

(1865) 06 CAL CK 0004

Calcutta High Court

Case No: None

Rajkristo Roy

APPELLANT

Vs

Dinobundo Surma

RESPONDENT

Date of Decision: June 14, 1865

Judgement

Sir Barnes Peacock, Kt., C.J.

We think that the Judge of the Small Cause Court was right in this case; and we agree in opinion with the learned Judges who referred the question to a Full Bench. The case ⁽¹⁾, which they cite and assume to be opposed to their view, relates to the time for preferring an appeal and does not conflict with this decision. By s. 333 of Act VIII of 1859, appeals are to be presented within the period prescribed, unless the appellant shall show, to the satisfaction of the Appellate Court, sufficient cause for not having presented it within the limited period. But the Limitation Act contains no words to a like effect. The period is fixed by the Act, and no discretion is given to the Courts to extend the time. The case will be sent back to the Divisional Court with an expression of our opinion.

⁽¹⁾ Before Mr. Justice Loch and Mr. Justice Seton-Karr.

The 24th April, 1865.

Gobind Chunder Bhattacharjee (Defendant) v. Sree Nath Mookeree (Plaintiff).*

This case was sent up by the Deputy Registrar with a note to the following effect:--

The time (90 days) for preferring this special appeal expired yesterday (Sunday), and the appellant has appeared today in person to present it.

The law, Regulation VII of 1832, section 2, clause 4, which prescribes that "when the periods for preferring appeals expire during the adjournment of the Court on account of any holiday or vacation, no default shall attach to the appellant, provided the appeal be presented immediately on the re-opening of the Court," has been

repealed by Act X of 1861, and by consequence also, the rule laid down on the appeal of Koon Koon Sing Summary Reports, Ed. of 1853, page 75 to the effect that the last day allowed for the appeal falling on a Sunday, the appeal is admissible on the following day, has been rendered null.

There is, therefore, now, no law or rule countenancing the practice of admitting an appeal, when the time for preferring it has expired on a holiday, on the day following; while the principle laid down at page 158 of Macpherson on Mortgage (pages 182 of the 2nd edition), founded on a decision of the North-Western Court, viz., "the fact of the twelve years having expired during the Dusserah vacation, is no ground for admitting the suit on the first Court-day after the vacation" is against the practice.

May I beg, therefore, the orders of the Court on the point, whether, under the circumstances, appeals can any longer be entertained, when the time for preferring them has fallen on a day on which the Court may have adjourned on account of a holiday or vacation, on the first Court day.

The order thereupon was as follows:--

We think the petitioner is entitled to have an extra day, when the last day on which he can file an appeal falls on a Sunday or other close holiday. Admit the appeal.

* Petition of Special Appeal, from a decree of the 2nd Principal Sudder Ameen of 24-Pergunnas, dated the 14th January 1865, affirming a decree of the Moonsiff of that district, dated the 14th September 1864.