

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice Jackson, Mr. Justice Macpherson, and Mr. Justice Ainslie.

THE EMPRESS *v.* JYADULLA.*

1877

March 26.

Criminal Procedure Code (Act X of 1872), s. 272—Appeal—Acquittal—Limitation—Act IX of 1871, s. 5, cl. b, and Sched. II, art. 153—Act XI of 1874, s. 23.

An appeal by the Local Government under s. 272, Criminal Procedure Code, is within time if presented within six months from the date of acquittal. The sixty days rule does not apply.

THE following case was referred to the Full Bench by Macpherson and Birch, JJ. :—

In this case the Local Government has appealed (under s. 272, Criminal Procedure Code) from a judgment of acquittal.

The acquittal was on the 29th of August, 1876, and the appeal therefrom was not presented until the 6th of February, 1877, *i. e.*, after a lapse of about five months and seven days.

The Court (Markby and Mitter, JJ.) admitted the appeal “subject however to the consideration of the question whether the appeal has not been presented after the time allowed by law. . . . If the period of sixty days is the time allowed for an appeal by the Crown, as well as for an appeal by the prisoner, in that case we think the Crown ought to be held strictly to sixty days, because no ground has been shown to us for enlarging the time under s. 5, cl. *b*, of Act IX of 1871.”

We think the question is of so much importance that it ought to be set at rest at once by an authoritative decision of a Full Bench, especially as in a variety of cases in which the point was not raised, appeals by Government against acquittals, presented after sixty days, have been admitted without hesitation.

The question arises in the following manner :—

The Limitation Act, IX of 1871, Schedule II, art. 153, says, that the period of limitation for appeals to the High Court

* Criminal Motion, No. 27 of 1877.

under the Code of Criminal Procedure is sixty days, and that the date of the sentence or order appealed against is the time when the period of sixty days begins to run. By s. 6 of the same Act it is provided that, when by any law thereafter to be in force in British India, a period of limitation differing from that prescribed by the Limitation Act is specially prescribed for any appeals, nothing in Act IX of 1871 shall affect such law.

Thereafter, by Act X of 1872 (Criminal Procedure Code), s. 272, an appeal was given to the Local Government from a judgment of acquittal: and it was declared "the rules of limitation shall not apply to appeals presented under this section." By Act XI of 1874, s. 23, this clause is repealed, and for it is substituted the following clause:—"No appeal shall be presented under this section after six months from the date of the judgment complained of." So that as the law now stands, by s. 272 modified by s. 23 of Act XI of 1874, the Government may appeal from a judgment of acquittal, but no such appeal shall be presented after six months from the date of the judgment complained of.

On the one hand it is contended, that the ordinary sixty days limitation applies to appeals by Government from judgments of acquittal, and that the six months are mentioned in s. 23 of Act XI of 1874, not as giving a right of appeal at any time within six months, but as providing that such an appeal must, under all circumstances, be presented within six months, after which time no excuse whatever can be received under the Limitation Act, 1871, s. 5, clause *b*, as sufficient cause for not having appealed within the sixty days.

On the other hand it is contended, that Act IX of 1871 does not apply to these appeals at all, and that there is no limitation of the right of appeal save s. 23 of Act XI of 1874, which says the appeal must be presented within six months.

The question referred is, whether an appeal by the Local Government under s. 272 from a judgment of acquittal is within time if presented within six months from the date of the acquittal, although presented more than sixty days from that date.

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EMPIRESS
v.
JYADULLAThe *Advocate General*, offg. (Mr. Paul) for the Crown.

The following was the opinion of the Full Bench:—

GARTH, C. J.—We are of opinion that an appeal from an order of acquittal is within time if presented within six months from the date of the order of acquittal. The sixty days rule does not apply (1).

APPELLATE CIVIL.

Before Mr. Justice L. S. Jackson and Mr. Justice White.

1877
May 22.

BHEKNARAIN SINGH AND ANOTHEE (DEFENDANTS) v. JANUK
SINGH (PLAINTIFF).*

*Hindu Law—Mitakshara—Son's Interest in Ancestral Property—Mortgage
by Father during minority of Sons.*

A Hindu, subject to the Mitakshara law, and forming with his sons a joint Hindu family, mortgaged certain ancestral immoveable property during the minority of his sons. In a suit by the mortgagee against the father and sons to recover the mortgage debt “by sale of the mortgaged property, and out of other properties, as well as from the person” of the father,—*held*, that it was incumbent upon the plaintiff to show for what purpose the loan was contracted, and that that purpose was one which justified the father in charging, or which the plaintiff had at least good grounds for believing did justify the father in charging, the sons' interests in the ancestral immoveable property.

THE special appellants, who were two of the defendants in the Court below, sought relief against a decree passed by the Officiating Judge of Patna, under which their shares of the ancestral property were declared liable to be sold in satisfaction of a bond executed by their father, the first defendant, in favour of the respondent, who was the plaintiff in the Court below.

(1) *Ed. Note.* In “*Reg. v. Dorabji Balabhai*” (11 Bom. Rep., p. 117) it was held, that s. 272 of Act X of 1872 must be read by itself.

* Special Appeal, No. 836 of 1876, against a decree of E. Grey, Esq., Officiating Judge of Zillah Patna, dated the 17th of February, 1876, reversing a decree of Baboo Ram Persad, Second Subordinate Judge of that district, dated the 15th of January, 1875.