

APPELLATE CIVIL.

Before Mr. Justice Knight and Mr. Justice Macleod.

1907.
November 14.

G. S. D., APPLICANT, *v.* THE GOVERNMENT PLEADER,
HIGH COURT, BOMBAY.*

*Letters Patent, clauses 10, 39—High Court—Disciplinary jurisdiction—
Suspension of Vakil—Leave to appeal—Privy Council.*

The applicant, a Vakil of the Bombay High Court, was suspended from practice for a period of six months by the High Court in the exercise of its disciplinary jurisdiction under clause 10 of the Letters Patent. The applicant applied for leave to appeal to His Majesty's Privy Council.

Held, that no appeal lay by right of grant against the order, as it was not in the nature of a final judgment, decree or order under clause 39 of the Letters Patent. It was open to the applicant to proceed by way of petition to His Majesty the King for leave to appeal.

APPLICATION for leave to appeal to His Majesty's Privy Council under clause 39 of the Letters Patent.

The applicant, a Vakil of the Bombay High Court, was suspended from practice for a period of six months by an order of the High Court passed under clause 10 of the Letters Patent.

The applicant applied to the High Court against this order for leave to appeal to the Privy Council.

MACLEOD, J.:—These are two applications by a Pleader of this Court for leave to appeal to the Privy Council against two orders, dated the 21st August 1907 and 23rd September 1907 respectively, passed by this Court in the exercise of its disciplinary jurisdiction under clause 10 of the Letters Patent whereby the applicant was suspended from practice for the period mentioned therein. The applicant admits that his applications do not come within the provisions of Chapter XLV of the Civil Procedure Code, which deal with the procedure to be adopted in the case of appeals to the Privy Council, which are allowed to be made under clause 39 of the Letters Patent, but he relies on the decision of the Allahabad Court *In re S. B. Sarbadhicary*,⁽¹⁾ as reported in the Calcutta Weekly

* Civil Applications Nos. 540 and 541 of 1907.

(1) (1906) 11 Cal. W. N. 274.

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Notes, from which it appears that in a similar case to this the learned Judges of the Allahabad Court, although they thought it was not necessary, granted leave to appeal, following the practice as laid down by two previous decisions of the Allahabad Court *In the matter of Parbati Charan Chatterji*⁽¹⁾ and *In the matter of Rajendro Nath Mukerji*⁽²⁾. In the first of these cases it does not appear from the report whether leave was granted, but in the second case a certificate was granted under section 595 of the Civil Procedure Code. However that may be, it appears from the report of *Sarbadhicary's case*⁽³⁾ that the appeal was by special leave and therefore the permission granted by the High Court did not obviate the necessity of the appellant applying for special leave. It does not appear, moreover, that the question, whether the Court had power to grant the leave, was argued in *Sarbadhicary's case*, but that is the point at issue now before us. In *Morgan v. Leech*⁽⁴⁾ the Judges of the Bombay Supreme Court had made a rule for the admission of attorneys which was contrary to the provisions of the Charter constituting the Supreme Court under the authority of 4 Geo. IV c. 71 and the appellants appealed against an order admitting the respondent as an attorney under the said rule. Their Lordships of the Privy Council held that the order not being in the nature of a judgment or determination was not an appealable grievance within the Charter, but it was competent to them to advise Her Majesty to grant the appellants leave to appeal. Following the analogy of that case we think that no appeal lies by right of grant against an order of the High Court under clause 10 of the Letters Patent, as it is not in the nature of a final judgment, decree or order under clause 39, and that therefore the High Court has no power to grant leave to appeal. The aggrieved party must proceed by way of petition to His Majesty the King for leave to appeal. See Safford and Wheeler's Privy Council Practice, at pages 726, 730 and 739. The rule must, therefore, be discharged with costs.

Rule discharged.

R. R.

(1) (1895) 17 All. 498.

(3) (1906) L. R. 34 I. A. 41: 11 Cal. W. N. 273.

(2) (1899) 22 All. 40.

(4) (1841) 3 Moo. P. C. 368.