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the repeal of the old Act would not have the effect of reviving any right not in force or existing at the time the repeal was made. We think, therefore, that on this ground the Rule must be made absolute, and the order of the Subordinate Judge set aside. The applicant is entitled to his costs of this hearing.

S. M. *Rule absolute.*

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## APPELLATE CIVIL.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice N. R. Chatterjea.*

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*Feb.* 6.

### EASTERN MORTGAGE AND AGENCY CO., LD., *v.* PURNA CHANDRA SARBAGNA.*

*Privy Council—Application for leave to appeal—Limitation—Admissibility of appeal filed after six months of the judgment—Time for taking copy of judgment and decree—Limitation Act (IX of 1908) s. 12 ; Sch. I, Art. 179.*

Clause (2) of section 12 of the Limitation Act, 1908, applies to an application for a certificate under Order XLV of the Code of Civil Procedure.

APPLICATION for leave to appeal to the Privy Council.

The judgment appealed against in this matter was passed by the High Court on the 3rd June 1910. The appellants to His Majesty in Council applied, on the 12th June 1910, for copies of the judgment and decree. Copies were ready on the 30th August, and the petitioners actually got them on the 31st August 1910. The petition for leave was filed on the 5th December 1910, the six months from the judgment appealed against expiring on the 3rd December.

* Application for leave to appeal to His Majesty in Council, No. 102 of 1910.

*Babu Jogesh Chandra Roy* (with him *Babu Shibchandra Palit* and *Babu Prakash Chandra Mazumdar*), for the respondent, took a preliminary objection to the admissibility of the appeal. The application for leave to appeal to the Privy Council was filed more than six months after the date of the decree in appeal. Of course the provisions of the new Limitation Act of 1908 may be said to be against my contention, and I admit that the construction put by your Lordships on section 12 of the Limitation Act of 1908 will decide the point. I contend that clause (2) of section 12 cannot apply to such an application.

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*Dr. Rashbehary Ghose* (with him *Babu Gunada Charan Sen*), for the appellant. The alterations made in section 12 of the Limitation Act of 1908, read with Article 179 of the same Act, make it clear that time taken for getting copy of the decree is now to be excluded.

*Babu Jogesh Chandra Roy*, in reply.

JENKINS C.J. AND CHATTERJEA J. This is an application by way of a petition to the Court under Order XLV, rule 2 of the Code of Civil Procedure, 1908, by one desiring to appeal to His Majesty in Council.

A preliminary objection has been raised that the application is out of time, and in support of this it is argued that clause (2) of section 12 of the new Limitation Act does not apply to an application for a certificate under Order XLV of the Code. But the answer to this is furnished by the phraseology of Article 179 of the first Schedule of the Limitation Act, which describes an application of this kind as an application for leave to appeal to His Majesty in Council. It is manifest, therefore, that clause (2) of section 12 of the Limitation Act does apply to applications such as the present, and the objection fails.

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As the decree from which it is sought to appeal is one of reversal, the only question is whether the amount or value of the subject-matter in dispute is of the requisite amount, or whether it involves directly or indirectly some claim or question to property of the value of Rs. 10,000.

The facts are these: The appeal now before us relates to rent, and it is said that the tenants have been evicted from a part of the land included in the tenancy, and the result has been that the High Court has decided that the rent is suspended and no claim therefore lies as long as the eviction continues.

The amount of the rent is Rs. 1,300 and odd, and it is claimed on the part of the applicant that if this sum of Rs. 1,300 is capitalized, it will reach a sum of more than Rs. 10,000. Further, it has been said on the part of the applicant that the eviction has been brought about by the creation of leases in favour of the tenants in perpetuity which cannot be brought out, and therefore the dispossession must continue for ever. It is accordingly claimed that the amount of the capitalized value of Rs. 1,300 would be more than Rs. 10,000; but the other side says that the capitalized value falls far short of that amount.

We have not before us the materials necessary for the decision of this question, and we must therefore utilize the provisions of rule 5, Order XLV of the Code, and refer the dispute to the Court of first instance to determine the amount or value and return its report to this Court.

S. M.