

## LETTERS PATENT APPEAL.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice,  
and Mr. Justice Dunkley.

1939  
May 8.

MAUNG BAW BYU AND ANOTHER  
v.  
MAUNG YAN SHIN AND ANOTHER.\*

*Limitation—Time to be excluded—Judgment pronounced—Decree signed after an interval—Application for copies filed after decree signed—Claim to exclude period between date of judgment and date of signing of decree—Limitation Act, s. 12.*

In computing the time to be excluded under s. 12 of the Limitation Act from a period of limitation the time requisite for obtaining a copy does not begin until an application for copies has been made. Where the applicant applies for copies of the judgment and decree after the decree has been signed by the Court, in computing the period of limitation allowed for an appeal he cannot claim to deduct the period of time that has elapsed between the date of delivery of the judgment and the date on which the decree is signed.

*Maung Po Kyaw v. Ma Lay*, I.L.R. 7 Ran. 18, approved.

*Bechr v. Ahsan-Ullah Khan*, I.L.R. 12 All. 461; *Subramanyam v. Narasimham*, I.L.R. 43 Mad. 640; *Yemaji v. Antaji*, I.L.R. 23 Bom. 442, followed.

*Harish Chandra v. Chandpur Co., Ltd.*, I.L.R. 39 Cal. 766; *Pramanatha Roy v. Lee*, I.L.R. 49 Cal. 999 (P.C.); *Sury v. T.S. Chettyar*, I.L.R. 6 Ran. 302, referred to.

*Bani Madhub Mitter v. Matungini Dassi*, I.L.R. 13 Cal. 104, distinguished.

*Tha Kin* for the appellants.

*Paul* for the respondents.

DUNKLEY, J.—The appellants brought a suit in the Township Court of Syriam, but the suit was dismissed. They thereupon filed an appeal before the Assistant District Court of Hanthawaddy, and this appeal was dismissed on the ground that it was barred by limitation. The sole point before us for decision is whether the

\* Letters Patent Appeal No. 2 of 1939 from the order of this Court in Civil Second Appeal No. 35 of 1939.

view taken by the learned Assistant District Judge is correct.

The relevant dates are as follows :

Date of judgment of the Township Court	... ..	19th July, 1938.
Date of signature of decree of the Township Court	... ..	29th July, 1938.
Date of application by appellants for copies of judgment and decree	... ..	30th August, 1938.
Date on which copies were supplied	... ..	3rd September, 1938.
Date on which memorandum of appeal was presented in the Assistant District Court	... ..	28th September, 1938.

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Now, under the provisions of section 10 of the Burma Courts Act, the period of limitation for an appeal to an Assistant District Court from a decree of a Township Court is sixty days, and under the provisions of Order XX, Rule 7, of the Civil Procedure Code, the decree shall bear date the day on which judgment was pronounced. Hence the appeal of the appellants to the Assistant District Court was, on the face of it, time-barred. This is admitted, but the appellants pray in aid the provisions of section 12 (2) of the Limitation Act, and urge that under this section they were entitled to deduct the period between the date of delivery of judgment and the date of signature of the decree of the Township Court, and that therefore their appeal was within time. The provisions of this section of the Limitation Act, so far as they are relevant to the present matter, read as follows :

“ 12. (2) In computing the period of limitation prescribed for an appeal . . . . the time requisite for obtaining a copy of the decree . . . . appealed from . . . . shall be excluded.”

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DUNKLEY, J.

The point raised is covered by the judgment of a single Judge of this Court in *Maung Po Kyaw v. Ma Lay and others* (1). The headnote of the report of this case reads as follows :

“ For the purposes of the Limitation Act the date of the decree is the date of the judgment and under section 12 of that Act time can only be allowed as time requisite for obtaining copies if the applicant has actually made an application for a copy. The fact that the decree has not been drawn up or signed does not prevent time from running.”

The correctness of this judgment is now in question. Learned counsel for the appellants relies on the decision of a Full Bench of the Calcutta High Court in *Bani Madhub Mitter v. Matungini Dassi* (2), in which it was held that where a suitor is unable to obtain a copy of a decree from which he desires to appeal, by reason of the decree being unsigned, he is entitled under section 12 of the Limitation Act to deduct the time between the delivery of the judgment and that of the signing of the decree in computing the time taken in presenting his appeal. This decision was followed in *Gopal Chandra Chakravarti v. Preonath Dutt* (3), but the decision in *Harish Chandra Tewary v. Chandpur Co., Ltd.* (4) is to the opposite effect, the Full Bench decision being distinguished on the ground that it was under the different provisions of the Limitation Act of 1877. In *Pramatha Nath Roy v. Lee* (5) their Lordships of the Privy Council held that

“ no period can be regarded as requisite under the Act, which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order.”

(1) (1928) I.L.R. 7 Ran. 18.

(3) (1904) I.L.R. 32 Cal. 175.

(2) (1885) I.L.R. 13 Cal. 104.

(4) (1912) I.L.R. 39 Cal. 766.

(5) (1922) I.L.R. 49 Cal. 999, 1003.

Their Lordships referred to the decision in *Bani Madhub Mitter's* case (1), and said that it was no authority for the proposition that in determining what period is to be deducted in any case the time actually consumed in obtaining the decree is to be regarded.

In *J. S. Surty v. T.S. Chettyar* (2), their Lordships observed :

“ The word ‘ requisite ’ is a strong word ; it may be regarded as meaning something more than the word ‘ required.’ It means ‘ properly required ’, and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default :”

In the present case, the delay was plainly due to the default of the appellants in failing to apply for copies until the 30th August ; the period between the date of delivery of judgment and the date of signing the decree did not contribute in any way to the delay.

In *Bechi v. Ahsan-Ullah Khan* (3), a Full Bench of the Allahabad High Court held that in computing the time to be excluded under section 12 of the Limitation Act from a period of limitation, the time requisite for obtaining a copy does not begin until an application for copies has been made. In my opinion, this view is in accordance with the plain meaning of the words of section 12 (2). It has been followed by the Bombay and Madras High Courts. *Yamaji v. Antaji and others* (4), *Subramanyam v. Narasimham and three others* (5). Hence I am in entire agreement with the decision in *Maung Po Kyaw v. Ma Lay* (6), and this appeal fails and is dismissed with costs, advocate's fee three gold mohurs.

ROBERTS, C.J.—I agree.

(1) (1885) I.L.R. 13 Cal. 104. (4) (1898) I.L.R. 23 Bom. 442.  
 (2) (1928) I.L.R. 6 Ran. 302, 313. (5) (1920) I.L.R. 43 Mad. 640, 642.  
 (3) (1890) I.L.R. 12 All. 461. (6) (1928) I.L.R. 7 Ran. 18.