

1914  
 DEBI  
 PRASAD  
 SAHI  
 v.  
 DHARAMJIT  
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the case and that he does not rely on it. It is not however, necessary to say more on this point.

D. CHATTERJEE J. I agree.

O. M.

*Appeal allowed.*

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ORIGINAL CIVIL.

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*Before Imam and Chapman JJ.*

*In the matter of AN ATTORNEY\*.*

1914  
 Jan. 2.

*Appeal to Privy Council—Review—Civil Procedure Code (Act V of 1908) O. XLVII—Letters Patent, 1865, cls. 10, 39—Sanction for prosecution—Criminal Procedure Code (Act V of 1898) s. 195.*

An order sanctioning prosecution made in the course of a disciplinary proceeding against an attorney under cl. 10 of the Letters Patent of 1865, is not governed by cl. 39 and therefore against such an order no leave to appeal to the Privy Council can be given.

Cl. 39 of the Letters Patent empowers the High Court to declare the fitness of an appeal to the Privy Council in any matter, not being of criminal jurisdiction, if it is a final judgment, decree, or order of the Court, made on appeal or in the exercise of original jurisdiction.

A proceeding under cl. 10 is a disciplinary power which does not fall under any of the jurisdictions specified in the Letters Patent, and thus is not governed by cl. 39.

On the 29th of August 1913, an order was made by the Chief Justice and Stephen and Chaudhuri JJ. granting to the Public Prosecutor of Calcutta sanction under section 195 of the Code of Criminal Procedure to prosecute one Paresh Chandra Ghosh, an attorney of this Court, for offences punishable under sections 193 and 196 of the Indian Penal Code alleged to have been committed by him in relation to a proceeding in

\* Application for Review (Original Civil Appellate Jurisdiction).

this Court. The proceeding was under cl. 10 of the Letters Patent, 1865. Subsequently, application was made by counsel on behalf of Paresh Chandra Ghosh to the Vacation Bench of this Court for leave to appeal to the Privy Council, against the aforesaid order of the 29th August. On the third of November 1913, Mr. Justice Imam and Mr. Justice Chapman delivered judgment stating that they were divided in opinion. Mr. Justice Imam stated that he was of opinion that it was a fit case for appeal to His Majesty in Council and that he would grant the leave prayed for, but Mr. Justice Chapman stated that, though he differed in opinion and would refuse leave, still as the senior Judge had formed a different opinion a certificate of leave to appeal would be granted accordingly.

1914  
AN  
ATTORNEY,  
*Itz re.*

Thereupon, the Public Prosecutor, aggrieved by the order of the Vacation Bench, moved the Chief Justice for an order against Paresh Chandra Ghosh to show cause why the said judgment and certificate of leave to His Majesty in Council should not be set aside, or, alternatively, that a Bench be formed to hear an application to review the said judgment and certificate, on the following, among other, grounds :—

“(i) The Vacation Bench had no jurisdiction to entertain an application for leave to appeal to the Privy Council from an order made by the Hon'ble the Chief Justice and two Honourable Judges of this Court under section 195 of the Code of Criminal Procedure for sanction to prosecute an attorney of this Court in a matter within, or arising out of, the disciplinary jurisdiction conferred by clause 10 of the Letters Patent of 1865.

(ii) The Vacation Bench had no jurisdiction or power to declare that the case was a fit one for appeal to the Privy Council inasmuch as there was no “final judgment, decree or order” within the meaning of clause 39 of the Letters Patent of 1865, nor any “decree or order” within the meaning of section 109(c) of the Civil Procedure Code.

(iii) The said order of sanction was an order made under section 195 of the Code of Criminal Procedure for sanction to prosecute for offences under sections 193 and 196 of the Indian Penal Code and as such was an

1914  
 AN  
 ATTORNEY,  
*In re.*

order in a criminal matter in respect of which no leave to appeal to the Privy Council could properly be granted.

(iv) The said order of sanction was a matter within the absolute and unfettered discretion of the three Honourable Judges who granted it on which they had duly exercised their judicial discretion and in respect of which no leave to appeal to the Privy Council could properly be granted.

(v) The Hon'ble Judges forming the Vacation Bench were wrong in holding that on a difference of opinion the opinion of the Senior Judge should prevail."

The Chief Justice referred the matter to Imam and Chapman JJ. who dealt with the application for review, and issued a Rule.

*Mr. Eardley Norton*, for the attorney, at the outset took a preliminary objection to the application for review. He submitted that the Public Prosecutor had not the status to ask for review of the order of the Vacation Bench as, under the Civil Procedure Code, only a person considering himself aggrieved could apply for review. In other words, the Public Prosecutor could have no grievance by reason of the appeal granted: *Queen v. The Keepers of the Peace and Justices of the County of London* (1), *Ralph v. Taylor* (2), *In re Riviere's Trade-mark* (3), *Underhill v. Rhoden* (4).

He contended that with the termination, on the 12th of June last, of the Rule issued against his client, calling upon him to show cause why he should not be dealt with under cl. 10 of the Letters Patent, all matters with regard to the disciplinary matters of the Court came to an end, and the moment their Lordships left the Bench the matter was concluded.

He also submitted that the appointment of their Lordships to hear the Rule was an appointment on the Original side of the Court in its Original civil jurisdiction.

(1) (1890) 25 Q.B.D. 357.

(2) (1883) 25 Ch. D. 194.

(3) (1883) 26 Ch. D. 48.

(4) (1876) 2 Ch. D. 494.

The invariable practice of this Court showed that enquiries into the conduct of a professional man with a view to his removal or suspension were held in the original civil jurisdiction.

1914  
 AN  
 ATTORNEY,  
*Is re.*

With reference to the application for leave to appeal to the Privy Council, although the subject-matter of the application was one which dealt with a question of criminal jurisdiction, the application itself was on the Civil side of the Court. It was obviously so for the removal of a bar which would have prevented the Magistrate from taking cognizance. There was nothing in the Letters Patent which denied the right to appeal. On the contrary section 39 dealt with that matter and allowed that right.

It was not a question of appeal from an order but from a final judgment which section 39 clearly contemplated and expressly sanctioned.

*The Advocate-General (Mr. G. H. B. Kenrick, K.C.)* (with him *Mr. Nisith Sen*), for the Crown, first dealt with the point raised by Mr. Norton that the Public Prosecutor was not "a person aggrieved" so as to entitle him to ask for a review of judgment. He submitted that none of the decisions cited by Mr. Norton had any bearing whatever on the interpretation of the words "person considering himself aggrieved" in section 114 of the Code of Civil Procedure. They were decisions on questions of highway obstruction, and of proprietary right with respect to registration of trade-marks and copyright under the English Statutes and were quite irrelevant to the present question. The Public Prosecutor was a party to the proceedings for an application for certificate for leave to appeal to the Privy Council. He had opposed the application, and he was the party against whom the judgment of the Vacation Bench had gone, and as such he was obviously "a person considering himself

1914  
AN  
ATTORNEY,  
*Int vs.*

aggrieved" within the meaning of section 114 of the Code of Civil Procedure. He was, therefore, the proper party to apply for review of the judgment of the Vacation Court.

With regard to Mr. Norton's point that his client was debarred from any local appeal against, or redress in respect of, the order which had been made against him under section 195 of the Code of Criminal Procedure sanctioning prosecution, the Advocate-General invited the attention of the Court to sub-sections (6) and (7) of section 195 under which there might have been an application to the Vacation Bench to revoke the order of sanction, and to the case of *Wazir Muhammad v. Hub Lal* (1). But whether or not any remedy or redress was available locally was quite immaterial to the question at issue.

There was no instance of a case in which, in a matter arising out of the disciplinary jurisdiction of the Court over an attorney of the Court under cl. 10 of the Letters Patent, leave to appeal to the Privy Council had been granted by the High Court after it had in the course of the exercise of its disciplinary jurisdiction made an order under section 195 of sanction to the prosecution of an attorney of the Court in respect of offences alleged to have been committed before the High Court in the course of the disciplinary proceedings.

The order of sanction under section 195 was merely a condition preliminary to the initiation of criminal proceedings, and was not a final judgment, much less a definitive sentence, so as to form the subject of a certificate of fitness for appeal, or of leave to appeal to the Privy Council. No precedent existed of any appeal to the Privy Council from an order sanctioning prosecution under section 195. The Privy Council

(1) (1909) I. L. R. 31 All. 313.

would decline to entertain an appeal from such a preliminary order on the ground that it was not a final order. Thus the Privy Council had held that an order directing an accused person to plead to an information and directing that, having pleaded he should be tried without a jury, was not a final order as it merely put in train the prosecution: *Esnouf v. Attorney-General for Jersey* (1). So in the present case the order of sanction was antecedent to and put in train the prosecution. This Court had held that an order giving liberty to a respondent to sue *in forma pauperis* was not a final order for the purpose of leave to appeal to the Privy Council: *Sakan Sing v. Gopal Chandra Neogi* (2). So the giving of leave to prosecute could not be a final order as it was simply a compliance with a condition precedent.

He further contended, as he had urged before the Vacation Bench when they granted leave to appeal to the Privy Council, that this was, in fact and in law, a criminal matter. The order of sanction was an order made under section 195 of the Code of Criminal Procedure for sanction to prosecute for offences under sections 193 and 196 of the Indian Penal Code, and as such was, necessarily, an order in a criminal matter in respect of which leave to appeal to the Privy Council could not properly be granted. It was well settled that no appeal lies to the Privy Council in any criminal case except where there is a violation of natural justice and some substantial and grave injustice has been done: *In re Dillett* (3), *In re Tilak* (4), *Ex parte Carew* (5) and Halsbury's Laws of England, vol. 9, p. 30.

(1) (1833) L. R. 8 Ap. Cas. 304.

(3) (1897) L. R. 12 A. C. 459, 467.

(2) (1904) 8 C. W. N. 296.

(4) (1909) I. L. R. 33 Bom. 221, 235.

(5) [1897] A. C. 719.

1914  
 AN  
 ATTORNEY,  
*In re.*

*The Advocate-General* also argued that the Vacation Bench which gave leave to appeal had no jurisdiction to entertain an application for leave to appeal to the Privy Council from an order made by the High Court, viz., by the Hon'ble the Chief Justice and two Judges, under section 195 of the Code of Criminal Procedure for sanction to prosecute an attorney of the Court in a matter arising out of the disciplinary jurisdiction conferred by clause 10 of the Letters Patent of 1865. The High Court, through three of its Judges, having once exercised this disciplinary jurisdiction no other Bench of the High Court could give leave to appeal from an order so made in the exercise of such disciplinary powers.

The right of appeal to the Privy Council conferred and regulated by clause 39 of the Letters Patent of 1865, in any matter not being of criminal jurisdiction, when the High Court shall declare that the case is a fit one for appeal to the Privy Council, does not extend to, nor can it have any application in any case, such as the present one, which is within the disciplinary jurisdiction conferred on the High Court by clause 10 of the Letters Patent. It was observable that the disciplinary powers conferred by clause 10 are quite separate and distinct from the other branches of jurisdiction, viz., Civil jurisdiction, Original, Extraordinary Original, and Appellate, regulated by clauses 11 to 18, criminal jurisdiction regulated by clauses 22 to 29, Admiralty, Testamentary and Matrimonial jurisdiction regulated by clauses 32 to 35 of the Letters Patent. Matters arising under clause 10 were quite outside the scope of the provisions of clause 39 relating to appeal to the Privy Council.

The judgment of the Vacation Bench giving leave to appeal ought to be reviewed and set aside.

*Cur. adv. vult.*

IMAM, J. This is an application for review of our order allowing Paresh Chandra Ghosh, an attorney of this Court, to appeal to His Majesty in Council against a sanction under section 195 of the Criminal Procedure Code granted to the Public Prosecutor of Calcutta by three learned Judges of this Court to prosecute him for perjury.

1914  
 AN  
 ATTORNEY,  
*In re.*

The sanction was granted in a proceeding arising out of an enquiry, under section 10 of the Letters Patent of 1865, into the conduct of the appellant as an attorney of this Court. It has been contended on behalf of the Public Prosecutor that an order, final or otherwise, made in a proceeding under section 10 is not governed by section 39 of the Letters Patent and thus no leave to appeal could be given by this Court in the present instance. This objection was not raised, and not even referred to, at the time we heard the application for leave to appeal. Our order granting leave proceeded on a misconception that the proceeding against the attorney was in the suit out of which the enquiry into his conduct had arisen—the misconception being due to the papers in the proceeding being marked as on the Ordinary Original Civil jurisdiction of the Court. Section 39 of the Letters Patent empowers us to declare the fitness of an appeal in any matter not being of criminal jurisdiction if it is a final judgment, decree or order of the Court made on appeal or in the exercise of original jurisdiction. A proceeding under section 10 does not fall under any of the jurisdictions specified in the Letters Patent and thus is not governed by section 39.

On behalf of the appellant a preliminary objection to this application for review has been taken that the Public Prosecutor has not the status to ask for review of our order as, under the Civil Procedure Code, only a person considering himself aggrieved can apply for



1914  
AN  
ATTORNEY,  
*In re.*  
IMAM J.

review, and the contention is that the Public Prosecutor can have no grievance by reason of the leave granted. Several decisions of English cases have been referred to as bearing out the contention but it is difficult to accede to the argument, as the cases cited refer to particular enactments and proceed on the language of the law that they elucidate. In the present case the sanction was granted to the Public Prosecutor and an appeal against that sanction is an attack on his power to prosecute. The order granting leave is clearly an order affecting the authority he has under the sanction to prosecute the appellant. This application for review, therefore, is maintainable.

Having held that the proceeding in which the sanction was granted was not within any of the specified jurisdictions of the Court, this application must prevail. The order declaring the fitness of the appeal is accordingly vacated.

CHAPMAN, J. I agree. This Court is empowered under section 10 of the Letters Patent to deal with professional misconduct by suspension or removal; but such a proceeding is not, in my opinion, in the exercise of original jurisdiction within the meaning of section 39 which provides for appeal to the Privy Council. The word 'jurisdiction' ordinarily means the power of a Judge with reference only to a particular cause or causes and to matters arising out of their judicial determination. The word is used also to mean the limits within which this judicial power is exercised. Except where extended by express definition, the word 'jurisdiction' is not used in English Statutes in the extended sense of any power of whatsoever kind legally conferred. 'Jurisdiction' in section 39 of the Letters Patent does not, in my opinion, include

the power of this Court to maintain professional discipline.

S.K.B.

1914  
AN  
ATTORNEY,  
*In re.*

*Application allowed.*

Attorney for the Public Prosecutor: *C. H. Kesteven*  
(*the Government Solicitor*).

[*Note.*—A petition was subsequently presented to the Privy Council, on behalf of the attorney, for special leave to appeal; but their Lordships of the Judicial Committee refused the application mainly on the ground that it was a criminal matter. ED.]

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CRIMINAL REVISION.

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*Before Holmwood and Sharfuddin JJ.*

1914  
Jan. 9.

MAHOMED HOSSAIN

v.

EMPEROR.\*

*Summary Trial—Warrant Case—Omission to examine the accused—Charge—Accusation of house breaking by night to commit theft—Finding of different intent—Necessity of charge specifying the same—Criminal Procedure Code (Act V of 1898) ss. 263, 342.*

Section 263 of the Criminal Procedure Code is governed by s. 342, and there must, therefore, be an examination of the accused in all warrant cases; the words "if any," in cl. (g) of the former section, not being applicable to such cases.

Where the case against the accused is one of theft or house-breaking to commit theft, and the Magistrate finds that it has broken down but that there is another object apparent on the evidence, it is his duty to give the accused notice of that by drawing up a charge clearly stating what it is that he is accused of doing.

THE petitioner was tried, under the summary form of procedure, before Babu N. Roy, Deputy

\* Criminal Revision, No. 1950 of 1913, against the order of J. C. Twidell, Sessions Judge of Chittagong, dated Nov. 28, 1913.