

1867.
June 13.

Civil Petition.

Ex parte ALI'KHA'N U'MARKHA'N.

Death of Pleader—Dismissal of Appeal—Re-admission—Reg. II. of 1827, Sec. LIV., Cl. 2—Act VIII. of 1859, Sec. 347.

The time allowed by Sec. 347 of Act VIII. of 1859, within which to apply for the re-admission of an appeal dismissed for default of prosecution, should not, where the appellant's pleader has died without his hearing of it, be counted as commencing, until the appellant has an opportunity of coming in under the provision of Reg. II. of 1827, Sec. LIV., Cl. 2.

AN appeal made by the petitioner in the District Court of the Konkan at Tháná was dismissed for default on the 20th of October 1866.

The appellant's pleader had died on the 6th of September; but the appellant did not hear of it until after the appeal was dismissed. On the 29th of August the case had come back to the District Court by remand from the High Court.

After more than thirty days from the date of the dismissal, the petitioner applied to the District Judge to have the appeal re-admitted; but his application was refused.

The petitioner then (Jan. 14) applied to the High Court, and notice was ordered to be given to the opposite party.

PER CURIAM (COUCH, C.J., and NEWTON, J.):—Reg. II. of 1827, Sec. LIV., Cl. 2, provides that in case of the resignation, dismissal, or death of a pleader, proceedings in the suit shall be stayed for such time as the Court deems reasonable, to enable the party to transfer his power of attorney to another pleader.

The time allowed by Sec. 347 of Act VIII. of 1859, within which to apply for the re-admission of the appeal, should not be counted as commencing, until after the appellant had an opportunity of coming in under the provision of the Regulation.

The District Judge is, therefore, ordered to re-admit and hear the appeal.

Application granted.