

## APPELLATE CIVIL.

Before Dawson Miller, C. J. and Bucknill, J.

AMIR MANDAL

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c.

MOHAN CHANDRA MANDAL.\*

February, 9.

*Appeal—order for payment of court-fee within a month or appeal to stand dismissed—expiry of the month during vacation—cost of stamp tendered on re-opening—stamp supplied on following day—appeal re-instated.*

An appellant was ordered by the High Court to deposit the court-fee payable on his memorandum of appeal within a month and the order provided that if the court-fee was not paid within a month the appeal would stand dismissed. The time expired during the vacation and on the re-opening day the appellant tendered the cost of the stamp required to the stamp vendor. The latter had no stamp of the value required but he supplied one on the following morning and it was tendered by the appellant. *Held*, that there having been no negligence or laches on the part of the appellant there was sufficient cause for re-instating the appeal and for extending the date fixed for payment of the court-fee up to the date when the stamp was provided by the stamp vendor.

The facts of the case material to this report are stated in the Order of the Court.

*Tribhuan Nath Sahay and Anand Prasad*, for the appellant.

*Purnendu Narayan Sinha and Nitai Chandra Ghose*, for the respondents.

DAWSON MILLER, C. J. AND BUCKNILL, J.—In this case an order was made on the 28th November to deposit the court-fee within a month and the order provided that if the fee was not paid within a month the appeal would stand dismissed. The time expired during the Christmas vacation and on the first day of term, *viz.*, the 3rd January, the appellants applied to the stamp vendor and tendered the money for a stamp of Rs. 90 which was the stamp necessary to be filed. That was at about 10-30 in the morning. The stamp

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vendor had no court-fee stamp of that value but promised to supply one by 3-30 P.M. on the same day. The money was thereupon deposited with the stamp vendor on his assurance that the stamp would be supplied by 3-30 P.M. When the clerk went again at 3-30 P.M. to obtain the stamp he found that the stamp vendor was not there and that he had not returned from the Treasury. The learned Vakil for the appellant waited for the stamp vendor in the High Court until 4-30 P.M. but as he did not turn up he was unable to get the stamp in time but he did obtain it on the following day and it was then tendered. The question now arises whether in face of the order made on the 28th November we can accept the stamp as that order stated that the appeal would stand dismissed if the stamp was not filed within a month. It is quite clear from what I have stated that there was no negligence or laches on the part of the appellants and so far as they are concerned they did their best to comply with the order. It is said that they ought to have applied for the stamp earlier but having regard to the fact that they would have had to apply sometime before the vacation, as the stamp vendor is not available during the vacation, we do not think that there was any laches on their part. It is not disputed that in the ordinary course there is no difficulty in obtaining stamps of the value of Rs. 90 as soon as they are applied for. The only question is whether in the particular circumstances of this case we can reopen the order which was made on the 28th November. We think sufficient cause has been shown even if an application were made before us for reinstating the appeal. The learned Vakil for the respondent is present and we have heard what he has to say about it and as we would have power to reinstate the appeal in spite of the order of the 28th November, we think we ought to hold that the time be extended up to the 4th January when the stamp was actually filed. The appeal will proceed in the ordinary course. The stamp has been returned to the learned Vakil for the appellant. Let it be deposited again to-day.