

Before concluding, I must remark, that according to the statements of Sukhai and Piru, the jewels were given on the night of the murder to one Durga Tewari. It is not clear from the statements of Piru whether Durga was aware of the manner in which the jewels had been obtained; but, if Sukhai be believed, Durga was not aware of it, and did not know that the ornaments were the proceeds of a murder. It is remarkable that Durga Tewari was never placed in the witness-box to state what actually happened, and whether the jewels were in fact handed to him as stated. This evidence would have been important; because I am not sure that if the jewels had been handed to him in the presence of all the prisoners, immediately after the murder and near the scene of it, there would not have been corroboration of the statements of those two persons. My brother Tyrrell and I have most anxiously considered this case. We may of course have our suspicions as to the correctness of the conclusions arrived at by the Judge and the assessors; but our decisions in criminal cases, and especially in so grave a matter as a capital offence, must not depend on mere suspicion but must be regulated by the principles of law laid down for the guidance of Courts of Justice. We have no alternative but to allow the appeals of Ram Saran, Mohib Ali, and Ram Ghulam, and direct that they stand acquitted. With regard to Piru, his appeal is dismissed, and we direct that the capital sentence be carried into execution.

TYRRELL, J.—I fully concur in what has fallen from my brother Straight and in the orders he proposes.

PRIVY COUNCIL.

BALWANT SINGH (APPELLANT) v. DAULAT SINGH (RESPONDENT).

[On Appeal from the High Court, North-Western Provinces]

Civil Procedure Code, s. 549.

An appeal, although it may have been rejected by the appellate Court, under s. 549 of the Code of Civil Procedure, upon failure by the appellant to furnish security demanded under that section, may be restored, on sufficient grounds, at the Court's discretion.

* Present; LORD BLACKBURN, LORD MONESWELL, LORD HOBHOUSE, SIR R. COCHRAN.

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The High Court having apparently treated an appeal as though, after rejection of it under the above section, a petition tendering security to the amount demanded, and asking restoration of the appeal, was not entertainable and could not be considered, *held* by the Judicial Committee that restoration was within the Court's discretion and that there were grounds for it, upon the appellant's giving approved security within such time as the Court might fix.

APPEAL by special leave from an order (29th November, 1882) of the High Court, refusing to restore to the file an appeal rejected (14th August, 1882) for default in furnishing security for costs demanded by its previous order (26th June, 1882).

The present appellant, as the son of the deceased elder brother of Jagendra Balli, deceased, late Raja of Sikri, obtained a decree, (21st November, 1881) in the Court of the Deputy Commissioner of Jalaun against the respondent, the late Raja's younger and surviving brother, for possession of the raj estates. This decree was reversed by the Commissioner of Jhansi on the 28th February 1882, and against it an appeal to the High Court was filed on the 5th May following. On the 3rd June, the respondent obtained an order under s. 541 of the Code of Civil Procedure, calling on the appellant to show cause why security to the amount of Rs. 2,500 should not be given by him for costs of the appeal. On this the appellant did not appear, and the High Court, on the 26th June, made the order that the appellant should deposit security within six weeks. On the 5th August, three days before the six weeks expired, appellant showed cause why he should not be ordered to give security. This, however, had no effect to prevent the High Court, on the 14th August, striking the appeal off the file with costs, on the ground that this was "of necessity," as the security had not been filed within the time proscribed.

On the 9th September following the appellant presented a petition for the restoration of the appeal, alleging that the order of the 3rd June had not at any time been served upon him, and offering security to the amount fixed in the order of the 3rd June. On this notice to the respondent to show cause was issued, and cause being shown on the 29th November, 1882, the petition of restoration was rejected by an order of that date, of which the terms are set forth in their Lordships' judgment.

The appellant on the 28th January, 1883, applied to the High Court for permission to appeal to Her Majesty in Council; and

notice to the opposite party having been issued, under section 600 of the Code of Civil Procedure, the certificate of leave to appeal was refused.

On the 12th December, 1883, on the appellant's petition setting forth the above facts as grounds, on which petition Mr. *W. A. Raikes* appeared for the petitioner, special leave to appeal was granted by the Judicial Committee.

On this appeal, Mr. *R. V. Dojne* and Mr. *W. A. Raikes*, for the appellant. Whether the order of the 26th June, 1882, was rightly made or not, that of the 14th August was clearly made without due regard to the appellant's not having had an opportunity to show cause, a fact which appeared on his petition of the 5th August. The order of the 29th November, 1882, was wrong for the same reason; and the tender of security should have been held sufficient to secure to the appellant the appeal to which he was entitled.

Mr. *T. H. Cowie*, Q. C., and Mr. *C. W. Aruthoon*, for the respondent. The High Court rightly exercised its discretion to refuse to re-admit an appeal, rejected strictly within the terms of s. 519.

Counsel for the appellant were not called upon to reply.

Their Lordships' judgment was delivered by

LORD HOBHOUSE.—This come before their Lordships in rather a peculiar way, and there is some difficulty in saying what in substance is the proper course to be taken. It appears that the appellant is seeking to recover property in the possession of the respondent, and that being defeated before the Commissioner of Jhansi, he appealed to the High Court. The respondent applied that the appellant might give security for costs, and on the 3rd June, 1882, the High Court made an order directing the appellant to show cause why the respondent's petition should not be granted. That order to show cause was not properly served upon the appellant, and on the 26th June, the appellant, then, as it would seem, knowing nothing about the order, a further order was made by the High Court in these terms:—"Appellant has not appeared, and he is hereby required to deposit security to the extent of Rs. 2,500 within six weeks from this date" viz., by the 8th August. On the 5th August the appellant presented a petition showing cause why he should not be ordered to give security, and

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on the 14th August another order was made by the High Court. It is simply in these terms :—“ Security has not been filed within the time prescribed by the Court. The appeal is therefore of necessity struck off the file with costs.” Whether the Court considered the merits of the cause then for the first time shown by the appellant, does not appear; but if they did, he was not allowed any time at all to tender his security. On the 9th of September the appellant presented a petition in which he stated the non-service of the original order to show cause of the 3rd June, and his ignorance of it until he got information in time to file his petition on the 5th August; and he prayed for the restoration of the appeal. It would seem that, on that petition, an order was made dated 13th September, 1882; but their Lordships cannot tell certainly upon what proceedings that order was made, nor can they do more than guess at the terms of it, for by some omission which is entirely unexplained, that order has not been transmitted to this country. The direction given by Her Majesty on the petition for leave to appeal was that the High Court should transmit the prior orders and also all subsequent orders relating to the refusal to restore the appeal, but for some reason or other this order has not been transmitted. The nature of it can only be gathered from a subsequent order which was made in this way. On the 27th November, 1882, the appellant again petitioned the High Court, and in that petition he states that “in obedience to the order of the Court, dated 13th September, 1882, the petitioner submits herewith two security-bonds for Rs. 2,500, as detailed below, and prays that proper order may be made for the restoration of the appeal to its original number of file.” Therefore it would seem that by the order of the 13th September, the Court had held that the appellant must give security, and had allowed time for the purpose. On the 27th November he tenders the security and asks that the proper order may be made for the restoration of the appeal. Upon that there comes an order of the 29th November, which their Lordships have great difficulty in understanding. It is a very short one. It does not say on what petition or proceedings it was made except that it was on a petition of the appellant. It does not state who appeared upon it. The whole of the order is this :—“The petitioner’s appeal was

not dismissed under ss. 556 or 557 of the Civil Procedure Code. This petition therefore is not entertainable under s. 558 of that Code, and it is inapplicable to an order made, as ours was made, under s. 549 of the Code." It is extremely difficult to apply the terms of this order to the petition of the 27th November, and is a matter now of uncertainty and dispute what petition the order speaks of and what order it speaks of. The effect of it is apparently to maintain in full force the order of the 14th August, by which the appeal was struck off the file.

It appears to their Lordships that the case has never been fully considered by the High Court.

The question is first, whether the appellant should give security; and their Lordships assume that on the 13th September he was ordered to give security after hearing him; and next, whether, on giving security, the appeal should be restored to the file. That seems never to have been considered by the High Court, because they held that the petition of the 27th November, which was to restore after tendering security, was not entertainable and could not be listened to. Their Lordships will humbly advise Her Majesty to make an order that the appellant may give security for the costs mentioned in the order of the 3rd June, 1882, of such nature as shall be satisfactory to the High Court and within such reasonable time as shall be fixed by that Court; and that upon his giving such security his appeal shall be restored to the files of that Court. There will be no costs of this appeal.

Solicitors for the appellant: Messrs. *Oehme* and *Summerhays*.

Solicitors for the respondent: Mr. *T. L. Wilson*.

APPELLATE CIVIL.

Before Sir *Comer Petheram*, Kt., Chief Justice, and Mr. Justice *Straight*.

LAKHMI CHAND (PLAINTIFF) v. GATTO BAI (DEFENDANT)*

Adoption—Hindu Law—Jains—Second adoption by widow.

In a suit to which the parties were Jains, and in which the plaintiff claimed a declaration that he was adopted by the defendant to her deceased husband, and

* First Appeal No. 134 of 1884, from a decree of Maulvi Muhammad Sami-lu-lah-Khan, Subordinate Judge of Aligarh dated the 27th June, 1884.

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