

Maung Sin - - - - - *Appellant*

*v.*

Ma Tok - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 31ST MARCH, 1927.

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*Present at the Hearing :*

LORD ATKINSON.

LORD CARSON.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD CARSON.]

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The respondent, who is the wife of the appellant, on the 30th September, 1916, obtained a decree in the District Court of Sagaing in terms of an award which had been previously made by which certain properties contained in a list attached to the award and the decree were to be left in possession of the appellant (defendant), who was to pay to the respondent (plaintiff) annually a sum of Rs. 2,000 in the month Kason, or in default of payment of the same (Rs. 2,000 annually) the said property contained in the said list would be made over to the plaintiff-respondent. It appears that after the making of the decree the parties lived together until the year 1923, when they separated.

On the 8th October, 1924, the respondent filed an application in the District Court of Sagaing for execution of the decree against the appellant in default of payment of two instalments of Rs. 2,000 each for the years 1923 and 1924 respectively, and claimed, as the judgment debtor failed to pay according to the decree, that the Court might direct the delivery of the lands in the said list by the judgment debtor to the decree-holder, the respondent.

The respondent also filed an application rendering an account of the sums alleged to have been received by her, in pursuance of the decree, up to May, 1922, and requesting that this might be noted in Court. The appellant, however, denied that he had ever made any annual payments, and pleaded that the execution of the decree was time-barred, and also alleged that even if the payments had been made, they could not be recognised by the Court because they had not been certified within the time limit of the Court under Order 21, Rule 2.

The learned District Judge before whom the case was first tried held that as the payments alleged, even if made, had not been certified, they could not be recognised by the Court, and that therefore, as no payment had been made from the date of the decree to the date of the claim for execution, such claim was barred by the Limitation Act.

The High Court, however, decided that, having regard to the provision of Clause 7 of Article 182 of the Schedule of the Limitation Act, no question of limitation could possibly arise, and that as failure to pay these two instalments was admitted, the respondent was entitled to execution in respect of them; and they also held that the respondent was entitled to execute the decree for the two annual payments, Rs. 2,000 each, and also, as she claimed, possession of the property to which the decree referred. The question as to whether the alleged payments during the intervening years between 1916 and 1923 were, in fact, paid, or were to have been taken as paid according to the evidence given, was discussed and considered at some length in the High Court, as was also the question of whether the claim of the respondent to have such payments certified was barred by time-limit. In the view, however, which this Board takes of the construction of the original decree, their Lordships think that it is unnecessary to pronounce any opinion upon the question of the application of the Limitation Act to the certification of the payments, or as to the effect of the absence of such certification. Their Lordships are of opinion that upon the true construction of the decree each instalment as it became due was a claim originating under the decree from the date when such claim arose, and that the provisions of Clause 7 of Article 182 of the Schedule to the Limitation Act therefore applied.

It was contended, however, on behalf of the appellant at the hearing before their Lordships that even if a decree could be made for the annual payments due in 1923 and 1924, nevertheless the respondent was not entitled in default of each payment to have the property mentioned in the decree made over to the respondent, the argument being that, as no claim was made to the possession of such property on default of payment during the early years after the decree, time commenced to run from the date of the earliest default, and the claim to the land was therefore time-barred.

Their Lordships cannot agree with this contention. They are of opinion that upon the construction of the decree itself, on the

occasion of a default in each payment the right of the respondent to have the said property made over to her arose, and therefore the claim to the lands was not time-barred.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

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MAUNG SIN

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MA TOK.

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DELIVERED BY LORD CARSON.

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