

the male line of the deceased's great-grandfather (see pedigree table attached to the lower Appellate Court's judgment and Wilson, paragraph 237). Thus the appeal fails and is dismissed with costs.

M. R.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith.

GHULLA SINGH (DEFENDANT) — *Appellant,*

versus

SOHAN SINGH, ETC. (PLAINTIFFS) — *Respondents.*

Civil Appeal No. 1334 of 1920.

Indian Limitation Act, IX of 1908, section 12 (3)—time requisite for obtaining a copy of the judgment—when copy is sent by post.

Held, that when copies are despatched by post, in accordance with the rules, the period intervening between completion and despatch of the copies should also be excluded in computing the period allowed for an appeal.

Krishna v. Balia (1), Raghu v. Mandhgia (2), and Mussamat Iqbal Jehan Begam v. Mathura Prasad (3), followed.

Rustomji's Law of Limitation, 2nd Edition, page 74, referred to.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 22nd December 1919, affirming that of Khan Muhammad Sher Nawab Khan, Munsif, 1st Class, Tarn Taran, district Amritsar, dated the 21st June 1919, decreeing the claim.

M. L. PURI, for Appellant.

B. D. KORBHI, for Respondents.

The order of remand, dated 26th October 1921.

SCOTT-SMITH J.—This is a second appeal from the order of the District Judge of Amritsar dismissing Ghulla Singh defendant's appeal to his Court as barred by time. It was urged before the District Judge that there was delay in despatching the copy of the judgment by post,

(1) (1908) 14 Indian Cases 408;
8 Nag. L. R. 11.

(2) (1914) 26 Indian Cases 819;
10 Nag. L. R. 189.

(3) (1919) 54 Indian Cases 881.

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and that the appellant was entitled to count the period from the date of its completion to the date of its despatch. The District Judge disallowed this plea saying that there was no such practice in this Province. It is not stated in the judgment of the lower Appellate Court whether in fact there was any delay in despatching the copy and what the extent of the delay was. In Rustomji's Law of Limitation, 2nd Edition, page 74, it is stated that when copies are despatched by post, in accordance with the rules, the period intervening between completion and dispatch of the copies is also excluded. The learned author cites certain authorities in support of this, and counsel for the appellant has referred to two of these, namely, *Krishna v. Balia* (1) and *Raghu v. Mandhgia* (2). He has also referred to *Mussammat Iqbal Jehan Begam v. Mathura Prasad* (3) which is a decision of the Judicial Commissioner of Oudh. These decisions certainly support the appellant's contention. In *Raghu v. Mandhgia* (2) the *ratio decidendi* was that where the rules allow copies to be despatched by post the post office is the agent of the applicant and the date when the copy is handed over to the post office is to be taken as the date up to which time is to be allowed. This view appears to be reasonable, but I am unable at present to decide the appeal because there is no evidence on the record to show when the copy of the judgment which was ready on the 9th July 1919 was despatched to the appellant. According to counsel it was despatched on the 12th July 1919, but whether this is correct or not I have no means of knowing.

I remand the case to the lower Appellate Court and order that it may enquire and report on what dates the copies of the judgment and the decree applied for were despatched by post to the appellant. Return to this should be made within two months.

JUDGMENT.

SCOTT-SMITH J.—The report of the District Judge has been received and is to the effect that the copies were despatched to the appellant on the 12th July 1919. Therefore the appeal to the lower Appellate

(1) (1908) 14 Indian Cases 409 : 8 Nag. L. R. 11.

(2) (1914) 26 Indian Cases 819 : 10 Nag. L. R. 199.

(3) (1919) 54 Indian Cases 651.

Court was within time in accordance with the authorities referred to and the view expressed by me in my order of 26th October 1921.

I accept the appeal and setting aside the order of the lower Appellate Court remand the case thereto for decision of the appeal in accordance with law. Stamp to be refunded and other costs to be costs in the case.

Appeal accepted—Case remanded.

LETTERS PATENT APPEAL.

Before Sir Shadi Lal, Chief Justice, and Mr. Justice Harrison.

MUHAMMAD AYUB AND OTHERS (PLAINTIFFS)—

Appellants,

versus

RAHIM BAKHSH (DEFENDANT)—*Respondent.*

Letters Patent Appeal No. 231 of 1921.

Indian Stamp Act, II of 1898, section 35—loss of bond after copy filed with plaint has been compared with the original and certified by the Clerk of Court to be correct—whether copy admissible on payment of penalty.

The plaintiffs sued to recover money from defendant on an unstamped bond executed in their *bahi*. The *bahi* was presented in Court with the plaint and a copy of the *bahi* entry. The copy was compared by the Clerk of the Court with the *bahi* entry and was certified by him to be a true copy. The *bahi* was subsequently stolen. The Munsif and District Judge held that the copy of the *bahi* entry was under the circumstances admissible in evidence on payment of the penalty. On appeal to the High Court Mr. Justice LeRossignol accepted the appeal and dismissed the suit.

Held, that production and presentation of a document are in no way identical with admission; and secondary evidence of the contents of an unstamped document, which has been lost or destroyed, can under no circumstances be allowed.

A non-existent document cannot be admitted, though under certain circumstances, of which the first and most essential is that before its disappearance the original should have borne the necessary stamp, secondary evidence is permitted.

Raja of Bobbili v. Inuganti China (1), followed.

Held consequently, that in this case no penalty should have been levied and that the suit was rightly dismissed.