

Holding this view of the case, I would reply that the Judges at the hearing of the appeal are at liberty to question its admission by a single Judge.

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OLDFIELD, J.—S. 5, Act IX. of 1871, gives the Court a discretion to admit an appeal after expiration of the period of limitation prescribed for it, when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal within such period. The Judge of this Court sitting for receiving applications and admitting appeals exercises a discretion under this section, but subject to the provisions of s. 4.

Illustration *b.* of s. 4, which applies generally to appeals after they have been admitted and registered, is to this effect:—“An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.” This is a general direction for the dismissal of appeals under certain circumstances, notwithstanding their previous admission and without reference to the authority admitting them, and will, in my opinion, apply to appeals admitted by a Judge of the Court under the discretion given him by s. 5, and this power of subsequent dismissal, I apprehend, is intended to be exercised by the Court sitting for the hearing of the appeal, and that Court having both parties before it (which the Judge admitting the appeal had not), is bound to determine whether the appeal should not be dismissed, sufficient cause not being shown why it should be entertained after the period prescribed by limitation.

BEFORE A FULL BENCH.

1875.
August 23.

(*Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

QUEEN v. NAIADA.

Act XLV. of 1860, ss. 59, 377—Punishment—Transportation in lieu of Imprisonment.

When an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.

* Appeal from a conviction by the Sessions Judge of Moradabad, dated the 26th April, 1875.

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THE Sessions Judge of Moradabad convicted Naiada of the offence described in s. 377 of the Indian Penal Code, and in consideration of the offender's youth passed a sentence on him of 14 years' imprisonment in transportation, instead of transportation for life. The Sessions Judge followed a case in which the High Court passed a like sentence for a like reason. The legality of the sentence appearing doubtful to Oldfield J., before whom an appeal against the conviction and sentence came on for hearing, the learned Judge referred the question to the Full Bench, with the following remarks:—

OLDFIELD, J.—There is some doubt whether a sentence of ten years transportation is not the maximum which can be passed for the offence. The punishment for the offence is transportation for life or imprisonment of either description for a term which may extend to ten years. The Code does not specifically provide transportation for any term shorter than life. S. 59, however, provides that “in every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.” It may be said that this section refers to offences where imprisonment is the sole punishment, and that the words “transportation for life,” where they occur as denoting a punishment, will include transportation for a term of years. But on the other hand the terms of s. 59 seem to refer to all cases, whether transportation for life be an alternative punishment or not, for the words of the section are “in every case in which an offender is punishable with imprisonment *etc.*,” and the words “transportation for life”, as used in s. 377, seem not to allow the option of transporting for a shorter term, for had that been the intention, the words would have run “shall be punished with transportation for a term which may extend for life,” just as in the latter part of the section the words are “or with imprisonment of either description for a term which may extend to ten years.”

I would draw attention to the note to s. 59 in Mayne's Commentary on the Penal Code, and the remarks at page 34 in Morgan and Macpherson's Penal Code.

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The question is of some importance, now that the Government of India, by its resolution dated the 17th of November, 1874, has rescinded the orders by which only life convicts were to be transported to the Andamans, and the Courts are likely to exercise more frequently their powers of sentencing to transportation for a term of years.

The opinion of the Full Bench was as follows :—

When the Indian Penal Code was originally drawn, it was in the contemplation of the framers of the measure that no sentence of transportation should be passed for a less period than life, and the Bill was so prepared. When the Bill was before the Council, s. 59 was introduced, which enacts that in every case in which an offender is punishable with imprisonment for a term of seven years or upwards, the Court may, in lieu of awarding a sentence of imprisonment, sentence the offender to transportation for a term no less than seven years, and not exceeding the term for which by the Code such offender is liable to imprisonment. No alteration appears to have been made in the language of the several sections which proscribed transportation as a punishment. Thus, in the majority of instances, the words used are as follows :—“ shall be punished “ with transportation for life or with imprisonment which *may* extend, &c.” While the Court has an option in determining the duration of the term of imprisonment, it has no option in determining the duration of the term of transportation. By s. 302 an offender convicted of murder shall be punished with death or transportation for life. By s. 307 an offender convicted of an attempt to murder shall, if hurt be caused, be *liable* to transportation for life, or to imprisonment for a term which may extend to ten years. By s. 389 an offender convicted of extortion under certain circumstances *may* be punished with transportation for life. By s. 75, on a second conviction of certain offences, an offender “ shall be subject to transportation for life or to double the amount of punishment for which he would otherwise be liable.” In no section of the Code which prescribes transportation as a punishment, with the exception of s. 59, is the language used such as to leave the Court any option regarding the duration of the term. It follows that a sentence of transportation for a period less

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than life can only be passed under the provisions of s. 59, and consequently that when an offence is punishable, either with transportation for life or imprisonment which may extend to ten years, if a sentence of transportation for a term less than life is awarded, the term cannot exceed ten years.

BEFORE A FULL BENCH.

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August 23.

(Before Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.)

MUSAMMAT GANGA JATI (DEFENDANT) v. GHASITA (PLAINTIFF).
Hindu Law—Stridhan—Inheritance—Unchastity.

Per TURNER, OFFG. C. J. and OLDFIELD, J.—Unchastity in a woman does not incapacitate her from inheriting *stridhan*.

Per PEARSON and SPANKIE, JJ.—Unchastity in a woman does not preclude her from keeping possession by right of inheritance of *stridhan*.

GHASITA, plaintiff, on behalf of his minor son, Mithai Lal, sued Musammât Ganga Jati, his wife, to obtain possession from her of two houses left by Musammât Radha, her maternal grandmother. It appeared that the defendant's mother died in the lifetime of her grandmother, and that the plaintiff and his wife lived with her grandmother until his wife left her home with a paramour, when the plaintiff went to his own home, taking his son with him. The defendant once sued her husband for maintenance, but the suit was dismissed on the ground that she was leading a life of profligacy. Subsequently to this her grandmother died, and the defendant took possession of the houses in suit. The plaintiff obtained a certificate of guardianship to Mithai Lal, although the defendant claimed the right to be his guardian, and it was again recorded that the defendant was a woman of bad character.

The defendant pleaded that the suit to dispossess her was not maintainable, as Mithai Lal was not an heir, according to Hindu

* Special Appeal, No. 225 of 1875, from a decree of the Judge of Mirzapur, dated the 25th January, 1875, reversing a decree of the Munsif, dated the 22nd August, 1874.