KARONCHIHAMI *v.* ANGOHAMI.

D. C., Kandy, 6,563.

1901.

June 12, and July 4 and 16.

Civil Procedure Code, ss. 779 and 780—"Final judgment"—"Within two calendar months.

MONCREIFF, J.—"A final judgment has been variously interpreted. By some it is said to be a judgment by which the whole of the contest in the suit has been destroyed; by others, one which determines the rights of the parties; and again, other judges have defined it to be a judgment in which no further steps are necessary to perfect the judgment. There seems to be some kind of obscurity about the *dicta* on the subject. In the case of the *Standard Discount Co. v. Lagrange*, *3 C. P. D. 67*, the Court of Appeal (Bramwell, Brett, and Cotton, L. J. J.) held that, where a Master of the Court (whose decision was affirmed on appeal) empowered the plaintiff to sign judgment under Order 14, it was not a final judgment, because, in order to issue execution, a further order would be necessary. There was a case also in the Privy Council (*Hubibbhoy v. Turner*, *L. R. 18 Ind. App. 6)* in which the action was for the taking of several accounts. The Court held that some of those accounts should be taken, and others not, and the Privy Council was of opinion that that judgment was final because the taking of the accounts was a mere arithmetical calculation.

"The principle which I should deduce from the case is, that where the act which remains to be done is purely ministerial or arithmetical, the suit is at an end."

The judgment of the Court below having been affirmed in appeal on 10th May, 1900, appellant applied on 10th July to have the judgment brought by way of review before the Collective Court,—

Held, that such application was made within two calendar months from the date of the judgment.

THIS was an application to the Supreme Court for a certificate under section 781 of the Civil Procedure Code prior to an appeal to the Privy Council. The judgment of the Court below, in respect of which the appeal was taken, was affirmed by the Supreme Court on the 10th May, 1900. The defendants filed their petition of appeal on the 10th July, 1900.

Van Langenberg, for appellants, moved for the certificate on 11th June, 1901.

Bawa appeared for the plaintiff, and desired to be heard.

The matter was argued on the 12th June before LAWRIE, A.C.J., and re-argued before LAWRIE, A.C.J., and MONCREIFF, J., on the 4th July.

Bawa.—The judgment of the Supreme Court was delivered on the 10th May, 1900, and appeal was filed on the 10th July, as will appear from the note of the Registrar, though the petition appears dated 9th July. The appeal must be filed under section 780 of the Code within two calendar months. The handing of the petition to the Registrar is not an application in the sense of the

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Code. It must be made to the Court itself within two calendar months. The rule of excluding the day on which the judgment was delivered does not apply to appeals under section 780. Stroud's *Judicial Dictionary* defines the meaning of "calendar." The reckoning should be from the given day in the first month to the corresponding day in the next month, less one day. The application was therefore one day too late (*Migotti v. Colville, 48 L. J. C. P. 695*). The decision in *South Staffordshire Railway Co. v. Sickness & Accident Insurance Co., L. R. 1 Q. B. D. 402 (1891)* is on the particular facts of the case, and not on the general law. Here the judgment in respect of which the appeal is taken is not final. The defendant is ordered to account to the plaintiff for the produce of certain lands, and directions are given as to certain matters in the work of futurity. The decree entered is not for a specific sum of money, but for accounts which have not yet been stated. Until the accounting is stated, and the result found, no final order can be given, and then only could an appeal be taken. *Jackson v. Colombo Commercial Co., 2 C. L. R. 127; 1 S. C. R. 113; Corbet v. Ceylon Company, Limited, S. C. Min., 5th April, 1887.*

Van Langenberg, for appellant.—The decree entered is final. The object of the action was to establish the status of the first plaintiff, and the decree in the case settles that point. The first plaintiff is declared the heiress of the intestate, and on the footing of that fact called upon the defendant to file certain accounts in the testamentary case wherein the estate of the intestate was administered. The decision in the present case is therefore final and appealable as to the meaning of the expression "within two calendar months."

The application was not made on the 10th July. It was handed in on the 9th evening, and the only reason why it was not argued on the same day was that it was not convenient to the Court. Even assuming that the application was made on the 10th, the first day must be excluded. *1 N. L. R. 178; 4 N. L. R. 284.* The words *within* and *from* are used in the former judgment. Again, South *Staffordshire Railway Co. v. Sickness & Accident Insurance Co., L. R. 1 Q. B. (1891) 402*, also excludes the first day and includes the last day. *Arch. Practice, p. 1435; Williams v. Burgess, 12 A. & E. 635; ex parte Fallon, 5 T. R. 283.*

Cur. adv. vult.

LAWRIE, A.C.J.—I am content to give the certificate asked for.

MONCREIFF, J.—I am of the same opinion.

In this action the plaintiff asked for a great many things, and many issues were framed by the District Judge. A good deal

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turned upon the validity of the alleged marriage of the first defendant to the deceased Sinno Appu, the legitimacy of her children by him, and the validity of certain donations made by him. The District Judge dealt first with those matters, and judgment on appeal was given on the 26th January, 1897.

Thereafter the District Judge dealt with other matters arising in the case, and his judgment upon them was affirmed by the Supreme Court on the 10th May, 1900. The defendants entered their petition of appeal on the 10th July, and in my opinion they were in time.

The question is whether the action came to an end in 1897, with the result that what has been going on since then is the mere formal execution of what was then decided, or whether the judgment of the 10th May, 1900, is not a final judgment, having the effect of a final sentence.

A final judgment has been variously interpreted. By some it is said to be a judgment by which the whole of the contest in the suit has been destroyed; by others, one which determines the rights of the parties; and again, other judges have defined it to be a judgment in which no further steps are necessary to perfect the judgment. There seems to be some kind of obscurity about the *dicta* on the subject. In the case of the *Standard Discount Co. v. Lagrange, 3 C. P. D. 67*, the Court of Appeal (Bramwell, Brett, and Cotton, L. J. J.) held that, where a Master of the Court (whose decision was affirmed on appeal) empowered the plaintiff to sign judgment under order 14, it was not a final judgment, because, in order to issue execution, a further order would be necessary. There was a case also in the Privy Council (*Hubibbhoy v. Turner, L. R. 18 Ind. App. 6*) in which the action was for the taking of several accounts. The Court held that some of those accounts should be taken, and others not, and the Privy Council was of opinion that that judgment was final, because the taking of the accounts was a mere arithmetical calculation.

The principle which I should deduce from the case is, that where the act which remains to be done is purely ministerial or arithmetical, the suit is at an end. In this case the judgment of January, 1897, disposed of issues 8, 9, and 10, and the judgment of May, 1900, disposed of five other issues, one of them involving a declaration that the plaintiff was sole heir, and the others involving contentious matters which ultimately necessitated an appeal to this Court. I cannot say that these were purely ministerial proceedings, or mere matters of accounting, and I think the suit was alive until they were determined.

In my opinion the certificate prayed for should be issued.