

PRIVY COUNCIL.

RABIABAI AND OTHERS, PETITIONERS, AND MAHOMED ISMAIL
KHAN AND OTHERS, OBJECTORS.

P. C.*
1897.
April 7.

IN THE MATTER OF AN APPEAL FROM THE HIGH COURT AT BOMBAY.

*Privy Council—Practice—Petition to restore an appeal—Terms under
which it was restored.*

Under Rule 5 of the Orders in Council of 13th June, 1853, an appeal was dismissed for want of prosecution on the 8th October, 1893. The record had been received on the 15th January, 1896, and since then no steps had been taken. The delay having been explained, and the cause of it considered sufficient, the appeal was restored to the file, on conditions as to costs, and on security to be given in England.

THIS was a petition preferred by Rabiabai, widow of Amir Saheb Mahomed Ali, in which his sons joined, relating to an appeal between the petitioners and Mahomed Ismail and others. This appeal had been dismissed for want of prosecution.

The petition set forth that on the 7th March, 1893, the suit brought against the petitioners was dismissed by the decree of the High Court in its original jurisdiction, but on appeal decreed by the Appellate High Court on the 13th October, 1893. An appeal to Her Majesty in Council was admitted on the 13th April, 1894. The record was received by the Registrar of the Judicial Committee on the 15th January, 1896. No steps having, after that, been taken, this appeal was, on the 8th October, 1896, dismissed for want of prosecution under the terms of Rule 5 of the Order in Council of the 13th June, 1853. The explanation of the petitioners was that the delay had taken place owing to the illness of Mahomed Ali Amir Saheb Kewal, the manager of the affairs of the family of which the appellants were members.

Mr. J. D. Mayne, for the petitioners, relied on this manager's affidavit, and referred to *Rajah Deedar Hossein v. Rance Zahooroon Nissa*,⁽¹⁾ *Rance Birjobuttee v. Pertaub Sing*⁽²⁾, and to the practice of the Judicial Committee by W. Macpherson, Esquire, p. 100.

Mr. T. Ribton was heard for Mahomed Ismael Khan, the first respondent on the appeal, on the objection to the petition.

* Present :—LORDS WATSON, HOBHOUSE, and DAVEY, and SIR R. COUCH.

(1) (1841) 2 Moore's Ind. Ap. Ca., 441. (2) (1860) 8 Moore's Ind. Ap. Ca., 160.

1897.

RABIABAI
v.
MAHOMED
ISMAIL.

Their Lordships held that the appeal ought to be restored upon condition, (1) that the petitioners do deposit in the Registry of the Privy Council, within four months from the date of Her Majesty's order, £300 as security for costs; (2) that the petitioners pay the respondent his costs of opposing the petition incurred in India, his costs of the dismissal of the appeal, and his costs of opposing the petition in England.

An order in Council to the above effect was made on the 18th May, 1897.

Solicitors for the petitioners:—Messrs. *Nichol, Manisty and Co.*

Solicitors for the first respondent:—Messrs. *Hughes and Sons.*

ORIGINAL CIVIL.

Before Sir C. Furrar, Kt., Chief Justice, and Mr. Justice Strachey.

1897.

July 9.

TULLOCKCHAND HARNATH AND ANOTHER (ORIGINAL DEFENDANTS),
APPELLANTS, v. GOKULBHOY MULCHAND (ORIGINAL PLAINTIFF),
RESPONDENT.*

Registration—Suit to compel registration—Document referring to another document—Two documents when registrable as one—Duties of Registrar—Further period for presentation allowed by Section 34 of Registration Act—Registration Act (III of 1877), Secs. 24, 34, 77.

The defendants executed and delivered two documents A and B to the plaintiff—A being an agreement of equitable mortgage and B an agreement that they (the defendants) would register A and do all things necessary therefor, and, in case they failed to do so, to pay whatever the plaintiff could claim under A if it had been registered. The plaintiff obtained an order for the registration of A, but failed to present it for registration within thirty days after such order as required by section 75 of the Registration Act (III of 1877), and, when he did present it, registration was consequently refused. He subsequently lodged B for registration, with A as an annexure to it, and it was accepted on payment of a penalty under section 24 of the Registration Act. The Registrar, however, refused to register B on the grounds (1) that without A there would be nothing to show to what property B referred, and (2) that to register A as an annexure to B would be contrary to the provisions of section 75 which limited the time for registration to thirty days. The plaintiff then brought this suit under section 77 praying for an order for the registration of B, with its accompaniment A, within thirty days from the decree. The Division Court made the order as prayed for. On appeal by the defendants,

* Suit No. 251 of 1896. Appeal No. 933.