

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Macpherson and Mr. Justice Markby.

1877
March 16.

IN THE MATTER OF THE PETITION OF SOORJMUUKHI KOER (APPELLANT).*

Privy Council's Appeals Act (VI of 1874), s. 11.—Deposit of Costs of Appeal—Power to enlarge time.

The requirements of s. 11, Act VI of 1874, as to the deposit of costs, are not absolutely imperative. The Court has power in its discretion to modify them, and when the period for making the deposit expires on a day when the offices of the Court are closed, it is a reasonable exercise of that discretion to allow the deposit to be made on the day they re-open (1).

THE points involved in the following questions, relating to the construction of Act VI of 1874, having arisen in this and several other cases on appeal to the Privy Council, they were referred by Markby, J., for the consideration of the Court:—

1. Whether, when the last day for making the deposit under s. 11 of Act VI of 1874, falls at a time when the offices of the Court are closed, the deposit may be made on the day on which the offices re-open?

2. Whether the Court has any discretion to enlarge the time prescribed by s. 11 for making the deposit?

The reference came before the above Judges, and their opinion was delivered by

GARTH, C. J. (who, after reading the questions, continued):—
We consider that we may answer both these questions by saying that the requirements of s. 11 as to the deposit of costs are not absolutely imperative. Had they been so, this Court

* Reference by the Judge in charge of the Privy Council Department, in Privy Council Appeal No. 30 of 1876.

(1) See *In the matter of Lalla Gopee Chund*, I. L. R., 2 Calc., 128, and *In the matter of Fuenadro Deb Roykut v. Jogendro Deb*, 23 W. R., 220. See also *Thakoor Kapilnath Sahai v. The Government*, I. L. R., 1 Calc., 142.

would not have any power to modify them. But we think they are not so. There is no provision similar to that in s. 10 requiring the petition to be dismissed in case of default. We think, therefore, that the Court has some discretion, and that it would be in all cases a reasonable exercise of that discretion, if, when the period for making the deposit expires on a day when the offices of the Court are closed, the deposit were allowed to be made on the day that the offices re-open.

1877

IN THE MAT-
TER OF THE
PETITION OF
SOORJMUKEE
KOER.

APPELLATE CRIMINAL.

Before Mr. Justice Jackson and Mr. Justice McDonell.

THE EMPRESS OF INDIA *v.* JUDOONATH GANGOOLY.*

1877

July. 18.

Criminal Procedure Code (Act X of 1872), s. 272—Appeal—Officer appointed to prefer Appeal—Judgment of Acquittal—Conviction on Charge of Murder of Culpable Homicide not amounting to Murder—Acquittal.

On the trial by a jury of a person on a charge of murder, the jury found the accused not guilty of the offence of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court under s. 263 of the Criminal Procedure Code. The Local Government, thereupon, directed the Legal Remembrancer to appeal under s. 272 of the Code, and in pursuance of this direction an appeal was preferred by the Junior Government Pleader. *Held*, that the appeal was duly made. *Held* further, that a judgment passed by the Court of Session, following the verdict of a jury acquitting the prisoner, is a judgment of acquittal within the meaning of s. 272. *Held* also, that there being an acquittal on the charge of murder, the appeal lay.

THE prisoner, Judoonath Gangooly, was tried by a jury for the murder of one Dasee Raur. The jury acquitted him of the charge of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he remarked that he did not concur with the verdict, declined to submit the case to the High Court under s. 263 of the Criminal Procedure Code. He recorded two separate findings and sen-

* Criminal Appeal, No. 278 of 1876, against an order of J. O'Kinealy, Esq., the Sessions Judge of the 24-Pergunnahs, dated the 8th May, 1876.