

suit under s. 158 of the Civil Procedure Code. So we understand the argument. The application of the 3rd of November 1887 was struck off because the Court thought it was long enough on the file. It did this although *talbana* had been paid." It is clear that that was not a case falling under s. 158 of the Code of Civil Procedure, and that it does not in any way clash with the views which have been enunciated to-day in the appeal before us.

BLAIR, J., I concur.

*Appeal decreed.*

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.*

RAGHUNATH SINGH (PETITIONER) v. RAGHUBIR SAHAI (OPPOSITE PARTY).\*

1892  
November 2.

*Application for restoration of an appeal dismissed for default—Vakalatnama.*

Where a vakil had been duly empowered by a *vakalatnama* drawn in the customary form to file and conduct an appeal in the High Court, and that appeal had been dismissed for default:—*Held* that such vakil was competent without filing a fresh *vakalatnama* to present an application for the restoration of the said appeal to the list of pending appeals.

This was an application to restore to the list of pending appeals a Second Appeal (No. 709 of 1891) filed by the petitioner which had been dismissed for default by an order of Straight, J., on the 24th of March 1892. The circumstances under which the said appeal was dismissed appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri* and Babu *Durga Charan Banerji*, for the applicant.

Babu *Rajendro Nath Mukerji*, for the opposite party.

EDGE, C. J. and TYRRELL, J.—This is an application to set aside a decree passed in default of appearance dismissing an appeal. We are satisfied that the non-appearance of the vakil to represent the appellant at the hearing was caused by the accidental omission of the vakil's name from the printed cause-list. The gentleman in question in our experience invariably attends to his clients' cases and follows the practice of the Court with regularity. We consider that this is a case in which the decree should be set aside and the appeal

\* Miscellaneous application in Second Appeal No. 709 of 1891.

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reinstated. There is, however, a further objection raised, namely, that no special *vakalatnama* has been filed authorizing the vakils, or either of them, especially to make this application, and it has been contended that the *vakalatnama* which authorized these vakils to file the appeal and to conduct the proceedings in it, and which was rightly filed, lapsed and determined the moment the decree dismissing the appeal was passed. That contention cannot in our opinion be supported. Under the *vakalatnama* authorizing the vakils to conduct the proceedings in the appeal they were authorized to conduct proceedings in execution subsequent to decree, whether those proceedings in execution were by or against their clients. It is also manifest that if we set aside the decree of dismissal and reinstate the appeal it will not be a fresh appeal, but will be an appeal to which the *vakalatnama* already filed applies, and it would seem strange if under these circumstances it were necessary to file a special *vakalatnama* for the simple purpose of enabling the appellant to have, not a new appeal entered, but his original appeal reinstated and proceeded with. In our opinion no fresh *vakalatnama* was necessary. We accordingly set aside the decree of dismissal and reinstate the appeal on the list of pending appeals in this Court. We make no order as to costs.

Before Mr. Justice Knox and Mr. Justice Blair.

BISHAMBAR NATH (PLAINTIFF) vs. NAND KISHORE AND OTHERS  
(DEFENDANTS). \*

*Acknowledgment of debt—Stamp—Act I of 1879, sch. I, art. I—Act XV of 1877, s. 19.*

The question whether or not an allusion to a debt contained in a letter from a debtor to his creditor amounts to an acknowledgment of the debt within the meaning of Art. I, sch. I, of the Indian Stamp Act, 1879, is a question in each case of the intention of the writer. Hence, were such a letter, written *ante litem motam*, before limitation in respect of the debt had expired, and at a time when other evidence of the debt was subsisting, was tendered in evidence as an acknowledgment of the debt for the purpose of saving limitation under the provisions of s. 19 of the Indian Limitation

\* Second appeal No. 444 of 1890 from a decree of Pandit Rai Indar Narain, Additional Subordinate Judge of Aligarh, dated the 6th January 1890, confirming a decree of Maalyi Syed Amjad-ullah, Munsif of Haveli, dated the 21st June 1889.