

1914
 SECRETARY
 OF STATE
 FOR INDIA
 v.
 KIRTIBAS
 BHUPATI
 HARICHANDAN
 MAHAPATRA.

these appeals dismissed with costs. And they will humbly advise His Majesty accordingly.

Appeals dismissed.

Solicitor for the appellant: *The Solicitor, India Office.*

Solicitors for the respondents: *Barrow, Rogers, & Nevill.*

J. V. W.

SPECIAL BENCH.

Before Jenkins C.J., Woodroffe and Holmwood JJ.

In re ABUL KALAM AZAD.*

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Jan. 11.

Forfeiture—Press Act (I of 1910), s. 4 (1)—Order made by Local Government of Delhi—Jurisdiction—Delhi Laws Act (XIII of 1912).

Where an order was made under section 4 (1) of the Indian Press Act, 1910, by the Local Government of Delhi, directing the forfeiture wherever found of all copies of a newspaper published on a certain date in Delhi, on an application to set aside the order made by a person who had in his possession in Calcutta a particular copy :—

Held, that this High Court had no jurisdiction to entertain the application.

APPLICATION.

This was an application under sections 17 and 19 of the Indian Press Act, 1910, by Abul Kalam Azad, described as of Calcutta, to set aside an order of forfeiture made under the Act.

It was alleged by the petitioner that he “ was the editor of a weekly newspaper known as *Al-Hilal* and was the recipient of a copy of the newspaper called *The Comrade* (bearing date the 26th September 1914)

* Original Jurisdiction.

in exchange for his newspaper *Al-Hilal* and as such became the owner of that newspaper and held possession thereof."

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By a notification dated the 2nd November 1914, the Governor-General in Council *quâ* the Local Government of the Province of Delhi declared the security of Rs. 2,000 deposited in respect of "The Comrade and the Hamdard Press, Kucha-i-Chalan, Delhi," and all copies of the issue of the newspaper called *The Comrade* bearing date the 26th of September 1914, wherever found to be forfeited to His Majesty.

The notification was in these terms:—

"NOTICE.

In pursuance of Section 4 (1) of the Indian Press Act, 1910.

To

The Keeper of "The Comrade and The Hamdard Press,
Kucha-i-Chalan, Delhi."

WHEREAS, in exercise of the power conferred by section 3 of the Delhi Laws Act, 1912 (XIII of 1912) the Governor-General in Council has been pleased to declare by Notification No. 1008, dated the 1st of October, 1912, that the powers or duties conferred or imposed on the Local Government under the Indian Press Act, 1910 (I of 1910), shall be exercised or performed by the Governor-General in Council, and not by the Chief Commissioner of Delhi, and

Whereas, it appears to the Governor-General in Council that the printing press known as "The Comrade and the Hamdard Press, Kucha-i-Chalan, Delhi" in respect of which security to the amount of Rs. 2,000 has been deposited in accordance with the provisions of section 3 (1) of the Indian Press Act, 1910, has been used for printing and publishing the issue of the newspaper called *The Comrade* bearing date the 26th of September, 1914, and

Whereas, the said issue of the said newspaper contains an article entitled "The Choice of the Turks" printed at pages 233 to 243 of the said issue, the whole tenour of which article, and in particular the words indicated and described in the schedule annexed to this notice, is in the opinion of the Governor-General in Council likely or has a tendency, directly or indirectly, whether by inference or suggestion or otherwise, to excite disaffection towards His Majesty and the Government established by law in British India.

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Now, therefore, take notice that the Governor-General in Council in pursuance of section 4 (1) of the Press Act, 1910, declares the security of Rs. 2,000 deposited in respect of *The Comrade* and the Hamdard Press, Kucha-i-Chalan, Delhi" and all copies of the issue of the newspaper called the "The Comrade" bearing date the 26th of September, 1914, wherever found to be forfeited to His Majesty.

By order of the Governor-General in Council,

(Sd.) H. WHEELER,

Secretary to the Government of India."

HOME DEPARTMENT,
 (Political);

Delhi, 2nd November, 1914."

It was alleged by the petitioner that the article in *The Comrade*, to which exception had been taken, was a rejoinder to an article entitled "The Choice of the Turks" which appeared in *The Times* on the 29th August 1914, and it was submitted that the article did not come under the purview of section 4, sub-section 1 of the Act.

The application was heard by a Special Bench appointed under the Indian Press Act, 1910.

The Advocate-General (Mr. G. H. B. Kenrick, K. C.) stated that he appeared in support of the order of forfeiture, under instructions from the Government of Bengal on whom notice of the application had been served. He took the preliminary objection that this Court had no jurisdiction to entertain the application inasmuch as no order of forfeiture had been passed by the Government of Bengal, and the applicant had no interest in the subject matter of the forfeiture.

[He was stopped.]

Mr. B. Chakravarti, for the petitioner. In framing the Press Act, 1910, the Legislature has studiously avoided investing the Government of India with any powers thereunder. The Legislature obviously intended to authorise the Local Government within

whose territory the Press was, to pass the order of forfeiture; this order under section 4, sub-section (1) would affect all copies wherever found. The object would be to avoid the possibility of conflict between the orders of the several Local Governments. Where the Legislature intended to limit the application of a section within local limits, appropriate words were used: see section 3 (2) and section 8 (2). An order of forfeiture by any Local Government would operate over the whole area covered by the Press Act. It follows that the order of the 2nd November 1914 directing the forfeiture of all copies *wherever found* affects the particular copy in the possession of the petitioner in Calcutta. Although the copy has not actually been forfeited, the petitioner's proprietary right in it has been affected: that being so, the petitioner is entitled to apply to this Court for relief. The petitioner does not complain against any particular Local Government, but against an order which affects property belonging to him, and which property is within the jurisdiction of this Court. It is submitted this Court has jurisdiction to entertain this application.

The Advocate-General was not called on to reply.

JENKINS C.J. Without in any way assenting to the proposition that Abul Kalam Azad is a person having an interest in any property in respect of which the order of forfeiture has been made and so entitled to come before any High Court under section 17 of the Indian Press Act of 1910, it appears to me that there is another and absolutely fatal objection to this application. It appears, though the petition is not in order on this point, that on the 2nd November 1914 the Governor-General in Council in pursuance of section 4 (1) of the Press Act, 1910, declared the

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security of Rs. 2,000 deposited in respect of "The Comrade and the Hamdard Press Kuchai-Chalan, Delhi" and all copies of the issue of the new paper called the *The Comrade* bearing the date the 26th of September, 1914, wherever found to be forfeited to His Majesty, and this order was served on the person concerned, presumably the Keeper of the Printing Press on the 3rd of November 1914. The Governor-General in Council in so acting was exercising a power conferred under the Delhi Laws Act of 1912, so that for the purposes of this application we must treat the order as though made by a Local Government under the Indian Press Act. The complaint of the petitioner is that 'he as a recipient of a copy of *The Comrade* in exchange for his newspaper *Al Hilal* became the owner of that newspaper.' I suppose he means of a copy of the newspaper and that he held possession thereof. He appears to consider that the order of forfeiture affects him in Bengal. But whether it does or does not—a point on which I express no opinion—it was made by the local authority I have described, and not by the Government of Bengal. There has been no order made by the Government of Bengal and no action by it or by any of its officers of which the petitioner can complain. According to the scheme of the Indian Press Act and its several provisions, it is abundantly clear that we have no jurisdiction in this case. Moreover, our rules only provide for a notice being served on the Government of Bengal. We are however asked to interfere with an order made by an authority exercising at Delhi the powers of a Local Government, without having that authority before us, and without having any means of compelling its attendance.

It is not as though the petitioner has no remedy. There is a High Court to which he could have gone,

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.

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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.*

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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 Habibhai (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.