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period of 60 years which is prescribed for a suit to redeem should be granted to the mortgagor. I agree in dismissing the appeal with costs.

BY THE COURT.—The order of the Court is that the appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL.

1903
July 23.

Before Mr. Justice Blair and Mr. Justice Banerji.

NANNHU MAL (APPLICANT) v. GULABO (OPPOSITE PARTY).*

Act VII of 1889 *(Succession Certificate Act), sections* 9 *and* 19—*Order granting certificate conditionally on the giving of security by the applicant—Appeal.*

When, on an application for the grant of a certificate of succession under section 7 of Act No. VII of 1889 the Court passes an order conditioned on the previous filing of security, such an order is not an order "granting, refusing or revoking a certificate within the meaning of section 19 of the Act, and no appeal will lie therefrom. *Bhagwani* v. *Manni Lal* (1) and *Bai Devkore* v. *Lalchand Jivandas* (2) followed. *Venkatasami Naik* v. *Chinna Narayana Naik* (3), *Ariya Pillai* v. *Thangammal* (4) and *Radha Rani Dassi* v. *Brindabun Chundra Basack* (5) referred to.

ONE Nannhu Mal applied in the Court of the Munsif of Bareilly for the grant of a certificate of succession under section 7 of Act No. VII of 1889. The Court in the exercise of its discretion under section 9 of the Act made an order in the following terms:—"That the certificate as prayed for be granted to the applicant, provided that he files a deed of agreement and furnishes security amounting to Rs. 362-14-0 within fifteen days from this date, to the effect that the applicant would deposit in Court all the money that might be realized by him in respect of those bonds. If the deed of agreement is not filed and security not furnished within this period, the application would be disallowed and the costs of the objector would be borne by the applicant." This order was appealed against by the resisting party, and the appeal was entertained by the District Judge and the order of the Munsif

* Civil Revision No. 5 of 1902.

(1) (1891) I. L. R., 13 All., 214.
(2) (1894) I. L. R., 19 Bom., 790.
(3) (1894) 5 Mad., L. J., 28.
(4) (1896) I. L. R., 20 Mad., 442.
(5) (1897) I. L. R., 25 Calc., 320.

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reversed. The applicant for grant of a certificate then applied in revision to the High Court, asking the Court to set aside the appellate order of the District Judge upon the ground that he had no jurisdiction to entertain the appeal, the order not being one under section 19 of the Act, which provides that an appeal shall lie from an order "granting, refusing or revoking" a certificate under the Act.

Mr. *Muhammad Raoof* (for whom Munshi *Haribans Sahai*), for the applicant.

Mr. *S. Sinha*, for the opposite party.

BLAIR and BANERJI, JJ.—This is an application for revision of an order made by a District Judge in an appeal from an order of a Munsif under the following circumstances. An application was made to the Munsif for the grant of a certificate under section 7 of Act No. VII of 1889. The Court in the exercise of its discretion under section 9 made an order in the following terms: "That the certificate as prayed for be granted to the applicant, provided that he files a deed of agreement and furnishes security amounting to Rs. 362-14-0 within fifteen days from this date, to the effect that the applicant would deposit in Court all the money that might be realized by him in respect of those bonds. If the deed of agreement is not filed and security not furnished within this period, the application would be disallowed and the costs of the objector would be borne by the applicant." This order was appealed against by the resisting party and the appeal was entertained by the Judge and the order of the Munsif reversed. Mr. *Haribans Sahai* applies to this Court in revision to set aside the appellate order of the District Judge upon the ground that he had no jurisdiction to entertain the appeal, the order not being one under section 19 of the Act, which provides that an appeal shall lie from an order granting, refusing or revoking a certificate under the Act. The contention of Mr. *Haribans Sahai* is that the order in question neither granted nor refused nor revoked a certificate under the Act. Mr. *Haribans Sahai's* contention is supported by the ruling of this Court in the case of *Bhagwani* v. *Manni Lal* (1). In that case a single Judge of great eminence, the

(1) (1891) I. L. R., 13 All., 214.

late Mr. Justice Mahmood, held that an order similar to the one before us was not an order granting, refusing or revoking a certificate under section 19 of the Succession Certificate Act. His view was that such an order was only an interlocutory order and not a final adjudication from which an appeal was allowed. On appeal under the Letters Patent the case came before a late Chief Justice and another Judge of this Court. They held, supporting the learned Judge, that the order was not one granting or refusing a certificate. A case substantially upon the same facts came before the Bombay Court. It is the case of *Bai Devkore* v. *Lalchand Jivandas* (1). In that case the Judge had ordered a certificate to issue on the applicant furnishing security. It was held, following the ruling of this Court, that such an order was not an order granting, refusing or revoking a certificate within the meaning of section 9 of the Succession Certificate Act. These are the authorities cited before us on behalf of the applicant. A similar question arose before the Madras Court in *Venkatasami Naik* v. *Chinna Narayana Naik* (2), and in that case the decision of this Court was cited and disapproved of. The judgment is to this effect: "We are of opinion, however, that the order that certificate be granted on security being furnished sufficiently meets the requirements of the section, though it is only intended to take effect on security being furnished." The learned Judges do not appear to have given due weight to the consideration that if the order was an order granting a certificate on security being furnished it was also by implication an order refusing the application if the security was not furnished. It seems to us that a bifurcated order of this kind would, if an appeal lay, be open to appeal by both sides. It would be open to one side to say that it was an order granting a certificate, and it would be open to the other side to say that it was an order refusing a certificate. There is another ruling of the same Court in *Ariya Pillai* v. *Thangammal* (3), where a single Judge had held, on the authority of the case in this Court, that the order was not an order granting a certificate, but the

(1) (1894) I. L. R., 19 Bom., 790. (2) (1894) 5 Mad., L. J., 28
(3) (1896) I. L. R., 20 Mad., 442.

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appellate Court, consisting of the Chief Justice and another Judge, dissented from the case in this Court, relying on the case previously cited of the Madras Court, as an authority to the contrary. No statement was made in that case as to the *ratio decidendi*. The same point arose in *Radha Rani Dassee* v. *Brindaban Chandra Busack* (1) before a Bench of the Calcutta High Court consisting of the Chief Justice and another Judge, in which the case decided in this Court was a matter of consideration. This was what was said by the Chief Justice: "In my opinion, an order is not the less an order because there is a condition attached to it that security is to be given by the person in whose favour it is made. It is still an order. The appellant not unnaturally relies upon the case of *Bhagwani* v. *Manni Lal*. With great respect to the learned Judges who decided that case, I regret I am unable to concur in that decision. It seems to me to be rather a narrow view to take of the term 'order' in section 19."

Apparently neither the learned Judges of the Madras Court nor those of the Calcutta Court had their attention called to the dilemma described above, namely, that if such an order was appealable by one party it was appealable by the other. Nor do they seem to have considered the precise terms of section 9 which permits the imposition of such a condition as that which has been imposed upon the grant of certificates. The words are: "The Court may require as a condition precedent to the granting of a certificate, that the person to whom it *proposes* to make the grant shall give to the Judge of the Court, to enure for the benefit of the Judge for the time being, a bond with one or more surety or sureties, or other sufficient security." In our opinion these words can receive no other interpretation but that the furnishing of the security is a condition precedent to the granting of the certificate. In the same section there are indicated the two steps to be taken in the direction of the granting of the certificate. These are clearly distinguishable from one another. The Court should, under the provisions of section 9, require the condition precedent to be fulfilled before making its order for granting the certificate asked for. It

(1) (1897) I. L. R., 25 Calc., 320.

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seems to us that what is termed an order is merely a preparation to grant a certificate—a preparation which can only be turned into a grant on the fulfilment of the condition precedent, that is to say, upon the furnishing of the security. We are prepared to follow the ruling in the case of *Bhagwani* v. *Munni Lal* (1). We accordingly allow the petition, set aside the order of the Court below with costs, and restore that of the Court of first instance.

REVISIONAL CRIMINAL.

1903
August 5.

Before Sir John Stanley, Knight, Chief Justice.

EMPEROR *v.* MUHAMMAD HADI.*

Criminal Procedure Code, section 208—*Procedure—Witnesses—Duty of Magistrate inquiring into a case triable by the Court of Session to summon and examine witnesses asked for by the accused.*

The accused, against whom an inquiry with regard to an alleged offence under section 330 of the Indian Penal Code was being held by a Magistrate of the first class, asked the Magistrate to summon certain witnesses for the defence; but the Magistrate without summoning such witnesses passed an order committing the accused to the Court of Session.

Held that the Magistrate was bound to take all such evidence as the accused was prepared to produce before him, and that the order of commitment was bad in law. *Queen-Empress* v. *Ahmadi* (2), followed.

IN this case one Kanah made a complaint charging Muhammad Hadi, a Sub-Inspector of Police, with having tortured him in order to extort from him a confession in a case of theft which the Sub-Inspector was investigating. The Sub-Inspector also brought a counter-charge against the complainant and several of his relations of offences under sections 353 and 147 of the Indian Penal Code. The two charges were inquired into by a Magistrate of the first class, the evidence for the prosecution in either case being treated, by consent, as evidence for the defence in the other. In the case under section 330, however, Muhammad Hadi tendered to the Court a list of witnesses whom he desired to have summoned and examined. Notwithstanding this, the Magistrate did not examine these witnesses,

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*Criminal Revision No. 348 of 1903.

(1) (1891) I. L. R., 13 All., 214. (2) (1898) I. L. R., 20 All., 264.