

an appeal which purports to have been filed under section 10 of the Letters Patent of this Court and we do not see any reason why we should be debarred from awarding costs. We hold that costs may be awarded by this Court and we direct that the appellant shall pay the costs of the respondent in the appeal. For the purpose of taxation we fix the counsel's fee at Rs.250. Counsel for the respondent is permitted to file his certificate of fees in the course of today.

1934

Haidari  
BEGAM  
v.  
JAWAD ALI  
SHAH

-----  
MISCELLANEOUS CIVIL  
-----

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice King*

ATMA RAM (APPLICANT) v. BENI PRASAD AND OTHERS  
(OPPOSITE PARTIES)\*

1934  
January, 5

*Civil Procedure Code, order XLV, rule 13—Stay of proceedings in suit pending decision of appeal to Privy Council from an order—Jurisdiction—Civil Procedure Code, section 151—Inherent powers—Government of India Act, 1915, section 107—Powers of superintendence—Staying suit pending in lower court.*

Order XLV, rule 13 of the Civil Procedure Code has no application where a party applies for the stay of proceedings in the suit in the court below, as distinct from the stay of execution of a decree, pending the decision of an appeal to the Privy Council from an order in the suit; and the High Court has no jurisdiction, therefore, under that rule to stay the proceedings in such a case.

Nor is there an inherent jurisdiction in the High Court to make such an order of stay, i.e. to direct courts subordinate to it to proceed in a particular manner. Section 151 of the Civil Procedure Code does not confer any jurisdiction on the court which did not already exist. It merely preserves the inherent powers of the court which it may possess. Varieties of inherent jurisdiction are well recognized, and new categories cannot be invented. Ordinarily such a power would be limited to its jurisdiction to deal with proceedings pending before it and would not include a wide jurisdiction over inferior courts.

---

\*Application in Privy Council Appeal No. 36 of 1933.

1934

ATMA NATH  
v.  
BENI  
PRASAD

*Quaere*, whether the power of superintendence conferred upon the High Court by section 107 of the Government of India Act, 1915, may be deemed to include the power to direct the court below to stay proceedings in a suit pending before it.

Sir *Tej Bahadur Sapru* and Messrs. *Shiva Prasad Sinha* and *S. K. Mukerji*, for the applicant.

Messrs. *S. K. Dar* and *Gopi Nath Kunzru*, for the opposite parties.

SULAIMAN, C.J., and KING, J.:—This is an application praying that pending the disposal of the Privy Council appeal the proceedings in the suit pending in the court below be stayed. The Collector, as representing the Court of Wards which was in possession of the estate of certain Hindu widows, withdrew the suit brought by him just about the expiry of the period of limitation. A reversioner, Beni Prasad, applied to the court for being permitted to continue the suit. His application was dismissed, but on revision a Bench of this Court allowed his application and directed that he be brought on the record as the plaintiff in place of the Collector and be permitted to proceed with the suit. Leave to appeal to his Majesty in Council from the order passed in revision by this Court has been granted under section 109(c) and the appeal is pending. The defendant now applies that the proceedings in the court below should be stayed till the disposal of the Privy Council appeal. A preliminary objection is taken on behalf of the opposite party that this Court has no jurisdiction to stay the proceedings.

So far as order XLV, rule 13 is concerned we are of opinion that that rule does not cover the present application. Sub-rules 2(a) and (b) do not obviously apply to this case. Sub-rule 2(c) cannot also apply because the application is not for the stay of the execution of the decree appealed from, inasmuch as there is no decree in existence, much less is there any execution case. It is further clear that sub-rule 2(d) also cannot apply because that deals with the power of the court in

placing any party seeking the assistance of the court upon conditions, or giving other directions respecting the subject-matter of the appeal. That sub-rule obviously refers to cases where a party is to be put to certain terms or where some order has to be made regarding the custody or disposal of the subject-matter of the appeal.

1934

---

 ATMA RAM  
 v.  
 BENI  
 PRASAD

In the case of *Ram Narain v. Harnam Das* (1) a Bench of this Court distinctly laid down that order XLV, rule 13 has no application where the party applies for the stay of proceedings in the court below as distinct from the stay of the execution of a decree. The learned Judges followed a Full Bench ruling of the Calcutta High Court in *Laliteswar Singh v. Bhabeswar Singh* (2), in which it was clearly laid down that the High Court had no power to stay proceedings in a suit following a preliminary decree for partition against which it had granted leave to appeal to the Privy Council, as the Privy Council which had seisin of the appeal could alone do so.

The learned advocate for the applicant relies strongly on the case of *Sarat Kumar Roy v. Official Assignee of Calcutta* (3) in which a Division Bench of the Calcutta High Court held that when an order was made by the High Court in appeal that a mortgage suit should be reheard, and an appeal to England against that order was admitted, and an application was made for stay of the hearing of the mortgage suit, the order could be made if the materials before the court warranted it, inasmuch as order XLV, rule 13 of the Civil Procedure Code would cover the case and the court would also have inherent jurisdiction to make any order that it may consider necessary in the circumstances. Apparently the attention of the learned Judges was not drawn to the previous Full Bench ruling of their own Court, to which there is no reference in the judgment.

(1) (1919) I.L.R., 42 All., 170. (2) (1909) 9 C.L.J., 561.  
 (3) A.I.R., 1931 Cal., 79.

1934

ATMA RAM  
v.  
BENI  
PHASAI

It seems to us that we must, following the decision in *Ram Narain's case* (1), hold that order XLV, rule 13 has no application to the present case.

We are also not prepared to hold that there is an inherent jurisdiction in the High Court to direct courts subordinate to it to proceed in a particular manner. Section 151 of the Civil Procedure Code does not confer any jurisdiction on the court which did not already exist. It merely preserves the inherent power of the court which it may possess. Varieties of inherent jurisdiction are well recognized, and new categories cannot be invented. Ordinarily such a power would be limited to its jurisdiction to deal with proceedings pending before it and would not include a wide jurisdiction over inferior courts, otherwise it would be conferring power on the High Court even in excess of that conferred by section 115 of the Civil Procedure Code. There is, however, section 107 of the Government of India Act, which confers upon the High Court the power of superintendence over courts subject to its appellate jurisdiction. It has been held in several cases that this section refers not only to administrative acts of the subordinate courts, but also to judicial acts. This section was not relied upon by counsel in *Ram Narain's case* (1) and its applicability was not at all considered in that case. If section 107 were interpreted in a wide sense it may well include the power to direct the court below to stay proceedings in a suit pending before it.

It is not, however, necessary for us to decide this point finally, because, even assuming that this Court has power to stay proceedings, it would not be advisable in this case to make this order. In spite of all endeavour on the part of the defendant to expedite the hearing of the appeal before their Lordships of the Privy Council it cannot be certain that the appeal would be disposed of in a short time. One of the

(1) (1919) I.L.R., 42 All., 170.

points in dispute in this case appears to be the alleged adoption of the defendant, said to have taken place in 1908. The plaintiff apprehends that much of the oral evidence may be lost or destroyed if the hearing of the case is delayed. The burden of proving the adoption may well be on the defendant, in which case it may be his duty to lead evidence in the first instance, and the plaintiff would not then be called upon to produce any evidence until the defendant's evidence on this issue is closed. The postponement of the hearing of the case would therefore involve some delay and there is a possibility of some oral evidence being lost in the meantime. The only loss which the defendant can suffer would be the costs incurred by him in defending the case and the time and labour spent. This can be adequately compensated for by an award of costs when the case is finally disposed of. The plaintiff's counsel himself offered to furnish security for costs if necessary. We think that the defendant would be sufficiently protected if the plaintiff were to deposit security for the costs of the defendant in the court below to the extent of Rs.3,000. On condition of such security being deposited in the court below to the satisfaction of that court, and on the understanding that the preparation of the record for the Privy Council would not be delayed on account of the proceedings in the court below, we reject this application. We allow two months' time to the plaintiff to deposit security sufficient for Rs.3,000 in the court below. In case of failure of such deposit within the time fixed the defendant will be at liberty to move this Court again for a stay order.

1934

---

ATMA RAM  
v.  
BENI  
PRASAD