arguments in so serious a matter as the substitution of a second decree for one already made by this Court, and we can find no authority, either in the arguments used before us, or in any reported decision of any of the High Courts, in favour of the application. It has also been said that to disallow this application will be a matter of hardship to the applicants, whose only other course is to obtain a certificate from us to the effect that the matter has been compromised, and then to make an application to His Majesty in Council. But this is obviously not the only way out of the difficulty, for the appeal can admittedly be withdrawn, and the adjustment arrived at between the parties can be certified to the Court under Order XXI, rule 2. We think that we cannot make the order which we have been invited to do, and that the application must fail.

Mr. Gumaste says that in view of the opinion just expressed by the Court, he wants further time in which to consider whether he should not amend his application, by adding a relief, to forward the compromise to His Majesty in Council, with the prayer that a decree may be passed in its terms. Mr. Nilkant Atmaram wishes to consult his client. Parties are granted fifteen days' time in which to amend their application accordingly, if so advised.

NANAVATI J. I agree.

Application dismissed.

J. G. R.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

AISHABAI (ORIGINAL PETITIONER), APPELLANT *v.* ISMAIL SAKHI AND ANOTHER (ORIGINAL RESPONDENTS), RESPONDENTS.*

1932 *September 30.*

Letters Patent, clause 15—Order refusing to declare a person to be of unsound mind—Whether a "judgment" from which an appeal lies—Indian Lunacy Act (IV of 1912), section 39.

* O. C. J. Appeal No. 31 of 1932 : L. A. No. 5 of 1931.

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An order refusing to declare a person a lunatic, is not a "judgment" within the meaning of clause 15 of the Letters Patent of the Bombay High Court. No appeal lies from such an order.

APPLICATION under section 39 of the Indian Lunacy Act.

Aishabai, the petitioner, was married to Ismail Sakhi in 1912, and she had a daughter by him. Ismail lived with his father, mother, two brothers and three sisters in Bombay. Aishabai left Ismail's house in 1914 alleging that she was illtreated and that Ismail exhibited signs of lunacy. Since then she had stayed at her father's place with her child.

Ismail's father died in 1929. On April 13, 1931, Aishabai presented a petition to the Bombay High Court praying that her husband Ismail be declared a lunatic and that she be appointed the guardian of his person and that the Court receiver be appointed the guardian of his property.

The petition was heard by Blackwell J. who, on April 1, 1932, held that Ismail was not a lunatic and dismissed the petition.

From this order Aishabai appealed. At the hearing of the appeal, a preliminary objection was raised by the respondents that the order of Blackwell J. was not a "judgment" and that no appeal lay from that order.

V. F. Taraporewalla, with *B. D. Boovariwalla*, for the appellant.

Sir Jamshed Kanga, Advocate General, with *K. S. Shavaksha*, for the respondents.

BEAUMONT C. J. This is an appeal from an order made by Mr. Justice Blackwell dismissing the petition of a wife to have her husband adjudicated a lunatic. The appellant is the wife, and a preliminary point is taken that from such an order she has no right of appeal. That question involves in the first place the question whether the order is a judgment within clause 15 of the Letters Patent, a question which has very frequently been considered in this Court. I may for convenience refer to a short summary of the decisions in

a judgment of mine in *Ramanlal Shantilal & Co.* v. *Chimanlal Damodardas*,[1] where at page 270 I said :—

". . . putting it shortly, the view which has always prevailed in this Court since the decision in *Miya Mahomed* v. *Zorabi*[2] is that any order affecting the merits of the question between the parties by determining some right or liability is a judgment within clause 15 of the Letters Patent, . . ."

In that case, and in the cases on which the summary was based, the question arose in a suit *inter partes*, but references to the order affecting the merits of the question between the parties must not be taken as meaning that there can be no judgment within clause 15 of the Letters Patent except in some proceeding *inter partes*. It is, I think, clear that there is nothing in clause 15 which would justify such a limitation, and indeed I feel no doubt whatever that a judgment of the Court declaring a person to be a lunatic would be a judgment within the meaning of clause 15 of the Letters Patent. But the question with which we have to deal is whether an order refusing to declare a person lunatic is a judgment within that clause, and if it is, whether the wife of the alleged lunatic can exercise the right of appeal.

Mr. Taraporewalla for the appellant puts his case in two ways. He says, first of all, that the wife has certain contingent rights in the property of the lunatic, because the Court might make an order giving her some right of maintenance out of the property of the lunatic under section 46 of the Indian Lunacy Act, and that the order affects those rights. There is, I think, no force in that contention. The Court of Lunacy acts in the interests of the lunatic, and not in the interests of the relative of the lunatic. When an order is made giving the wife or other relative a right to maintenance out of the lunatic's property, the Court acts on the footing that the lunatic himself would desire such an order to be made. But, in my opinion, neither the wife nor any other relative can be said to have any right in the property of the lunatic which is interfered with by the order

[1] (1931) 56 Bom. 268. [2] (1909) 11 Bom. L. R. 241.

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of the Court adjudicating or refusing to adjudicate a person a lunatic.

Then Mr. Taraporewalla puts his case on an alternative ground, which offers a more hopeful prospect. He says that the alleged lunatic has a right to the protection afforded to him by the Indian Lunacy Act, and that the order made by Mr. Justice Blackwell deprives him of that right. I think the answer to that is that the order of the learned Judge refusing to adjudicate a man a lunatic cannot be treated as a judgment at all, because it leaves the parties in precisely the same position as they were in before, and does not affect anybody's rights. All that the order does is to hold that at the date of the petition there was no sufficient evidence of lunacy. I think, therefore, that the order is not a judgment within clause 15 of the Letters Patent, but, even if it be, I fail to see how the wife of the alleged lunatic can appeal from it. The only possible appellant, I think, would be the alleged lunatic himself, who is not likely to prefer an appeal. The man in question not having been proved to be a lunatic or incapable of managing his affairs, it is not competent, in my opinion, for his wife or anybody else to act on his behalf. Under section 39 of the Indian Lunacy Act express power is given to a relative of the alleged lunatic or the Advocate General to apply for an inquisition. That is the section under which the wife applied in the present case. But there is no section in the Indian Lunacy Act which enables a relative or the Advocate General to prefer an appeal against an order made on the inquisition. If a man be adjudged lunatic there are rules under which a next friend can be appointed, but, in my opinion, in the absence of some statutory provision neither the wife nor any other relative nor the Advocate General is competent to prefer an appeal on behalf of a man against whom no order has been made. That being so, I think the preliminary objection must be upheld and the appeal must be dismissed.

RANGNEKAR J. The question raised by the preliminary objection on behalf of the respondents is whether it is open to the appellant to maintain this appeal. The appeal is from an order made by Mr. Justice Blackwell on the petition of the appellant under section 39 of the Indian Lunacy Act for an order that her husband should be adjudged a lunatic under the provisions of that Act. The learned Judge on the materials before him was of opinion that the alleged lunatic was not proved to be of unsound mind or incapable of managing himself and his affairs, and dismissed the petition.

Now in order to understand the preliminary objection, it is necessary to consider the nature of the proceedings taken by the appellant. The petition is headed "In the matter of the Indian Lunacy Act and in the matter of Ismail Sakhi" etc. Then the name of the petitioner, the present appellant, is mentioned. The petitioner submitted in the last part of the petition that an inquiry be held as regards the mental capacity of the petitioner's husband. It is obvious that this petition was made under the provisions of Part III, Chapter IV, of the Indian Lunacy Act. The heading of that Part is "Judicial Inquisition as to Lunacy". Section 37 says that the High Court of Bombay along with the other High Courts has jurisdiction under this chapter. Section 38 says that the Court may, upon application by order, direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be a lunatic is of unsound mind and is incapable of managing himself and his own affairs. Section 40 provides for notice to be given to the alleged lunatic and his other relatives. Section 41 empowers the Court to require a lunatic to attend for the purpose of being personally examined by the Court or by any other person from whom the Court may desire to have a report as to the mental capacity and condition of the alleged lunatic. Then comes section 46 under the heading "Judicial powers over person and estate of lunatic", and that section

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refers to the custody of the lunatic and the management of his estate.

Now, it is clear from the scheme of the Act, to which I have briefly referred, that the right, if any, of the petitioner is exhausted after the application of the petitioner is entertained by the Court, and it is entirely the Court's privilege upon the application to direct an inquisition, and the matter thereafter becomes one really between the Court and the alleged lunatic. There is no provision in the Indian Lunacy Act which shows that the applicant, as such, is entitled to take part in the proceedings, once the application is entertained. This being the scheme of the Act, it is clear, in my opinion, that it can hardly be said that when an application of this nature is dismissed, the order "determines some right or liability".

Mr. Taraporewalla says that the order determines and affects the rights of his client as to maintenance, etc., and refers to section 46 of the Act. I do not think that a contingent right of maintenance which may or may not be declared and dependent on there being property or not belonging to the lunatic, is such a right as would make the order in question a "judgment" within the meaning of the current of decisions as to what a "judgment" is under clause 15 of the Letters Patent. It can hardly be disputed that an inquisition under the Indian Lunacy Act is primarily in the interest and for the benefit of the alleged lunatic and not in the interest of any one else.

The learned counsel next contends that the order is a "judgment" because it affects the lunatic and determines his right. I do not agree, as the effect of the order is to leave the matters *in statu quo* and to leave the alleged lunatic in the position in which he was before the inquisition. The order merely means that the Court on the evidence on the inquisition is not satisfied that the person alleged to be a lunatic is a lunatic. In my opinion, therefore, an order dismissing a petition to adjudge a person to be lunatic is not

a "judgment" within the meaning of clause 15 of the Letters Patent.

The second objection raised by the Advocate General is that the appellant has no right to appeal from the order in question. As I have pointed out, the scheme of the Act is that the right of the relative of an alleged lunatic is exhausted as soon as an inquisition is ordered. It is conceded that no right of appeal is given by the statute. It is clear on the authorities that a party has no right of appeal unless it is conferred by a statute. There is considerable force in the contention that the appellant cannot maintain the appeal, but in view of the conclusion to which I have come, it is not necessary to express any definite opinion on the point.

I agree, therefore, that the preliminary objection must be upheld and the appeal dismissed.

Per Curiam. No order as to costs of the appeal. Costs in the lower Court to be paid by the alleged lunatic, including the usual doctor's costs.

Attorneys for appellant: Messrs. *Mulla & Mulla.*

Attorneys for respondent: Messrs. *Merwanji, Kola & Co.*

Appeal dismissed.

B. K. D.

APPELLATE CIVIL.

Before Mr. Justice Baker and Mr. Justice Rangnekar.

SHIDRAMAPPA NILAPPA UJALAMBE (ORIGINAL DEFENDANT No. 4), APPELLANT *v.* NEELAWABAI KOM CHANBASAPPA, AND OTHERS, ALL HEIRS OF THE DECEASED BHAGIRTHIBAI KOM SHIVLINGAPPA CHALAVA AND OTHERS (HEIRS OF ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 AND 2 AND HEIR OF ORIGINAL DEFENDANT No. 3), RESPONDENTS.*

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Hindu law—Sister—Her place in order of succession in Bombay Presidency—Not affected by Act (II of 1929)—Hindu Law of Inheritance (Amendment) Act, section 2.

*First Appeal No. 14 of 1927.