

witnesses, named Thakur Das Roy, was attacked with cholera on the way to the Court at Ulubariah, and the other was necessarily detained to take care of the sick; that, in the mean time, the Subordinate Judge struck off the petitioner's application, on default, on the 18th; that the petitioner, on coming to know about the illness of the said witness and the detention of the other, sent instruction to her agent at Midnapore to file an application for re-hearing of the case, on the cause before assigned; that as the petitioner is a pauper, and as none of the lawyers take up her case warmly, on the 14th February last, a petition was made to the Subordinate Judge to re-hear the matter of the petitioner's pauperism; and that the Subordinate Judge refused to hear the petitioner's application, on the ground that, under Chapter V, Act VIII of 1859, he had no jurisdiction to entertain a petition for re-hearing on cause shewn or for entertaining a second application to sue *in forma pauperis*. The petitioner prayed the High Court to exercise the power given to it by Section 15 of the Charter Act (1), and to direct the Subordinate Judge to entertain the application as to whether the petitioner's witnesses had not been detained in the way to the 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.

Baboo Annada Prasad Sanerjee, 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.

Baboo Tarrak Nath Sen and Gopi 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.

B. L. R. Vol. V, p. 30.

(Appendix.)

The 11th May 1870.

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

EMAUDDIN KHAN (*Defendant*),

versus

RAMKISSORE KOWAR (*Plaintiff*).

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.

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;"

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 the 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 defendant 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.

B. L. R. Vol. V, p. 34.

(Appendix.)

The 6th June 1870.

Before Mr. Justice Norman.

ORD v. ORD.

Alimony, Permanent.

Principle on which the Court will grant permanent alimony.

THIS was an application for permanent alimony. Mr. Justice Phear had, upon an application for alimony *pendente lite*, estimated the respondent's income at rupees 600 per month, and ordered rupees 200 a month as alimony *pendente lite*. The wife had brought the suit against her husband for judicial separation on account of his adultery, and obtained an order for judicial separation. The affidavit put in, in support of the application, showed that the marriage took place in October 1860, the husband at the time being an assistant in the petitioner's late husband's business which he had left to his wife; that from his marriage up to the end of 1868, the profits of the business were estimated at rupees 2,000 per month, but after that time, they had decreased to about one half that amount; that from June 1867 to March 1869, the respondent did not afford the petitioner any adequate means of support; that in March 1869, she accordingly obtained an order from the Police Magistrate that her husband should pay her rupees 50 a month as maintenance; that he failed to pay this sum after the first three months, and had only made payment on her taking out a summons to compel him to do so; and that he was living in adultery at the time of the application. The income of the respondent at the time of the application was stated to be rupees 1,200 per month, and an advertisement in one of the daily papers was referred to in which the respondent stated that he wanted a partner in his business, and guaranteed him rupees 700 per month.

The respondent filed an affidavit in opposition to the application, in which he stated that the petitioner had left his protection, taking away with her property amounting to about rupees 4,000; that he had incurred liabilities in consequence of a suit by his wife with respect to property she alleged to be her separate property, but which suit