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BUCKNILL, J.

licenses of this nature) are not only worthless as reasons for such refusals but in themselves are incapable of having any legal effect; and, in addition, might I think give rise not only to some hardship in certain instances but also possibly to some disturbance between those whose ideas are against the slaughter of cattle and those whose ideas are not against the slaughter of cattle.

The application, therefore, must be rejected and the convictions will stand; but the penalties will be reduced to the amounts which I have already indicated.

ROSS, J.—I agree.

S. A. K. *Application rejected.*

Penalty reduced.

APPELLATE CIVIL.

Before Jwala Prasad and Adami, J.J.

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SHIB DUTTA SINGH

v.

SHEIKH KARIM BAKHSH.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XXII, rule* 4(3)—*Abatement of appeal—death of a respondent —application for substitution of some of the heirs, appellant being unaware of the existence of others—Limitation.*

Wehr an appellant applies within time for the substitution of such of the heirs of a deceased respondent as he *bona fide* believes to be in existence the appeal does not abate under Order XXII, rule 4(3), Civil Procedure Code, 1908, even though in fact there are in existence other heirs of the respondent of whose existence the appellant is unaware.

Ram Anuj Sewak Singh v. *Hingu Lal*(1), *Krishnaji Janardon* v. *Murrarray* and *Narsingrav*(2), followed.

* In the matter of an application for substitution in Second Appeal no. 932 of 1922.

(1) (1881) I. L. R. 3 All. 517. (2) (1888) I. L. R. 12 Bom. 48.

Kadir Mohideen Marakkayar v. *N. V. Muthukrishna Ayyar*(1), *Ghamandi Lal* v. *Amir Begam*(2) *Haidar Husain* v. *Abdul Ahad*(3) and *Bai Full* v. *Alesang Pahadsang*(4), referred to

Application by the appellant.

This was an application to bring on the record two daughters of Sheikh Karim Bakhsh deceased, namely, Nasir Bibi and Kulsum Bibi. Sheikh Karim Bakhsh was respondent no. 1 and he died on the 12th March, 1924, after the appeal was filed. On the 17th May 1924, the appellant-petitioner applied for substituting the names of his minor son Sheikh Yusuf and his major daughter Mari-un-nisa. This application was within time and substitution was ordered by the Registrar. The son being a minor, the question of the appointment of a guardian arose, and when this matter was being dealt with by the Registrar the Vakil on behalf of respondent no. 3 informed the Registrar that there were two other heirs of the deceased respondent no. 1. Upon this information being received by the Vakil of the appellant, he wrote to his client and the latter made enquiries and reported that the deceased respondent no. 1 had left behind two other heirs, his daughters, namely, Nasir Bibi and Kulsum Bibi mentioned above. An affidavit to this effect was sworn to in the month of August at Purulia, and when the High Court re-opened after the vacation, on the 27th October, 1924, the application was filed.

Abani Bushan Mukerji, for the petitioner.

Sailendranath Palit, for the opposite party.

JWALA PRASAD AND ADAMI, JJ.—It is clear upon the sworn petition of the appellant that he *bonâ fide* made an application for substitution of only two heirs of the deceased respondent no. 1 because he had no knowledge of the existence of the other two heirs,

(1) (1903) I. L. R. 26 Mad. 230 (233-234).
(2) (1894) I. L. R. 16 All. 211.
(3) (1908) I. L. R. 30 All. 117.
(4) (1902) I. L. R. 26 Bom. 203.

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and after that when he came to know of their existence he made diligent inquiry and put in his application. Therefore there can be no doubt as to the *bonâ fides* and the application is within time from the date of knowledge of the appellant. In this view the application should be granted, and the two daughters of respondent no. 1 mentioned above be also made respondents along with the other two heirs already brought on the record.

An objection has been taken by the learned Vakil on behalf of the respondent that the appeal had already abated so far as the heirs of respondent no. 1 now sought to be brought on the record are concerned, and that the present application for bringing them on the record is barred by limitation. Upon this view there is divergence of opinion. Personally speaking we are of opinion that the appeal in the present case did not abate, inasmuch as an application for bringing upon the record some of the heirs of the deceased respondent no. 1 was already made within time. Rule 4 of Order XXII, clause (*3*), directs that the appeal shall abate where within the time limited by law no application is made under sub-rule (*1*). Here an application, as already observed, was made within time. Therefore the appeal did not abate as against the deceased respondent. The respondent no. 1 having died the appeal could abate only if it was not continued against his representative by an application made within time, and the moment the application was made within time the appeal was saved from abatement. The bringing on the record subsequently of the other heirs of the deceased will be simply an addition of the names in the category of respondents. This view is supported by the cases of *Ram Anuj Sewak Singh* v. *Hingu Lal*(1) and *Krishnaji Janardan* v. *Murrarray* (2). Some support is also lent to this view by the decision in the case of *Kadir Mohideen Marakkayar* v. *N. V. Muthukrishna Ayyar* (3). The other cases, however,

(1) (1881) I. L. R. 3 All. 517. (2) (1888) I. L. R. 12 Bom. 48.
(3) (1903) I. L. R. 26 Mad. 280.

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are not exactly on the point. The cases relied upon on the other side, namely, *Ghamandi Lal* v. *Amir Begam* (1), *Haidar Husain* v. *Abdul Ahad* (2) and *Bai Full* v. *Adesang Pahadsang* (3), are not on all fours with the present case.

Even if there was abatement in the present case, the appellant is entitled, upon the facts clearly set forth in his sworn petition and not controverted by any counter-affidavit, to have the abatement set aside and to have the names of the fresh heirs added on the record. No doubt, in his application the appellant has prayed for substitution and addition of the daughters of the deceased respondent no. 1 as heirs in his place and has not clearly asked for setting aside the abatement; but reading the whole application and the prayer, the application can reasonably be construed as an application for setting aside the abatement and for substitution.

The application is, therefore, granted. Let the heirs proposed be brought on the record as respondents in place of the deceased respondent no. 1. In the circumstances of the case there will be no order as to costs.

Application granted.

APPELLATE CRIMINAL.

Before Bucknill and Ross, JJ.

SHAIKH MUHAMMAD YASSIN

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Dec., 19.

v.

KING-EMPEROR.*

Penal Code, 1860 (*Act XLV of* 1860) *section* 211—*information to the police followed by complaint to the magistrate—sanction of the Court, whether necessary—Code of*

* Criminal Appeal no. 207 of 1924, from a decision of Suresh Chandra Sen, Esq., Assistant Sessions Judge of Muzaffarpur, dated the 27th of September, 1924.

(1) (1894) I. L. R. 16 All. 211. (2) (1908) I. L. R. 30 All. 117
(3) (1902) I. L. R. 26 Bom. 203.