

and therefore it cannot be said that justice is denied him by our holding, as we do, that we have no jurisdiction to interfere in this case.

The application is, therefore, dismissed.

1915
 ABUL KALAM
 AZAD,
In re.

WOODROFFE J. I agree.

HOLMWOOD J. I agree.

Application refused.

Attorneys for the petitioner: *B. N. Basu & Co.*

J. C.

APPEAL FROM ORIGINAL CIVIL.

Before Jenkins C.J., and Woodroffe J.

SUKHLAL CHUNDERMULL

v.

EASTERN BANK, Ld.*

1915
 Jan. 18.

Appeal—Letters Patent, 1865, s. 15—“Judgment”—Order by single Judge on Original Side directing defendant to give security—Civil Procedure Code (Act V of 1908), O. XXXVII, r. 2.

An order made by a single Judge sitting on the Original Side, under O. XXXVII, rule 2 of the Code of Civil Procedure, directing a defendant to give security as a term on which leave to defend should be given, is not a “judgment” within the meaning of s. 15 of the Letters Patent and is not appealable.

Justices of the Peace for Calcutta v. Oriental Gas Company (1) followed.
Sonbai v. Ahmedbhai Habilhai (2) referred to.

* Appeal from Original Civil, No. 5 of 1915, in Original Suit No. 1271 of 1914.

(1) (1872) 8 B. L. R. 433.

(2) (1872) 9 Bom. H. C. 398.

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 SUKHLAL
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APPEAL by Sukhlal Chundermull, the defendant, against the order of CHITTY J.

On the 30th November 1914 the Eastern Bank, Ltd., an English Company having a branch office in Calcutta instituted this suit under Order XXXVII of the Civil Procedure Code, against the defendant carrying on business in Calcutta, claiming the sum of Rs. 1,53,898-12-2 for principal and interest and notarial expenses alleged to be due on twenty several bills of exchange.

It was alleged in the plaint that one of these bills of exchange, No. 586, was drawn on C. J. Hambro & Sons, London, and the other nineteen bills were drawn on W. F. Malcolm & Co., London. All the bills were drawn by the defendant in Calcutta, and were payable to his order and were endorsed by him in Calcutta to the plaintiff Bank for valuable consideration. Bill No. 586 reached London on the 4th August 1914 and was presented for acceptance by the London office of the plaintiff Bank on the 7th August 1914, the 4th, 5th and 6th being Bank holidays : the bill was retained by the drawees and dishonoured on the 20th August 1914. The remaining bills reached London on the 14th August 1914 and were on the same day presented for acceptance by the London office of the plaintiff Bank : the bills were retained by the drawees and dishonoured on the 18th August 1914. The twenty bills were duly protested for non-acceptance, and the defendant was duly notified of the bills being dishonoured and protested.

On the 4th January 1915, the defendant made an application to Chitty J. for an order that he may be at liberty to appear and defend the suit, on the ground that he had a good defence to the suit. In his petition the defendant admitted that the bills of exchange were drawn by him and discounted by him with the plaintiff Bank. It was alleged that "the bills were

sold to the plaintiff Bank along with shipping documents and invoices made out in accordance with contracts for sale entered into by the defendant. The shipping documents related to goods on board the S.S. *Westmark*, *Trieste* and *Moravia* which are enemy vessels and which as your petitioner is informed and believes have taken refuge in neutral ports and it was the duty of the purchasers to accept the bills and take delivery of the shipping documents." It was further contended in the petition that if the persons to whom the goods were sold availed themselves of the delay in presentation of the bills and tender of the shipping documents (by the plaintiff Bank) to refuse acceptance and reject the tender the plaintiff Bank was solely responsible, that if acceptance was refused owing to a *moratorium* in force in London the plaintiff Bank was not entitled to make any claim on the defendant without having presented the bills on the expiration of such *moratorium*, and that in any event the plaintiff Bank was entitled to claim from the defendant only any deficiency after realizing the amounts payable by the purchasers of the goods or the valuer of the goods. The defendant disputed the claim for interest and finally alleged that he was a person of substance and the application was not made for the purpose of delay.

On the 4th January 1915, Chitty J. passed the order "that upon the defendant within a fortnight from the date hereof giving security to the satisfaction of the Registrar of this Court to the extent of the plaintiff Bank's claim in this suit, he be at liberty to appear in and defend this suit."

The order was filed on the 12th January. Against this order, the present appeal was preferred by the defendant Sukhlal Chundermull on the 13th January. The main ground of appeal was that the learned Judge

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should have granted the defendant leave to defend unconditionally, and should not have required the defendant to furnish security.

Mr. Zorab, for the appellant. The order of Chitty J. directing the defendant to furnish security is a "judgment" within the meaning of section 15 of the Letters Patent and is appealable: *R. v. R.* (1), *Vyasa-chary v. Keshavacharya* (2), *Seshagiri Row v. Nawab Askur Jung Aftab Dowla* (3), *Veerabadran Chetty v. Nataraju Desikar* (4), *The Justices of the Peace for Calcutta v. The Oriental Gas Company* (5). The learned Judge was in error in directing security to be furnished; the defendant should have been allowed unconditional leave to defend: *Jacobs v. Booth's Distillery Company* (6).

Mr. Aveloom, for the respondent Bank, was not called upon.

JENKINS C.J. According to a course of decisions in this Court, the order complained of is not a "judgment" from which an appeal lies under the Letters Patent. Reference has been made to a number of Madras authorities which are entitled to every respect, but which we can not follow in preference to the course of decisions in this Court. It has always been recognised that the Madras High Court has taken a somewhat broader view of clause 15 of the Charter than has prevailed here. The decisions of this Court rest upon what was said by Sir Richard Couch in *The Justices of the Peace for Calcutta v. The Oriental Gas Company* (5). In this case there is not even an appeal allowed under the Code, so that it cannot be

(1) (1899) I. L. R. 14 Mad. 88.

(4) (1904) I. L. R. 28 Mad. 28.

(2) (1901) I. L. R. 25 Mad. 654.

(5) (1872) 8 B. L. R. 433.

(3) (1902) I. L. R. 26 Mad. 502.

(6) (1901) 85 L. T. 262.

suggested, if the order made had been in a mofussil Court, that an appeal would have lain under Order XLI. But that perhaps is not so material here, as it would be in Bombay where it would possibly have been regarded as decisive of the question against the appellant: *Sonbai v. Ahmed'hai Habibhai* (1).

We must, therefore, dismiss this application with costs.

WOODROFFE J. I agree.

Appeal dismissed.

Attorneys for the appellants: *Watkins & Co.*

Attorneys for the respondents: *Orr, Dignam & Co.*

J. C.

(1) (1872) 9 Bom. H. C. 398.

PRIVY COUNCIL.

BALMUKUND

v.

KING-EMPEROR.

P.C.^o
1915

March 3.

[ON APPEAL FROM THE CHIEF COURT OF THE PANJAB AT LAHORE.]

Privy Council, Practice of—Special leave to appeal in Criminal case, application for—Petitioners sentenced to death—Stay of execution of sentences pending hearing of petition, refusal of—Tendering advice as to exercise of King's Prerogative of pardon.

On an application for special leave to appeal in a case in which the petitioners had been sentenced to death, their Lordships of the Judicial Committee, not being a Court of Criminal Appeal, declined to interfere with regard to staying execution of the sentences pending the hearing,

^o *Present*: THE LORD CHANCELLOR (LORD HALDANE), LORD DUNEDIN, LORD ATKINSON, SIR GEORGE FARWELL AND MR. AMEER ALI.

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