-barred.

Their Lordships cannot agree with this contention. They are of opinion that upon the construction of the decree itself, on the occasion of a default in each payment the right of the respondent to have the said property made over to her arose, and therefore the claim to the lands was not time-barred.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for Appellant—*Bramall and Bramall.*

Solicitors for Respondent—*T. L. Wilson & Co.*

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VERTANNES AND OTHERS
v.
ROBINSON AND ANOTHER.

(On Appeal from the High Court at Rangoon.)

Will—Construction—"Effects"—Immovable property—Power of executor—Conveyance after estate wound up—Estoppel—Landlord's title—Indian Evidence Act (I of 1872), ss. 115, 116—Probate and Administration Act (V of 1882), s. 4.

A Christian resident in Rangoon by his will appointed his wife executrix and devised and bequeathed to her specified immovable properties "and all my household furniture, carriages, horses, chattels and effects, and all money and debts due and owing to me which I shall be possessed of at the time of my death." He died in 1897, possessed of land, the K property, in addition to the immovable properties specified in the will. The widow proved the will, sold the specified properties, and by 1904 had paid all the debts including a mortgage on the K property. She and the children of the marriage then went to reside on the K property, and they were still in occupation when the present suit was brought. In 1905 the widow, not purporting to act as

* PRESENT:—LORD PHILLIMORE, LORD WARRINGTON OF CLYFFE AND SIR JOHN WALLIS.