

## APPELLATE CIVIL.

*Before Mr. Justice Carr and Mr. Justice Maung Ba.*

MA DAN

v.

TAN CHONG SAN AND OTHERS.\*

1928

Aug. 23.

*Limitation Act (IX of 1908), ss. 4, 12—Period of appeal expiring on a day Court is closed—Application for copies of judgment and decree made on reopening of Court—Appellant whether entitled to benefit of s. 12—Right of appeal alive and subsisting.*

*Held*, that if the period of appeal expires on a day the Court is closed for vacation and the appellant has not till then made any application for copies of the judgment and decree, but does so on the day the Court reopens, whilst his right of appeal is still alive and subsisting in virtue of s. 4 of the Limitation Act, he can claim the benefit of s. 12 of the Act and file his appeal the day after the copies of judgment and decree are ready for delivery.

*Siyadat-un-nissa v. Muhammad*, 19 All. 343; *Tukaram v. Pandurang*, 25 Bom. 584—*referred to*.

*K. C. Bose* for the appellant.

*Choon Fong* for the 1st respondent.

On the 7th of December 1927, the Original Side Judge passed an order in Civil Miscellaneous Case No. 82 of 1927, refusing the application of the appellant for the winding up of a certain Company under the Companies Act, and advised her to file a regular suit in respect of her claim. She had twenty days to file her appeal from the date of the judgment, which expired during the Christmas vacation when the Court was closed. She had made no application till then for copies of the judgment and decree. On the day the Court reopened, viz. the 3rd of January 1928, when she was entitled to file her appeal in virtue of section 4 of the Limitation Act, she applied for copies of the judgment and decree and

\* Civil Miscellaneous Appeal No. 5 of 1928 from the judgment of the Original Side in Civil Miscellaneous No. 82 of 1927.

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obtained them on the 10th January 1928. The appeal was filed on the 11th January 1928 and she claimed the benefit of section 12 of the Limitation Act for the exclusion of the time requisite for obtaining the copies in computing the period of limitation. After notice to the respondents their Lordships passed the following order :—

CARR and MAUNG BA, JJ.—On the question of limitation we think, following the cases reported in 19 All. 342 and 25 Bom. 584, that the appeal was in time.

Appeal admitted.

### APPELLATE CIVIL.

*Before Sir Henry Pratt, Kt., Officiating Chief Justice, and Mr. Justice Ormiston and on reference before Mr. Justice Carr.*

WOR MOH LONE & CO.

v.

THE JAPAN COTTON TRADING COY., LTD.\*

*Contract for rice, construction of—Seller's option to deliver produce of one of specified mills—Seller's own mill not specifically mentioned—Destruction of seller's mill by fire before issue of milling notice—Refusal of seller to supply from any of the other mills—Option clause, construction of.*

Plaintiff-respondents sued defendant-appellants for damages for breach of their contract to supply rice. The contract was embodied in the standard form of bought and sold notes for rice contracts in Rangoon. The last clause enabled the sellers to deliver rice of the milling of some twenty named mills in which however their own mill was not included. There were some clauses which possibly indicated that the sellers could deliver the produce of their own mill. One of the clauses exempted the sellers from liability to deliver in case of accident to machinery. Before the issue of any milling notice the seller's mill burnt down, and they failed to give delivery. They contended that their contract was primarily to deliver rice from their own mill, and, that having burnt down, they were exempted from liability. The last clause merely gave them an additional option to supply rice from any of the specified mills but

\* Civil First Appeal No. 157 of 1928 against the judgment of the Original Side in Civil Regular No. 96 of 1927.

1928

Aug. 28.