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on the ground that the appellant's pleader or counsel was unavoidably prevented from being heard.

OLAYET
KHAN
v.
KING-
EMPEROR.

The facts of the case material to this report are stated in the judgment of the Court.

Hasan Imam, for the petitioner.

H. L. Nandkeolyar, Assistant Government Advocate, for the Crown.

JWALA PRASAD AND COUTTS, J. J.—This application appears to be incompetent. The appeal in the Court below was disposed of under section 423 of the Code of Criminal Procedure after "perusing the record" and considering the grounds of appeal. The appellant's Counsel could not be heard, inasmuch as he was prevented from being present in Court in time on account of the railway strike. The appeal was, therefore, disposed of on the merits, and in revision we can deal with it only under section 439 of the Code of Criminal Procedure, under which the petition before us has to be disposed of under section 423 of the Code. There is, therefore, no power in this Court to set aside the judgment of the Court below, merely upon the ground that the pleader or the Counsel on behalf of the petitioner was not heard in the Court below.

The application is, therefore, rejected.

Application rejected.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Adami, J.

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SUDHANSU BALA HAZRA;

April, 11.

IN RE MISS.*

Appeal to His Majesty in Council—Legal Practitioners Act 1879 (XVIII of 1879), section 6, order under, refusing to enrol applicant as legal practitioner.

* Privy Council Appeal No. 6 of 1922.

An order of the High Court refusing to enrol a particular person as a legal practitioner under the Legal Practitioners Act, 1879, is not one from which the High Court has jurisdiction to grant leave to appeal to the Privy Council.

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IN RE
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Birkishore Roy v. King-Emperor⁽¹⁾, applied.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

Manuk (with him *S. P. Sen, Susil Madhab Mullick* and *Devaki Prasad Sinha*), for the applicant.

DAWSON MILLER, C. J.—This is an application for leave to appeal from an order made by this Court upon an application by Miss Sudhansu Bala Hazra for enrolment as a pleader in the District Court of Patna. The question whether she was a proper person to be enrolled as a pleader was one which would have to be decided before a decision could be come to as to whether she should be enrolled or not. The application was made in the ordinary way to the District Judge who forwarded it to the High Court in accordance with the practice. The question whether she ought to be enrolled or not was one which gave rise to considerable difficulty. Miss Hazra was qualified in every way for enrolment as a pleader except by the disability arising by reason of her sex. Before making any order in the matter, in order to give her an opportunity of urging before us any points that she might like to argue before a decision was come to, we agreed that she might appear by Counsel before three Judges of this Court and put before them her contentions based upon the Legal Practitioners Act and other enactments in support of her application to be enrolled as a pleader. Having heard her through learned Counsel we came to the conclusion that under the law as it then existed Miss Hazra was not entitled under the Legal Practitioners Act and the rules made in accordance therewith to be

(1) (1819) 4 Pat. L. J. 423.

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enrolled as a pleader. The result was that her application was refused. [See *In re Sudhansu Bala Hazra* (1).]

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It is from that order that she now asks for a certificate that the case is a fit one for appeal to His Majesty in Council under the provisions of the Civil Procedure Code. In the case of *Bir Kishore Roy v. King-Emperor* (2) the same class of question arose and it was there decided that the Court had no power to grant leave in that case. That case was one also arising under the Legal Practitioners Act and it raised the question whether an order made by a court under its disciplinary power conferred under section 13 of the Legal Practitioners Act was one in which any appeal lay. Having considered the powers given to this Court under the Letters Patent we came to the conclusion that the right of appeal to His Majesty in Council conferred by the Letters Patent was confined to the different classes of jurisdiction named in the Letters Patent and not to the administrative or disciplinary powers conferred upon the Court thereby. I am unable to distinguish the present case from that to which I have just referred in which after considering the powers of the Court and considering the cases upon the subject we arrived at the conclusion that in all cases where the only question for the court is one of its disciplinary powers under the Legal Practitioners Act or its administrative powers under the same Act if the party aggrieved wished to appeal to the Privy Council the proper practice was for him to make an application to their Lordships in the Privy Council. In Safford and Wheeler's *Privy Council Practice*, at page 789, as was pointed out in the case I have just referred to, the practice in cases of this sort is referred to and is treated as the subject of special leave.

It has been contended in this case that the decision from which it is sought to appeal is not really entirely

(1) *Ante*, p. 105.

(2) (1919) 4 Pat. L. J. 423.

one coming under the administrative powers of the Court but that it is in fact a judicial act in so far as we had to interpret the Legal Practitioners Act relating to the subject. I do not think that this contention can be supported. It may always be necessary in performing administrative acts for the Court or the Judge or the person whose duty it is to carry out these acts to consider and come to a conclusion as to what his powers may be under a particular Act of Council and the mere fact that such a consideration arises does not seem to me to take the case out of the ordinary course. The decision we arrived at was one which was necessary to come to before we could determine whether or not Miss Hazra could be admitted as a pleader. It was all part and parcel of an administrative act and that being so I cannot see how we can grant leave in this case because it is a matter which lies solely within the jurisdiction of their Lordships of the Privy Council and this Court has no power to make the order.

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MILLER,
C. J.

I regret that this should be so but I think Miss Hazra would have been better advised had she proceeded immediately to their Lordships of the Judicial Committee to ask for special leave.

ADAMI, J.—I agree.

Application rejected.

LETTERS PATENT.

Before Dawson Miller, C. J. and Adami, J.

PRITHI MAHTON

v.

JAMSHAD KHAN.*

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April, 26,

Code of Civil Procedure, 1908 (Act V of 1908), section 11—Res Judicata—Execution proceedings, whether Explanations to section 11 applicable.

* Letters Patent Appeal No. 49 of 1921.