1870

IN THE MATTER OF THE PETITION OF RANI UMASUNDARI DEBI.

Court, as one had fallen ill, and the other was detained to watch him; and if so, then to hear the evidence as to her pauperism, and decide the matter.

Upon hearing the petition, BAYLEY and KEMP, JJ., granted her a rule *nisi* calling upon the opposite party to show cause why the Subordinate Judge should not be directed to enquire as to whether there were good and sufficient grounds for the delay alleged by the petitioner, and, if satisfied, why he should not examine the witnesses as prayed for.

Baboos *Annada Prasad Banerjee*, *Anukul Chandra Mookerjee* and *Purna Chandra Shome* now showed cause. They contended that the petitioner had had ample time to produce her evidence, but had neglected to do so.

Baboos *Tarrak Nath Sen* and *Gupi Nath Mookerjee* for the petitioner.

The judgment of the Court was delivered by

BAYLEY, J.—We think this rule must be made absolute. The Subordinate Judge is wrong to have held, as the only reason for his refusing jurisdiction, that, after a careful study of Chapter V of the Civil Procedure Code, he considers himself debarred from allowing the re-hearing of a pauper application. It is quite within the discretion of the Subordinate Judge to allow the pauper application or not. But before granting the application in this case the Subordinate Judge must carefully see whether, under the circumstances of this case, there was good and sufficient cause for the delay, that is to say, whether it was owing to circumstances beyond the lady's control that the delay occurred; and that on knowing the cause of the delay she immediately took measures to inform the Court and prosecute the case in its proper light. Without proof of this the petition should not be granted.

Before Mr. Justice Loch and Justice Sir C. P. Hobhouse, Bart.

1870
May 11.

EMAUDDIN KHAN (DEFENDANT) *v.* RAMKISSORE KOWAR (PLAINTIFF).*

Valuation of Suit—Appeal.

When a suit has been admitted upon a certain stamp, tried, and decreed for the plaintiff, "under valuation" is no ground for dismissing the defendant's appeal.

THIS was a suit to recover possession of certain land before the Moonsiff of Sarun. The defendant pleaded, *inter alia*, that the suit had been instituted on an insufficient stamp.

The Moonsiff, however, said "It does not appear that the institution of this "suit has caused any loss to Government in respect of the stamp duties;"

* Special Appeal, No. 3025 of 1869, from a decree of the Subordinate Judge of Sarun, dated the 28th September 1869, affirming a decree of the Moonsiff of that district, dated the 25th February 1869.

1870

EMAUDDIN KHAN *v.* RAMKRISSORE KOWAR.

and went on to try the case on the merits. He gave a decree for the plaintiff. The defendant appealed to the Judge who, on the 28th September 1869, passed the following judgment:

"Before this, on the grounds mentioned in a proceeding of the 9th "instant an order was passed to the effect that appellant should make up "the deficiency of the stamp duties of the petition of appeal in proportion to "the amount under claim, rupees 666, up to the 25th idem; and that then "the appeal should be tried. But as he has not complied with that order "up to this date, the petition of appeal is rejected; and it is, accordingly, "ordered that the appeal be dismissed with costs; and that the respondent's "costs with interest up to date of realization, be borne by the appellant."

The defendant appealed specially to the High Court

Baboo *Bama Charan Banerjee* for the appellant.

Baboo *Debender Narayan Bose* for the respondent.

HOBHOUSE, J.—The Judge is quite wrong in this case. If the plaint was under valued, objection should have been taken in the first instance, and then the Court could have proceeded on the matter of under valuation in the mode prescribed by law. But the plaintiff was allowed to put in his suit on a certain valuation, the suit was determined by the first Court on that valuation, and it is not until the defendant comes up in appeal that the Court curiously enough rules that the defendants must suffer for the laches committed by the plaintiff. It is quite clear that the Court was wrong in rejecting the defendant's appeal on the ground of under valuation, and we direct that his judgment and his decree be set aside, and the case be remanded to be tried on the merits.

The costs to follow the final result of the case.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Phear.

BHINJI GOVINDJI *v.* MONOHAR DAS,

Pledge—Possession—Seizure—Interpleader Suit—Costs.

1870
June 22.

A. obtained a decree in the Small Cause Court against B. In execution of the decree, goods belonging to B., but in the possession of a pledgee, were seized by a bailiff of the Small Cause Court. The pledgee brought an interpleader suit under section 88 of Act IX of 1850 to recover the goods. *Held*, the pledgee was entitled to have the goods released to him, and have the costs of his suit paid by the execution-creditor.

THIS was a case referred for the opinion of the High Court by the first Judge of the Calcutta Court of Small Causes, under section 7 of Act XXVI of 1864. The case was referred at the request of the plaintiff, and was thus stated by the Judge referring it:—

"In this suit, which was an interpleader suit under section 88 of Act IX of 1850, the plaintiffs claimed as pledgees, to recover three bales, Nos. 869, 875,