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IN THE MATTER OF THE PETITION OF BANARSI DAS.

that a sanction presupposes an application for sanction, and that where no such application is made, a Court ought not to take upon itself to grant sanction, but should take action in the manner provided by section 476. I cannot agree with the Sessions Judge in thinking that his sanction in this case was "perfectly adequate." It did not comply fully with the provisions of section 195.

As to the merits of the case, it is urged that there is no ground for the institution of a prosecution against the applicant. I have read through carefully all the evidence which was recorded in the case for both and against Lalla, and I am clearly of opinion that this is not a case in which the complainant, Banarsi Das, should be prosecuted. If the concluding remark of the Sessions Judge in his judgment can be looked upon as a sanction, I revoke that sanction and direct that any proceedings instituted upon it be stayed and abandoned.

Before Mr. Justice Knox and Mr. Justice Blair.

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R. WALL AND ANOTHER (APPLICANTS) *v.* J. E. HOWARD AND OTHERS (OPPOSITE PARTIES).

Act No. VI of 1882 (*Indian Companies Act*) *ss.* 162, 169, 214—*Appeal—Limitation—Act No. XV of* 1877 (*Indian Limitation Act*) *s.* 12.

Held that no appeal lay from an order made under section 162 of Act No. VI of 1882, by a Court under the supervision of which proceedings in liquidation were being conducted declining to continue an investigation commenced by it under that section.

Held also that, whether or not the service of notice of appeal within three weeks provided for by section 214 of Act No. VI of 1882, implies that all the formalities prescribed for the presentation and admission of an appeal by the Code of Civil Procedure must first be gone through before notice of appeal can be served, a person appealing under the said section cannot avail himself of the provisions of section 12 of Act No. XV of 1877.

The facts of this case are as follows:—

On the 13th of March 1894, a petition signed by R. Wall and others as contributories and creditors of the Agra Savings Bank, then in process of liquidation under the supervision of the Court, was presented to the District Judge of Allahabad. The petition purported to be made under sections 162 and 214 of the Indian Companies Act, 1882, and by it the petitioners asked for an inquiry into the conduct of certain officers of the bank, with the ultimate

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object that a decree might be passed against the said officers, or such of them as might be found liable, under section 214 of the Act.

Upon this petition the then District Judge passed orders on the 16th of March 1894, to the effect that an inquiry would be held by the Court into the matters complained of in the petition, and fixing certain issues to limit and define the scope of the inquiry. On these issues the petition came up for hearing, before a different Judge from the Judge who had admitted the petition. After the hearing had lasted two or three days, on the 30th of April 1894, the District Judge passed an order dismissing the application so far as it was an application under section 214 of the Act, and awarding costs against the applicants, but allowing the hearing to proceed under section 162. On the 19th of May 1894 the latter portion of the application also was dismissed. On the same day a dispute as to the specification of the costs allowed under the order of the 30th of April was settled by an order of the Court, and a formal order or decree was ultimately drawn up, bearing date the 19th of May, and embodying the results of the orders of the 30th of April and the 19th of May.

Against the dismissal of their application, two of the petitioners appealed to the High Court. The memorandum of appeal was worded as an appeal against the orders of the District Judge of the 30th of April 1894 and the 19th of May 1894. This appeal was filed on the 2nd of June 1894, and notice was served on the last of the respondents on the 7th of June.

Mr. *W. K. Porter*, for the appellants.

Mr. *D. N. Banerji*, Mr. *W. Wallach*, and Babu *Satya Chandar Mukerji*, for the respondents.

KNOX and BLAIR, JJ.—This is a first appeal from an order passed by the District Judge of Allahabad. In the memorandum of appeal it is stated that the appeal is brought from an order dated the 30th of April 1894 and the 19th of May 1894. A memorandum of appeal can only deal with one particular order, but, as will be seen hereafter, part of the contention of the appellants is that the learned Judge gave an order on the 30th of April 1894 and

completed that order on the 19th of May 1894. The proceedings before the Judge out of which the order appealed against arose consisted of an application praying the Judge to grant an inquiry under section 162 and section 214 of the Indian Companies Act, 1882. Both the orders mentioned in the memorandum of appeal were as a fact passed upon the proceedings which arose out of that application. On the 30th of April, the Judge dismissed the application so far as any inquiry under section 214 of the Act was concerned. On the 19th of May he dismissed the application so far as it related to an inquiry under section 162 of the same Act. A third paper over and above the copies of the orders of the above-mentioned dates is attached to the memorandum of appeal. It is a paper about which much contention has arisen, partly because the Judge has not taken due care to comply with the form set out in the Civil Procedure Code, 1882, as the form according to which decrees should be drawn up, and partly because, after passing a formal order that the application, so far as the inquiry under s. 214 was concerned, should be dismissed with costs, he went on afterwards to hear the parties touching the question of what particular sums under the detail of costs should be allowed. Still, so far as we are concerned, the order or orders with which we have to deal can only be the orders dated the 30th of April and the 19th of May.

The counsel for the respondents took certain preliminary objections, contending that no appeal lay from these orders. If the order concerned was the order dated the 30th of April 1894, the notice required by section 169 of the Indian Companies Act, 1882, had not been given within three weeks after the order complained of had been made. If the order appealed from was the order of the 19th of May 1894, it was an order from which no appeal was allowed by law. It was not an order within the meaning of section 169 of the Indian Companies Act, 1882. In support of this contention we were referred to the precedents *in re Gold Company* (1) and *in re Imperial Continental Water Corporation* (2). We have no hesitation in saying that in our opinion an appeal does

(1) L. R. 12 Ch., D. 77. (2) L. R. 33 Ch., D. 314.

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not lie from an order like the present made under section 162 of the Act. The section in question gives the Court extraordinary powers which at its discretion it may or may not exercise. Proceedings taken under it are not proceedings to which of necessity there are parties. They may be begun, continued and ended by the Court at its discretion and without any parties before it. So far then as the order of the 19th of May is concerned, if that be the order appealed against, it is an order from which no appeal lies.

There remains the order of the 30th of April. Notice of the intention to appeal was not given until the 7th of June 1894. This is admitted by the parties. The appellants, however, contend that they are still in time. They could not, they say, give notice of their appeal against the order complained of in any manner other than that in which notices of appeal are ordinarily given under the Code of Civil Procedure. One of the necessary requisites before an appeal can be filed under the Code of Civil Procedure is that the memorandum of appeal must be accompanied by a copy of the decree appealed against. The learned Counsel drew our attention in support of this argument to a precedent of this Court—*In re* Official Liquidator, Uncovenanted Service Bank, Limited, in liquidation, (Miscellaneous No. 1 of 1891, decided on the 10th of April 1891). The case cited is undoubtedly an authority for holding that the words contained in section 169—"Manner in which notices of appeal are ordinarily given under the Code of Civil Procedure"—include the accompaniment of the memorandum of appeal by the documents required by the Code of Civil Procedure to be filed along with the memorandum of appeal. We give no opinion concerning this precedent, and we confine ourselves to the words set out in section 169. As the order complained of was dated the 30th of April 1894, and notice of appeal was not given until the 7th of June 1894, it is obvious that, unless the appellants can pray in aid some law by which the period of three weeks can be extended, their appeal, which is by statute subject to this restriction, cannot now be heard. The learned Counsel felt this difficulty and asked us to apply section 12 of the Indian

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Limitation Act, 1877, and to exclude from the period of three weeks the time that was requisite for obtaining a copy of the order appealed against. He cited to us several precedents in which the provisions of this section or of the Limitation Act generally had been applied to periods of limitation prescribed under special laws. In each of these cases, however, the particular papers or proceedings in which this section was applied were papers or proceedings of the nature distinctly specified in section 12. The paper or proceeding to which we are now asked to apply this section is not a suit, not an appeal, not an application. It is a paper or proceeding distinct from all these, and we are unable to extend the provisions of section 12 to a paper or proceeding which is not distinctly named, or does not from its nature fall within the distinct terms of that section. We are therefore of opinion that notice of the appeal from the order complained of was not given within three weeks after such order had been made. We have repeatedly expressed from this Court the difficulties which attend the application of section 169 to proceedings in this country. There is great risk of considerable hardship arising, and we have therefore most carefully considered in the present proceedings whether, if such hardship has occurred in the present case, there was any alternative open to us other than that of dismissing this appeal. One loophole which the section gives is the power to extend the time which it permits Courts of appeal to apply. In this case that power of extension has been specifically asked for. It has been refused by this Court, and we can only apply the law and dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

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January 29.

Before Mr. Justice Banerji and Mr. Justice Aikman.

RAHIM BAKHSH (DEFENDANT) *v.* AMIRAN BIBI AND OTHERS (PLAINTIFFS).*

Misjoinder of causes of action—Suit by one plaintiff claiming by inheritance and another claiming as assignee from the first—Civil Procedure, sections 31, 45, 53.

Where two plaintiffs joined in a suit for the recovery of immovable property, the one claiming a title by inheritance and the other a title by assignment from the

* First Appeal No. 309 of 1893 from a decree of Syed Siraj-ud-din, Subordinate Judge of Gorakhpur, dated the 22nd May 1893.