

1928
 MAUNG PO
 KYAW
 v.
 MA LAY
 AND
 OTHERS.
 BROWN, J.

computed from the date of the decree was made with due care and attention. There is no explanation offered as to why the pleader was not aware of the law as laid down in *Maung Kin's* case, which has ever since been followed by the Courts in this Province. Copies were actually obtained on the 15th of November and there is no explanation, besides this incorrect legal advice, as to why there was a further delay of 19 days after filing the application. In the application the applicant does mention his illness but it is only a vague mention and there is no affidavit in support of this allegation. I am not satisfied that the applicant has made out a case under the provisions of section 5 of the Limitation Act, and I must therefore hold that the present application is barred by limitation. It is accordingly rejected.

APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Otter.

1928
 Dec. 23.

MANDALAY MUNICIPAL COMMITTEE

v.

MAUNG IT.*

Land Acquisition Act (I of 1894). ss. 3, 18, 20 and 20 (b).—Parties to a proceeding on reference to the Civil Court—Public authority on whose behalf Collector acquires land not a necessary party, nor entitled to separate notice.

Held, that to a reference to the Civil Court by the Collector under the provisions of s. 18 of the Land Acquisition Act, the local authority at whose instance and at whose cost the acquisition of land is made is not a necessary party and is not entitled to a separate notice of the reference.

A. C. Mukerjee for the appellants.

PRATT and OTTER, JJ.—A piece of land belonging to Maung It was acquired by the Collector under

* Civil Miscellaneous Appeal No. 40 of 1928 (at Mandalay).

the Land Acquisition Act, on behalf of the Mandalay Municipal Committee.

Maung It did not accept the Collector's award and claimed a reference to the Civil Court under section 18 of the Land Acquisition Act.

The Collector made a reference and the Court, after issue of notice to the claimant and the Collector, took evidence, and passed orders enhancing the compensation awarded to Maung It.

The Municipal Committee was not represented at the proceedings before the Court, and applied to the Court to set aside the award made *ex parte* and reopen the proceedings in order to give the Committee an opportunity of contesting Maung It's claim.

The Court held that the Municipal Committee was not a necessary party to the proceedings, and that their application to have the order set aside and to contest Maung It's claim on reference was not maintainable.

The appeal has been argued before us almost entirely on the basis that the Committee is a person interested in the objection within the meaning of section 20 (b) of the Act.

No direct authority has been cited on the point in dispute and we have been able to find none.

It is common ground that no notice was issued to the Committee under section 20.

Under that section the Court is bound to issue notice of the day, on which it proposes to determine the objection, to and to direct the appearance of—

(a) the applicant,

(b) "all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded," and

1928

MANDALAY
MUNICIPAL
COMMITTEEv
MAUNG ITPRATT AND
OTTER, JJ.

1928
 MANDALAY
 MUNICIPAL
 COMMITTEE
 v.
 MAUNG IT.
 PRATT AND
 OTTER, JJ.

(c) if the objection is in regard to the area or to the amount of the compensation—the Collector. Reading sub-section (b) as it stands the natural construction is that 'persons interested' means persons interested by reason of their interest in the land acquired as owners, tenants, and the like, and not persons interested as acquiring the land through the Secretary of State.

This interpretation is confirmed by the definition in section 3, where it is laid down that the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land, if he is interested in an easement affecting the land."

It is apparent that this definition does not contemplate the case of the person in whose interest the property is acquired.

Had this been the intention, it would have been perfectly simple to include such persons in the definition.

Moreover it is provided in section 50 that no local authority or company, at whose cost the Act is put in motion, is entitled to demand a reference under section 18, although the local authority or company is allowed to appear and adduce evidence for the purpose of determining the amount of compensation.

As the Judge of the District Court pointed out, the Municipal Committee is not a necessary party to the proceedings before the Court, though it has the right to appear and adduce evidence.

In such a case the Municipality is represented by the Collector, who has acquired the property on its behalf, and if it is represented otherwise in Court, is there to assist the Collector.

The Municipal Committee is not entitled to separate notice, and if it wishes (in case reference to the Court is made under section 19) to contest the claim, must make its own arrangements to ascertain, if a claim is made, and when the objection is fixed for hearing, in case the Collector fails to keep it *au fail* with events in Court subsequent to his award.

The appeal is dismissed.

1923
 MANDALAY
 MUNICIPAL
 COMMITTEE
 v.
 MAUNG IT.
 PRATT AND
 OTTER, JJ.

APPELLATE CRIMINAL.

Before Mr. Justice Carr.

KING-EMPEROR

v.

U THIN OHN AND OTHERS.*

1928
 Dec. 21.

City of Rangoon Municipal Act (Burma Act VI of 1922), ss. 125, 214—Unlicensed private market—Prosecution must be within three months from commission of offence—Continuing offence not a fresh offence under the Act.

Held, that under the provisions of s. 214 of the City of Rangoon Municipal Act a Court is prevented from taking cognizance of the offence of keeping a private market without a license if the prosecution was not within three months either from the date of commission of such offence or from the date it became known. The wording of the section precludes the Corporation from treating the offence as a continuing one and as a fresh offence committed in the month in which the prosecution was instituted.

N. M. Cowasjee for the Crown.

CARR, J.—These are appeals by the Local Government against the acquittal of the respondents by the Sixth Additional Magistrate of Rangoon.

The facts in all the cases are the same, and the point for decision is the same.

The Corporation of Rangoon some time in 1926 sold certain premises to the Commissioners for the Port of Rangoon. It appears that the Port Commissioners

* Criminal Appeals Nos. 1064 to 1096 of 1928 against the order of the Sixth Additional Magistrate of Rangoon.