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mean 'the local limits of the jurisdiction of the Court issuing the writ.'" This meaning would not be opposed to the context, for though the word 'within' has been used, there can be no doubt that under this section one District Court may send a writ to another.

The question submitted to the Honorable High Court for authoritative determination is whether I can legally send a writ of arrest to the District Judge of this district for execution at Dhulia in this case.

The order of the Court was delivered by

JACKSON, J.—It appears to us that this case should have been dealt with under chap. xix, and that s. 648 has no reference to it.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

ELAHI BUKSH (PLAINTIFF) *v.* MARACHOW AND OTHERS (DEFENDANTS).*

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Feb. 19.

Suit under Act VIII of 1859—*Decree given after repeal of Act VIII of* 1859—*Appeal—Act X of* 1877, *s.* 3.

Where a suit has been instituted under Act VIII of 1859, but decided at a time when Act X of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of Act X of 1877 distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal.

Where, therefore, an appeal presented when Act X of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its readmission under s. 558; and if such readmission is refused, he is entitled to an appeal under s. 588 (*v*).

Burkut Hossein v. *Majidoonissa* (1) distinguished.

ONE Elahi Buksh instituted a suit against a person named Marachow and others to recover possession of certain lands from which he had been dispossessed on the 1st September 1877,

* Appeal from Original Order, No. 211 of 1878, against the order of A. C. Brett, Esq., Judge of Shahabad, dated the 22nd of June 1878.

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at a time when the old Code of Civil Procedure, Act VIII of 1859, was in force. His suit was dismissed on the 2nd February 1878, after Act VIII had been repealed, and when Act X of 1877 had come into force.

The plaintiff appealed against the decree, and on the appeal coming on to be heard before the District Judge, neither the appellant nor his pleader appeared, and the appeal was, therefore, dismissed by the Court with the following remarks:—"There is no one present on the part of the appellant. The pleader is not present, and I am informed that he is a well-known lunatic. During the short time I have acted as Judge here, I have seen him once or twice, and I consider him palpably mad, and not a person to whom any *bonâ fide* litigant would entrust a case. I therefore dismiss the appeal under s. 556 of Act X of 1877."

The plaintiff applied to have his appeal restored under s. 558 of Act X of 1877, stating in his petition that the pleader was suffering from lunacy and was unable to attend; that he had not been informed himself of the date fixed for the hearing, and was not, therefore, present himself in Court, but had trusted that his pleader would represent him.

The Judge of Shahabad, on the 26th June 1876, on hearing the application, refused the application in the following words:—"I cannot consent to this application."

The plaintiff appealed from this order to the High Court.

Mr. *M. L. Sandel* for the appellant.

Baboo *Doorga Pershad* for the respondents.

The judgment of the Court was delivered by

AINSLIE, J.—In this case the suit was instituted when Act VIII of 1859 was in operation, namely, in September 1877, and a decree was passed after that Act was repealed and the new Code of Procedure was in operation, namely, on the 2nd of February 1878. An appeal against that decree was made, and, on that appeal coming on to be heard, neither the appellant nor his pleader appeared, and the appeal was dismissed.

The Judge who dismissed the appeal stated, when he did so, that he was aware that the appellant's pleader was a lunatic.

The appellant afterwards applied to have his appeal restored, but the Judge, giving no reasons, rejected the application. The appellant in this application stated that, having engaged a pleader, he felt secure, and did not think it necessary to appear in person. The order dismissing the appeal in the first instance was made on the 31st of May 1878, and it is stated by the Judge that it was made under s. 556 of Act X of 1877. The application for its restoration was made under s. 558 on the 21st of June 1878. The appellant now appeals from the order rejecting this application, and s. 588, cl. (v), if the new Code of Procedure applies to the case, allows him to appeal. It is contended, however, by the respondents that, as the suit was instituted under the Act of 1859, that Code, and not Act X of 1877, applies to the case; and that as it has been held in the case of *Amiruddin* v. *Jiban Bibi* (1) that an order made under similar circumstances was not, under s. 347 of the Act of 1859, appealable, no appeal now lies from the order of the Judge refusing to readmit the appeal.

In support of this contention the case of *Runjit Singh* v. *Meharban Koer* (2) was cited.

It was then held by a Full Bench that proceedings already commenced when the new Code of Civil Procedure came into operation were saved by the 6th section of Act I of 1868; and that an appeal allowed by the Code of 1859 in such proceedings is not taken away by anything in the Code of 1877.

It was further held in the case of *Surrendro Nath Pal Chowdhry* v. *Chunder Coomer Roy* (3)—one of the cases under consideration by the Full Bench—that the provisions of chap. xliii of the new Code are inapplicable to orders made before 1st October 1877, and do not give an appeal against such orders where an appeal was not allowed under the repealed Code of Procedure.

This case is not directly governed by the Full Bench decision on either point. Here we have a suit instituted under Act VIII

(1) 1 B. L. R., F. B. Rul., 101. (2) I. L. R., 3 Calc., 662: S. C., C. L. R., 391
(3) I. L. R., 3 Calc., 669.

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of 1859, but decided in the Court of first instance after the repeal of that Act. So far it was undoubtedly governed by the Code of 1859: but the appeal was presented after the repeal of that Code; and therefore the provisions of s. 3 of the Code of 1877 by expressly excepting appeals presented before the new Code came into operation, distinctly indicate that the procedure in this appeal is to be governed by the law of procedure in force at the date of presentation.

According to this law, an appeal may be dismissed for default under s. 556, and the appellant may apply for its readmission under section 558, and by s. 588 (cl. v) he is entitled to an appeal on refusal.

Although the Full Bench decided that an appeal allowed by the old Code in proceedings originated while it was in force, is not taken away by the repeal thereof, it does not follow that a further appeal may not be allowed under the Code of 1877, if the procedure of the new Code is applicable to such proceedings. It is not in our opinion open to a party to say that by the institution of a suit before 1st October 1877 he has acquired a right to have the proceedings stopped at a certain point, notwithstanding provisions in the new Code for further proceedings in cases governed by it, because it has been held that there is a right to carry proceedings, dating back before 1st October 1877, beyond the stage at which they must stop under the Act of 1877. The Courts will, as a rule, grant the fullest enquiry and most complete remedy they can grant. Their action, if limited, must be limited by express words, and whenever a reasonable construction of the law will admit of granting the remedy, it will be granted.

This case differs from *Burkut Hossein* v. *Majidoonissa* (1). In that case there was an application pending on the 1st of October 1877, which had been pending for some months. If the order made thereon had been made on or before the 30th September, it would have been final under an express provision of Act VIII of 1859. We held that s. 6, Act I of 1868 operated to keep in force rules laid down in Act VIII, so that the order, though of later date than the repeal of that Act,

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must be taken as made under it; and that, consequently, the appeal allowable by the new Code against similar orders being limited to orders actually made under the provisions of this latter Code, was not available.

In this case there was nothing pending in the lower Appellate Court on the 1st of October 1877, and the application to the Judge on the 21st June 1878 was after what now stands as the final decree in the suit, namely, the dismissal of the appeal and confirmation of the decree of the first Court on the 31st May preceding.

It seems to us that the order of the 21st June 1878 was made under the Code of 1877, and is, therefore, open to appeal. Then unquestionably the order of the Judge was wrong, for he himself gives a good reason why the appeal should have been reinstated, and none against it.

The appeal will, therefore, be allowed with costs, and the Judge will be directed to readmit the appeal.

Appeal allowed.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, and Mr. Justice Pontifex.

1879
Feb. 5 & 13.

IN THE MATTER OF ACT XVIII OF 1869 AND OF THE UNCOVENANTED SERVICE BANK (LIMITED).

Bank Memorandum—Receipt—Act XVIII of 1869, sched. ii, cl. 7.

A bank memorandum informing one of their customers that money has been paid to his account by a third person and has been credited to that account, does not require to be stamped under art. 7, sched. ii, of Act XVIII of 1869.

THIS was a case referred to the High Court under s. 41 of Act XVIII of 1869, by order of the Board of Revenue, North-Western Provinces.

It appeared that the Commissioner of Stamps, North-Western Provinces, on the 13th October 1878, forwarded to the Manager