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aside. The difficulty is to know which conviction and sentence should be set aside. If the conviction and sentences under section 379 are set aside, then, also, the first two petitioners, who have been subjected to a heavier punishment by reason of their previous conviction, will also escape the effects of the previous convictions. Ordinarily the case is one which should go back for retrial owing to the trial Court not carrying out the provisions of section 349; but as pointed out by Mr. *Agarwala* the case has a large element of the civil nature in it and also the petitioners have already served a considerable part of their sentence.

With regard to the previous convictions, it is to be remembered that those convictions were passed in 1898 and 1902 and there is nothing to show that these persons have since then led otherwise than a good life.

We set aside the convictions under section 379 and reduce the sentences to the period already undergone under sections 143 and 144. The fine under section 379, if paid, will be refunded.

SEN, J.—I agree.

Order modified.

APPELLATE CIVIL.

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

BIBI WASHIHAN

v.

MIR NAWAB ALI.*

1924.

June, 13.

Religious Endowments Act, 1863 (*Act XX of* 1863), *section* 18—*rejection of application under, for leave to sue—appeal, whether lies—Bengal, Assam and Agra Civil Courts Act*, 1887 (*Act XII of* 1887), *section* 20.

* Appeal from Original Order no. 248 of 1923, from an order of J. N. Prashad, Esq., District Judge of Shahabad, dated the 20th July, 1923.

There is no appeal from an order under section 18 of the Religious Endowments Act, 1863, refusing leave to institute a suit under that Act.

Section 20 of the Bengal, Assam and Agra Civil Courts Act, 1887, merely deals with the *forum* to which an appeal lies and does not confer a right of appeal from every order of the District Judge to the High Court.

The appellants in this case made an application before the District Judge of Shahabad, under the Religious Endowments Act, XX of 1863, for removing the *mutwali* of a certain *Darga*. The application was made under the provisions of section 18 of the Act. That section provides that no suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such a suit: The Court on the perusal of the application shall determine whether there are sufficient *primâ facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution. The rest of the section is not material. Under section 14 of the Act any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager, or superintendent of such mosque, temple or religious establishment. It was in order to bring a suit under section 14 that the application was made, and, therefore, if the condition referred to in section 18, namely, that the application should first be made for leave to bring the suit, was not complied with and leave obtained, the appellants would not be entitled to proceed under section 14.

The District Judge, before granting the application, made an enquiry and certain witnesses were examined on behalf of the applicants before the learned Judge. Having heard their evidence he came to the conclusion that no *primâ facie* case had been made out justifying him in granting leave for the

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institution of the proposed suit. He also pointed out that the present *mutwali* had, so far from mismanaging the property, in fact, out of his own income redeemed the whole of the *wakf* property which had been mortgaged to other persons by his predecessors. In these circumstances he refused the application.

G. N. Mukherjee, for *M. Yunus*, for the respondent, took a preliminary objection: This appeal arises out of an application under section 18, Act XX of 1863 (Religious Endowments Act, 1863). Nowhere is it provided by that Act that where an application under section 18 is rejected, an appeal shall lie. A right of appeal must be conferred by the Statute. See *Minakshi Naidu* v. *Subramanya Sastri* (1) and *Rangoon Botatoung Company, Ltd.* v. *The Collector, Rangoon* (2). The appellants had an option to proceed either under section 18 of Act XX of 1863 or under section 92 of the Civil Procedure Code. Had they proceeded under section 92 they would have had a right of appeal. But they have chosen to adopt the procedure prescribed by Act XX of 1863 and must, therefore, be subject to the provisions of that Act.

Manmatha Nath Pal (with him *N. N. Sen*), for the appellants: Every order passed by the District Judge is appealable unless the contrary is laid down by any Statute. *See* section 20, Bengal Civil Courts Act, 1887.

DAWSON MILLER, C.J. (after stating the facts, as set out above, proceeded as follows): A preliminary objection has been taken that no appeal lies from an order of the learned District Judge under section 18, Religious Endowments Act. This objection, I think, is sound. The Act itself which creates the cause of action does not provide for any appeal from the order of the District Judge. Nor is there anything in the Civil Procedure Code which would indicate that any appeal lay The order of the District Judge is clearly not a decree and the cases in which an appeal lies from

(1) (1888) I. L. R. 11 Mad. 26; L. R. 14 I. A. 160.
(2) (1913) I. L. R. 40 Cal. 21; L. R. 39 I. A. 197.

orders are laid down in sections 104 and 105 of the Civil Procedure Code; the cases are there named in which an appeal lies from certain orders and an appeal lies from no other orders. These two sections, coupled with Order XLI of the Code, show quite clearly to my mind that no appeal is permissible in such a case. The only contention put forward by the other side is that under section 20 of the Bengal Civil Courts Act of 1887 it is provided that save as otherwise provided by any enactment for the time being in force an appeal from a decree or order of a District Judge or Additional District Judge shall lie to the High Court. The learned Vakil wants us to construe that section as if it granted a right of appeal from every order of the District Judge to the High Court. This is clearly not the interpretation of that section; the only thing the section is dealing with is the *forum* to which an appeal, if any, shall lie from decrees or orders of the District Judge.

In my opinion the preliminary objection is a sound one and this appeal is not permissible.

The appeal is dismissed with costs.

FOSTER, J.—I agree.

Appeal dismissed.