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passed. The judgment in the case of *Reg.* v. *Tukaya bin Tamana* (1) has a bearing on this point.

I am of opinion that the sentences in this case were legal, and that these appeals should be dismissed.

BRODHURST, J.—The facts and the law applicable to the case have been fully stated by the learned Chief Justice, and I have, on previous occasions, expressed my own views on the legal points that have again arisen. Under these circumstances, it is, I think, sufficient for me to observe that the convictions are supported by the evidence for the prosecution; that the sentences that have been passed are, in my opinion, undoubtedly legal; that I see no sufficient reason for interference either with the convictions or the sentences, and that I therefore concur in dismissing the appeals.

Appeals dismissed.

APPELLATE CIVIL.

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May 20.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight and Mr. Justice Brodhurst.

HUSAINI BEGAM (PLAINTIFF) *v.* THE COLLECTOR OF MUZAFFARNAGAR AND OTHERS (DEFENDANTS). *

Limitation—Appeal—Admission after time—Act XV of 1877 *(Limitation Act), s.* 5—"*Sufficient cause*"—*Poverty—Pardah-nashin—Letters Patent, N. W. P., s.* 10—"*Judgment*"

On the 14th February, 1881, the High Court dismissed an application of the 22nd March, 1883, by a *pardah-nashin* lady, for leave to appeal *in formâ pauperis* from a decree dated the 16th September, 1882, the application, after giving credit for 86 days spent in obtaining the necessary papers, being out of time by 73 days. On the 16th August, 1884, an order was passed allowing an application which had been made for review of the previous order to stand over, pending the decision of a connected case. On the 24th April, 1885, the connected case having then been decided, the application for review was heard and dismissed. Nothing more was done by the appellant until the 18th June, 1885, when, on her application, an order was passed by a single Judge allowing her, under s. 5 of the Limitation Act (XV of 1887) to file an appeal on full stamp paper, and she thereupon, having borrowed money on onerous conditions to defray the necessary institution fees, presented her appeal, which was admitted provisionally by a single Judge.

* Appeal No. 3 of 1886 under s. 10 of the Letters Patent.

(1) I. L. R., 1 Bom, 214.

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Held, affirming the judgment of Mahmood, J., (1) that the poverty of the appellant, and the fact that she was a *purdah-nashin* lady, did not constitute "sufficient cause" for an extension of the limitation period within the meaning of s. 5 of the Limitation Act, and that such extension ought not to be granted. *Moshaullah* v. *Ahmedullah* (2) and *Collins* v. *The Vestry of Paddington* (3) referred to.

Where the Judges of a Division Bench hearing an appeal differed in opinion, one of them holding that the appeal should be dismissed as barred by limitation, and the other that sufficient cause for an extension of time had been shown, and that the appeal should be determined on the merits,—*held* that the "judgment" of the latter Judge came within the meaning of that term as used in s. 10 of the Letters Patent, and that, as the result of the difference of opinion was that the appeal to the Division Bench stood dismissed, an appeal under s. 10 was not premature.

THIS was an appeal under s. 10 of the Letters Patent from a judgment of Mahmood, J., in which his Lordship differed in opinion from Tyrrell, J., Mahmood, J., holding that the appeal before the Division Bench should be dismissed as barred by limitation, and Tyrrell, J., that "sufficient cause" for an extension of time had been shown by the appellant within the meaning of s. 5 of the Limitation Act (XV of 1877), and that the appeal should be heard and determined on the merits. The judgments of Tyrrell and Mahmood, JJ., in which the facts of the case were stated, will be found reported at p. 11, *ante*.

Mr. G. E. A. Ross, for the respondent (the Collector of Muzaffarnagar, representing the Court of Wards), took a preliminary objection to the hearing of the appeal, to the effect that the appeal was premature. The only question before the Division Bench was whether, the appeal to that Bench being admittedly out of time, an extension of time should be allowed. Tyrrell, J., had given no "judgment" on the appeal within the meaning of s. 10 of the Letters Patent, but merely a kind of interlocutory order, to the effect that sufficient cause had been shown for the hearing of the appeal. If the Division Bench had proceeded to deal with the appeal, *non constat* but that Tyrrell, J., might have concurred with Mahmood, J., in dismissing it, and in such a case no further appeal would have been possible. If the Judges of the Division Bench had chosen to do so, they might have referred the case to the rest of the Court under s. 575 of the Civil Procedure Code, and no objection could

(1) *Ante* p. 11. (2) I. L. R. 13 Calc. 78.
(3) L. R., 5 Q. B. D. 368; 49 L. J., N. S., (C. L.) 612.

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then have been raised. But under the circumstances the case should go back to the Division Bench, and if, after a hearing on the merits, the learned Judges should record dissentient judgments, an appeal under the provisions of the Letters Patent would then lie.

THE COURT overruled the preliminary objection, holding that the "judgment" of Tyrrell, J., came within the meaning of that term as used in s. 10 of the Letters Patent. The result of the difference of opinion in the Division Bench was that the appeal to that Bench stood dismissed, and consequently the present appeal was not premature, and must be heard.

Pandit *Sundar Lal*, for the appellant.—Tyrrell, J., was right in applying s. 5 of the Limitation Act to this case. That section was enacted to enable the Court to do justice; and the expression "sufficient cause for not presenting the appeal" should be held to include any cause, beyond the appellant's control, which has prevented the appeal from being presented. Extreme poverty, like extreme illness, is such a cause.

[EDGE, C. J.—Such a construction would enable the period of limitation to be extended for fifty years, if the appellant's poverty lasted the whole of that time. Why should the successful litigant be kept indefinitely in a state of uncertainty, and prevented from dealing freely with the subject-matter to which the first Court has declared him entitled?

STRAIGHT, J., referred to *Collins* v. *The Vestry of Paddington* (1)].

It is not contended that the plea of poverty should in all cases be a sufficient reason for extending the time indefinitely. The plea must be examined with reference to the particular circumstances of each case. It is only thus that it can be determined whether any, and if so what, extension should be granted. Here there are special circumstances: the appellant was unable to furnish the necessary court-fees, and she is a *pardah-nashin* lady.

[EDGE, C. J.—The law provides a special procedure for the relief of pauper appellants. Art. 169 of the second schedule of the Limitation Act fixes thirty days as the period within which leave

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to appeal as a pauper may be applied for. The view you contend for would make that provision useless.]

In *Fatima Begam* v. *Hansi* (1), it was held that an order admitting an appeal under s. 5 of the Limitation Act ought not to be set aside, unless the Judge had clearly acted on insufficient grounds or improperly exercised his discretion.

[EDGE, C. J.—In that case the cause of the delay was that the appellant was *bonâ fide* pursuing a wrong remedy. Here you were pursuing a remedy which was barred by time.]

Mr. *G. E. A. Ross*, for the respondent, was not called upon to reply.

EDGE, C. J., (STRAIGHT and BRODHURST, JJ. concurring).—This is an appeal under s. 10 of the Letters Patent. On the 16th September, 1882, the plaintiff's suit was dismissed by the Subordinate Judge of Saháranpur. It appears that for eighty-six days the plaintiff was unable to obtain the papers necessary for filing her appeal. However, having obtained the papers, she, on the 22nd March, 1883, filed a memorandum of appeal with a prayer to allow her to proceed *in formâ pauperis*. The time limited, giving credit for the eighty-six days spent in obtaining the necessary papers for proceeding *in formâ pauperis*, had expired seventy-three days before the 22nd March, 1883. The result of the appeal *in formâ pauperis* was that, on the 14th February, 1884, her application was rejected, the Court deciding that it was barred by limitation. On the 10th May, 1884, the appellant filed an application for review. That application was rejected on the 24th April, 1885. Nothing was done by the appellant until the 18th June of the same year, when, on her application, the late Chief Justice gave her leave to file an appeal on full stamped paper and extended the time for filing it. That is a form of order which, when made by a Judge of this Court, has never been treated as precluding the Bench before whom the matter may come from considering the propriety of the order so far as the question of limitation may be concerned. I say this from my short experience, and with the concurrence of my brothers Straight and Brodhurst, who have had long experience in this Court. On the 17th July, 1885, the appeal was filed; the case came on to be

(1) *Ante*, p. 244.

heard before Tyrrell and Mahmood, JJ., when the point was raised as to the appeal being time-barred. Tyrrell, J., considered that the appellant should be allowed to proceed with her appeal, thinking that the case was one of some hardship on account of the poverty of the appellant and the fact of her being a *pardah-nashin* lady. Mahmood, J., on the other hand, considered that no case was made out for extending the time under s. 5 of the Limitation Act, and the Judges having thus differed in their judgments, the appeal stood dismissed. I have already said that the appeal *in formâ pauperis*, after making allowance for 86 days, was 73 days out of time. Making the same allowance of 86 days, the appeal on a full stamped paper, if it had been filed on the 22nd March, 1883, would have been 13 days out of time. The appellant for 55 days, between the 24th April, 1885 and the 18th June, 1885, did nothing; that is a period we cannot overlook. It is contended by Pandit *Sundar Lal*, that the fact that the appellant had not the means to appeal on full stamped paper brings the case within s. 5 of the Limitation Act. We have asked him, if that be so, what period of limitation a Court in its discretion should apply to the case of a would-be appellant who was a pauper. We have received no satisfactory suggestion from him. The framers of the Limitation Act have not overlooked the fact that a would-be appellant may be a pauper. It is enacted that an appeal *in formâ pauperis* must be brought within 30 days. If we were to listen to this contention of the learned Pandit, we would be holding that the Limitation Act did not apply to cases of would-be appellant paupers. We agree with the judgment of Mahmood, J., in which he refers to *Moshaullah* v. *Ahmedullah* (1). The principle upon which Courts should grant indulgence, at any rate as far as England is concerned, in cases which have not been brought in time, is discussed in the judgments of the majority of the Court of Appeal in *Collins* v. *The Vestry of Paddington* (2). This appeal is dismissed. Separate sets of costs are allowed to the respondents, who are separately represented here, in proportion to their interests in the subject-matter of this suit.

Appeal dismissed.

(1) I. L. R., 13 Calc. 78. (2) L. R., 5 Q. B. D. 368; 49 L. J., N. S., (C. L.) 612.