

1893

BURKITT, J.—I also would make the same reply.

IN THE MAT-
TER OF THE
PETITION OF
GANESHI.

AIKMAN, J.—I entirely concur with the learned Chief Justice. It is, as remarked by him, difficult to define what is the personal interest referred to in s. 555 of the Code of Criminal Procedure as debaring a Magistrate or Judge from trying a case. I should be inclined to say that it was an interest attaching to him as an individual, *e.g.* in the present case to Mr. Porter, as Mr. Porter, and not an interest which he derives solely from his official position. The decisions which have given a wider meaning to the words of s. 555, have, it seems to me, overlooked the important provisions of s. 191, cl. (c.) Code of Criminal Procedure.

I concur in the order proposed.

1893
March 24.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.

IN THE MATTER OF THE PETITION OF MURAD-UN-NISSA.*

Civil Procedure Code s. 546—Execution of decree—Application for stay of sale of immovable property in execution of a money-decree under appeal.

An application under the third paragraph of s. 546 of the Code of Civil Procedure to stay the sale of immovable property in execution of a decree for money against which an appeal has been filed must be made to the Court which passed the decree and not to the appellate Court. *Gossain Money Puree v. Gour Pershad Singh* (1) referred to.

The facts of this case are sufficiently stated in the judgment of the Court.

Mr. *Abdul Raoof* and Mr. *Mahomed Raoof*, for the applicant.

EDGE, C. J., and AIKMAN, J.—This is an application to stay the execution of a decree for money against which decree an appeal is pending in this Court, and in execution of which decree an order has been passed for the sale of immovable property. It is an applica-

* Application under s. 546, Civil Procedure Code, in First Appeal No. 258 of 1892.
(1) I. L. R. 11 Calc. 146.

tion falling under the last paragraph of s. 546 of the Code of Civil Procedure. An application to stay was made to the Court which passed the decree and an interim stay was ordered by that Court to enable the appellant to present the present application to this Court. In our opinion the Court which passed the decree was the proper Court to deal with the application. The application could only be granted "on such terms as to giving security or otherwise as the Court which passed the decree thinks fit." This Court was not the Court which passed the decree. Consequently we could not decide or suggest what should be the "terms as to giving security or otherwise," as those terms are entirely for the Court which passed the decree, and are in its discretion and not in ours. The paragraph in question is not very explicit. We infer from the wording of that paragraph, and to some extent from the fact that in the second paragraph of the same section the appellate Court is expressly given jurisdiction to make an order as to security, which, by the wording of the first paragraph of the same section, otherwise would be confined to the Court which passed the decree, that the intention of the Legislature was that the Court which should act under the last paragraph of the s. 546 was the Court which passed the decree and not the appellate Court. The High Court of Calcutta in *Gosain Money Poree v. Gour Pershad Singh* (1) apparently took the same view of the last paragraph of s. 546 as we do. In this case we dismiss the application in this Court on the above grounds. Under the circumstances our order of dismissal, being one entirely dependent on the question of the jurisdiction of this Court, will not debar the appellant here from prosecuting his application in the Court which passed the decree.

We make no order as to costs.

Application rejected.

(1) I. L. R. 11 Cal. 146.