

(1867) 12 CAL CK 0004

Calcutta High Court

Case No: None

Tamvaoo

APPELLANT

Vs

Skinner

RESPONDENT

Date of Decision: Dec. 7, 1867

Judgement

Macpherson, J.

In my opinion, the petition not having been presented within the six months, the appeal cannot be allowed. The Rule ⁽¹⁾ of the Privy Council upon the subject (the first of the Rules of the 10th of April 1838) is imperative, and leaves this Court no discretion in the matter. It says expressly that no appeal shall be allowed, "unless," the petition for this purpose be presented within six calendar months." It is argued by Mr. Woodroffe that the petition was presented in due time, because the Court was closed when the six months expired, and the petition was presented on the day in which the Court reopened. The Court was, no doubt in one sense closed during the holidays; but one Judge was at all times available for the transaction of any business of a pressing nature, and as I was myself the Vacation Judge, I know as a fact that there would have been no difficulty whatever (as far as the Court was concerned) in the way of presenting this petition, had the appellant chosen to do so within the proper time.

2. Reference was also made to the discretion exercised by this Court as regards the admission of appeals to it. But that is no argument in favour of the appellant's contention. However, in the first place, Section 333 of Act VIII of 1859 is in its terms only directory, not prohibitory, merely directing that appeal "shall be presented" within the prescribed number of days, and because the section expressly gives the Court a discretion, if "the appellant shall show sufficient cause to the satisfaction of the Appellate Court for not having presented" the memorandum of appeal within the limited time. The provisions of that section are wholly unlike those of the Privy Council Rule. Mr. Woodroffe's application is refused with costs, and the petition of appeal, which has been presented, must be taken off the file. I have Mr. Justice Markby's authority to say that, on further consideration of the question, he agrees

in thinking that the appeal ought not to be allowed.

(1) "That from and after the 31st day of December next, no appeal to Her Majesty, Her Heirs, and Successors in Council, shall be allowed by any of Her Majesty's Supreme Courts of Judicature, at Fort William in Bengal, Fort St. George, Bombay, or the Court of Prince of Wales' Island, Singapore and Malacca, or by any of the Courts of Sudder Dewany Adawlut, or by any other Courts of Judicature in the territories under the Government of the East India Company. unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment, decree, or decretal order complained of."