ORIGINAL CIVIL.

1923.

October 2.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.

MACMILLAN & Co., LTD. AND ANOTHER, APPELLANTS AND PLAINTIFFS *v.* K. & J. COOPER, RESPONDENTS AND DEFENDANTS*.

Limitation Act (IX of 1908), section 12—Time requisite for obtaining copies of judgment and decree—Period excluded.

Where an unsuccessful party to a suit on the Original Side of the High Court applied for a copy of the judgment with a view to filing an appeal, and later applied for a copy of the decree, both applications being made before the prescribed period of limitation had expired,

Held that, under section 12 of the Limitation Act (IX of 1908), in computing the period of limitation the aggregate of the two periods of time requisite for obtaining the above copies, less such part thereof as was common to both, should be excluded.

Application for admission of memorandum of appeal.

The plaintiffs, Messrs. Macmillan & Co., publishers, sued (*inter alia*) for an injunction to restrain the defendants from printing and selling certain publications alleged to be an infringement of the plaintiff's copyright in a book called "An Anthology of Verse for Indian Schools". Kajiji J. delivered judgment dismissing the suit on 11th June 1923. On 12th June 1923 the plaintiffs applied to the Prothonotary for a certified copy of the judgment, adding that they desired to prefer an appeal. An application was also made for a certified copy of the decree but inasmuch as it was the practice to submit a draft decree along with such an application and the defendants in whose favour the decree had been passed had not yet sent a draft for approval, this application was not in fact made till 30th June 1923. Certified copies of the judgment and decree were furnished to the plaintiffs on 3rd July and 8th August respectively. On 22nd August 1923 the plaintiffs filed their memorandum of appeal.

* O. C. J. Appeal No. 78 of 1923; Suit No. 881 of 1918.

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The Prothonotary, however, declined to accept the appeal on the ground that the memorandum was presented after the time prescribed under Article 151 of the Schedule to the Limitation Act, namely, 20 days from the date of the decree. He was of opinion that, the copy of the decree having been applied for on 30th June, i. e., 19 days after judgment and having been furnished on 8th August, the plaintiffs should have filed the memorandum of appeal on 9th August which was in view of the provisions of section 12 of the Act, the twentieth day.

The plaintiffs applied to the appellate Court for the admission of the memorandum of appeal under High Court Rule 741.

Campbell, for the appellants:—The Prothonotary has completely ignored the time taken in obtaining copy of judgment. The time requisite for obtaining copies of both judgment and decree should have been excluded under section 12. This is clear from the use of the word "also" in section 12 (3). See *Rajani Kanta Kapali* v. *Kali Mohan Das Kapali*[1]; *Silamban Chetty* v. *Ramanadhan Chetty*[2]; *Siyadat-Un-Nissa* v. *Muhammad Mahmud*[3] (which has been accepted in this High Court as an authority): see *Pandharinath* v. *Shankar*[4] and *Ali Muhammad* v. *Nathu*[5]. Both applications for copies were made while the right of appeal was still subsisting and in each the intention to appeal was made clear: see *New Piece Goods Bazar Co. Ltd.* v. *Jivabhai Vadilall*[6]. In any event even if the Court holds that the appeal is strictly out of time there was "sufficient cause" to excuse the delay, within the meaning of section 5, Explanation, of the Act.

(1) (1916) 21 C. W. N. 217.
(2) (1909) 33 Mad. 256.
(3) (1897) 19 All. 342.
(4) (1901) 25 Bom. 586.
(5) [1919] P. R. No. 163.
(6) (1913) 15 Bom. L. R. 681.

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Engineer, for the respondents, cited, among other cases, *Pramatha Nath Roy* v. *Lee*[1].

SAHA, AG. C. J.:—The dates material for the purpose of dealing with the point arising on this rule are these :—

The decree sought to be appealed from was passed on June 11, 1923. An application for a certified copy of the judgment was made on June 12. On June 30, an application for a certified copy of the decree was made. The copy of the judgment applied for was furnished on July 3, 1923, and the copy of the decree was furnished on August 8. The plaintiffs presented the memorandum of appeal on August 22, but it was rejected by the Prothonotary as being beyond time on August 31.

On the application of the appellants we granted a rule to show cause why the appeal should not be admitted. It is urged in support of the rule that the time spent in obtaining copies of the judgments and of the decree should be excluded and that if that is done the presentation of the appeal should be within time. The whole question is whether the time requisite for obtaining the copy of the decree only should be excluded, or the time requisite for obtaining the copy of the judgment also should be excluded. The Prothonotary has allowed deduction of the time taken in obtaining the copy of the decree, but has not allowed any time for the copy of the judgment. Under section 12, sub-section (2), a party is entitled to deduct the time taken in obtaining a copy of the decree appealed from ; and under section 12, sub-section (3), where a decree is appealed from or sought to be reviewed, time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded. The appellants rely on this provision as entitling them not only to the deduction

[1] (1922) L. R. 49 I. A. 307.

of time taken in getting a copy of the decree but also of the time taken in getting a copy of the judgment exclusive of the overlapping period. On the interpretation of section 12 of the Indian Limitation Act, I should not find any difficulty in accepting the view contended for by the appellants. This view is supported by the decisions in *Rajani Kanta Kapali* v. *Kali Mohan Das Kapali*[1] and *Silamban Chetty* v. *Ramanadhan Chetty*[2]. It may be mentioned that it has been held by this Court in *Tukaram Gopal* v. *Pandurang Sadaram*[3] and *Pandharinath* v. *Shankar*[4] that in order that a party may be entitled to deduct the time taken in obtaining a copy, it is necessary for him to make an application for copies of the decree and the judgment before the expiration of the time allowed to him by law to prefer an appeal. If this is done there is no reason why the time occupied in obtaining copies of the decree and the judgment should not be deducted as provided by section 12. There is no decision of this Court directly bearing on the question whether the aggregate of the time taken up in obtaining both the copies should be excluded, of course deducting therefrom any overlapping period. On inquiry we are informed that the practice on the Appellate Side is to exclude the longer of the two periods where the applications for the two copies are made on different dates. The decisions of the Calcutta and Madras High Courts, to which I have just referred, are opposed to this practice. But they appear to us to be based on a correct interpretation of section 12 of the Indian Limitation Act. It is desirable that there should be uniformity of interpretation on a point of this nature; and in spite of the contrary practice we think that the view taken in these two cases should be followed. In

(1) (1916) 21 C. W. N. 217.
(2) (1909) 33 Mad. 256.
(3) (1901) 25 Bom. 584.
(4) (1901) 25 Bom. 586.

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the present case the whole period from June 12 to August 8 should be excluded according to this view; but the overlapping period from June 30 to July 3 should not be excluded twice over. The other view is based upon the assumption that a party is bound to apply for both the copies at the same time, for which there is no express warrant.

On behalf of the respondents reliance is placed upon the decision in *Pramatha Nath Roy* v. *Lee*[1]. It appears from the statement of facts in that case that the order sought to be appealed from was made on July 26, 1918. An application was made by the respondent in that case on August 6 to have the order drawn up, the draft of the order was sent to the appellant on August 7, and it was approved and returned by him on August 16. It was signed by the master on August 28 and was actually filed on September 3, 1918. The appellant had made no application for a copy of the order until September 9 and the appeal was in fact presented on August 30, 1918. The appeal was clearly beyond time, and no application for a certified copy of the order in that case was made within twenty days. In my opinion the *ratio decidendi* of that case cannot apply to a case where the applications for copies of the decree and of the judgment have been made within the time allowed by law for appealing. In the words of their Lordships reasonable and proper steps to obtain a copy of the decree must be taken in order to get the benefit of section 12. According to the decisions and the practice this requirement is satisfied if the application is made within the time allowed by law for appealing. And we do not read the observations in *Pramatha Nath Roy's case*[1] as touching the decisions and the practice on this point in any way. In the present case the applications for copies were made

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within the time allowed for appealing and the appellants are entitled as of right to exclude the time occupied in obtaining them. The only question is whether they are entitled to the aggregate of two periods deducting the overlapping period, or only to one period which may happen to be longer than the other.

A reference has been made to the decision in *New Piece Goods Bazar Co. Ltd.* v. *Jivabhai*[1]. I do not think that that case presents any difficulty. All that is decided in that case is that the intention to appeal must be made manifest within the time allowed by law for appealing. In the present case that was done by the appellants applying for the copies in time. It is not suggested in this case that the appellants are in any way responsible directly or indirectly for the time occupied in obtaining the copies.

We make the Rule absolute.

Costs to be costs in appeal.

Solicitors for appellants : Messrs. *Crawford, Bayley & Co.*

Solicitors for respondents : Messrs. *Payne & Co.*

Rule made absolute.

K. MCI. K.

[1] (1913) 15 Bom. L. R. 681.

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Before Mr. Justice Fawcett.

SUKHNAND SHAMLAL, PLAINTIFF *v.* OUDH AND ROHILKHAND RAILWAY AND ANOTHER, DEFENDANTS*.

1923. *October* 18.

Indian Railways Act (IX of 1890), sections 3 (6), 145—Suit against a State railway—Civil Procedure Code (Act V of 1908), section 79 (1)—Secretary of State for India in Council to be the proper party.

A suit against a State railway must be brought against the Secretary of State for India in Council.

* O. C. J. Suit No. 4375 of 1922