

1886
 SECRETARY
 OF STATE
 FOR INDIA IN
 COUNCIL
 v.
 JUDAH.

order, it is not open to it to grant another order, and therefore this application must be refused.

Application refused.

Attorney for the plaintiff: Mr. R. L. Upton.

Attorneys for the defendant: Messrs. Gregory and Moses.

T. A. P.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice.

1886
 April 14.

MOORAJEE POONJA (PLAINTIFF) (OPPOSITE PARTY) v. VISRANJEE
 VISENJEE AND OTHERS (DEFENDANTS) (APPLICANTS).*

Appeal to Privy Council—Practice—Appeal struck off for want of prosecution—Civil Procedure Code (Act XIV of 1882), ss. 598, 599, 600.

A on the 8th September 1885 filed his petition of appeal to Her Majesty in Council against a decree obtained against him by B on the 19th May 1885. On the 11th September 1885 A's attorney received for approval from the Registrar the usual draft notice calling upon B to show cause why the case was not a fit and proper one for appeal to Her Majesty in Council; this draft notice was never returned as approved or otherwise to the Registrar, and no further steps were taken to prosecute the appeal.

On the 1st April 1886 B applied to have the appeal struck off for want of prosecution,—*held* that he was entitled to the order.

THIS was an application to make absolute a rule obtained by the defendants calling upon the plaintiff to show cause why a petition of appeal, filed by the plaintiff to Her Majesty in Council, should not be struck off the file for want of prosecution.

It appeared that on the 14th March 1884, the plaintiff obtained a decree against the defendants on certain bottomry bonds, and that on the 19th May 1885 this decree was in part reversed by the Appellate Court.

The plaintiff on the 8th September 1885 filed his petition of appeal to Her Majesty in Council against the decree of the 19th May 1885, and on the 11th May, in accordance with the usual practice, a draft notice to show cause why a certificate, that the case as regards amount or value and nature

* Application in Appeal No. 8 of 1884.

fulfilled the requirements of s. 596 of Act XIV of 1882, and that it was otherwise a fit case for appeal to Her Majesty in Council, should not be granted, was sent by the Registrar of the Court to the plaintiff's attorney for approval.

No steps were, however, taken by the plaintiffs after receiving the draft notice to prosecute the appeal.

On the 31st March 1886 the defendants obtained a certificate from the Registrar showing that no steps had been taken by the plaintiff in the matter, and on the 1st April 1886 they obtained the rule *nisi* set out above.

Mr. *Allen* showed cause on behalf of the plaintiff, and said that he had been instructed that the plaintiff had already verbally informed the other side that the appeal would not be proceeded with; but contended that they were not entitled to the order asked for, inasmuch as the draft notice had not been served upon the defendants as yet, and it was only when that had been done that the defendants would be entitled to come in and show cause why the certificate mentioned in s. 600 should not be granted; that the other side were not placed in any jeopardy by the action of the plaintiff, as the plaintiff could not advance a step in furtherance of the appeal without notice being served on the other side.

Mr. *Stokoe* in support of the rule contended that he was perfectly justified in the application, as at any time the other side might call upon the Registrar to issue the notice, and the Registrar would be bound to do so; and it was therefore right that they should be allowed to come in and ask to be freed from the possibly impending appeal, seeing that no steps had been taken since the 8th September 1885; that the case of *Thakoor Kapilmath Sahai v. The Government* (1) was an authority for such an application where no steps were being taken to prosecute an appeal.

Mr. *Allen* in reply contended that the case cited was no authority for such an application being made at the stage which the present proceedings had reached; but merely authorized such an application after the certificate mentioned in s. 600 had been granted.

1886
MOORAJEE
POONJA
v.
VISWANJEE
VISENJEE.

(1) I. L. R., 1 Calc., 142.

1886
 MOORAJEE
 POONJA
 v.
 VISWANJEE
 VISWANJEE.

PETHERAM, C.J.—Held that as no formal notice of abandonment of the appeal had been given, and that as at any time the Registrar might be called upon to issue the notice upon the opposite party, the application was a proper one; and therefore ordered the petition of appeal to be struck off the file for want of prosecution, allowing costs to the applicant.

Rule absolute.

Attorney for applicant: Mr. Carruthers.

Attorneys for opposite party: Messrs. Watkins & Co.

T. A. P.

CRIMINAL REVISION.

Before Mr. Justice Wilson and Mr. Justice Porter.

1886
 April 14.

DHARMA DAS GHOSE (PETITIONER) v. NUSSERUDDIN (OPPOSITE PARTY).^a

Mischief—Penal Code (Act XLV of 1860), s. 425—Revenue sale—Damage done between date of sale and grant of certificate—Wrongful loss to property held under incomplete title.

The damage contemplated in s. 425 of the Penal Code need not, necessarily, consist in the infringement of an existing, present and complete right, but it may be caused by an act done *now* with the intention of defeating and rendering infructuous a right *about to come into existence*.

Any person who contracts to purchase property, and pays in a portion of the purchase-money, has such an interest in that property, although his title may not be complete, or his right final and conclusive, that the destruction of such property may cause to him wrongful loss or damage within the meaning of s. 425.

ONE Dharma Das Ghose was charged before the Deputy Magistrate of Sealdah with having committed mischief under the following circumstances:—

On the 14th December 1885 a small holding held by the accused from Government was sold by the Collector of the 24-Pergunnahs for arrears of revenue, and was purchased by the complainant who, in accordance with the sale law, on the day of sale, had deposited a portion of the purchase-money. The accused

^a Criminal Motion No. 140 of 1886, against the order of Moulvi Syud Ameer Hossein, Deputy Magistrate of Sealdah, dated the 8th of February 1886.