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interest which the District Judge has relaxed in favour of the debtor, who did, as to interest, appeal to the District Court. The plaintiff did not appeal, although he was entitled to do so, and, if he had, he ought to have obtained a decree for the immediate payment of the whole debt; nor does he appear to have made any [101] cross objection on that point to the decree during the appeal of the defendant in the District Court. However, he has appealed to this Court on that ground as well as with respect to the District Judge's ruling as to interest, but the plaintiff has not stamped his memorandum of second appeal sufficiently to re-open the whole decree; and were we to permit him to do so, it could be only on the condition of paying the additional stamp duty. Rather than have this permission granted, the learned pleader for the defendant is satisfied that the Subordinate Judge's decree should be restored to its pristine state, and the learned pleader for the plaintiff has, with laudable moderation, assented to such an order. Under these circumstances, and on the above-mentioned consent of both sides, we reverse the decree of the District Judge, with costs of the appeal to him to be paid by the defendant, and restore the decree of the Subordinate Judge. The parties respectively should bear their own costs of this appeal.

Order accordingly.

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4 B. 101=4 Ind. Jur. 579.

APPELLATE CRIMINAL.

Before Mr. Justice Kemball and Mr. Justice F. D. Melvill.

EMPRESS v. MAHOMED YASHIN.
[8th September, 1879.]

Criminal Procedure Code (Act X of 1872), ss. 278, 280 and 285—Appeal—Revision.

An order under s. 278 of the Code of Criminal Procedure by the Appellate Court, rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against and without calling for the record and proceedings of the case, is a final order falling within the scope of s. 285, and is not subject to revision.

[Appl., 23 B. 50 (54); R., 19 B. 732 (734).]

THIS was an application for the revision of an order passed by the High Court rejecting the appeal of the accused, Mahomed Yashin.

The accused was tried by A. D. Pollen, LL.D., Joint Session Judge of Poona, at Sholapur, on charges of receiving gratification, [102] omitting to give information which he was legally bound to give, and omitting to apprehend an offender, under ss. 161, 176 and 221 of the Indian Penal Code respectively, and being convicted was sentenced to undergo rigorous imprisonment for two years and a half and to pay a fine of Rs. 100. On the 22nd of July 1879 he appealed to the High Court by his pleader, Rao Saheb Vasudev Jagganath; but the Court on the 31st of the same month, without calling for the proceedings, rejected his petition under s. 278 of the Code of Criminal Procedure. On the 27th September the accused presented a second petition, praying for the reversal of his conviction and sentence.

Gill and Rao Saheb *Vasudev Jagganath*, for the petitioner.—The Court's order was made without calling for the proceedings, and it was not one for rejection of the appeal. The finality provided for in s. 285 refers to orders passed under s. 280. No appeal can be heard, unless

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the Court at first decides to hear it under s. 279. This was not done in this case. All that the Court did, was to refuse to hear the appeal. This view is supported by *Reg.* v. *Mehtarji* (1), which is a decision on the corresponding section of the old Code of Criminal Procedure.

JUDGMENT.

The judgment of the Court was delivered by

KEMBALL, J.—The only question is whether it is competent to us to review our order of the 31st July rejecting the appeal. Mr. Gill admits that if this order had been a final one we should be debarred, by the provisions of s. 285 of Code of Criminal Procedure, from entertaining this application. He contends that that section refers only to s. 280, and that an order of rejection made by an Appellate Court under s. 278 is not a judgment, sentence, or order within the meaning of s. 285, on the ground that an appeal has really not been heard until the Court has decided to hear it and call for the papers; and our attention has been drawn to a remark made by Justice Gibbs in *Reg.* v. *Mehtarji*, in the seventh volume of the Bombay High Court Reports, as an authority for showing the existence of a practice of hearing an appellant, albeit his petition had been rejected **[103]** after perusal. But whatever may have been the practice under the old Code—and it is to be observed that there is material difference between s. 417 of the old Code and the corresponding s. 278 of the present one, the Appellate Court being now required to fix a time within which the appellant or his counsel may appear before an appeal can be rejected—the uniform practice of recent years, so far as we know, has been to regard an order of rejection made under s. 278 as final, and, therefore, not open to review. It is clearly an order made by an Appellate Court in appeal, and it seems immaterial whether such order is made before or after the papers are called for. The Code makes no exception, and we can see no reason for making one.

Without, therefore, considering its merits we must reject the application.

Order accordingly.

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4 B. 103=4 Ind. Jur. 580.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Pinhey.

NILKANTH (*Plaintiff*) *v.* DATTATRAYA (*Defendant*).*

[15th September, 1879.]

Limitation Act (XV of 1877), s. 25—Month—Year—Native date.

Where a bond bears a native date only, and is made payable after a certain time, that time, whether denoted by the month or the year, is to be computed according to the Gregorian [British] calendar; s. 25 of Act XV of 1877.

THIS was a reference under s. 617 of the Civil Procedure Code (Act X of 1877) by the Subordinate Judge of Satara through the District Judge.

The Subordinate Judge stated the case as follows:—

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* Special Appeal No. 32 of 1874.

(1) 7 B.H.C.R. Cr. Ca. 67.