

1891
 MOWLA
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 v.
 SAJIDUN-
 NISSA BIBI.

(c) of the Code. We have had some difficulty in deciding this point, but having regard to the facts found in the judgment of this Court read with the allegations made in the affidavit put in by the opposite party, the defendant in the suit, and which statements have not been contradicted on behalf of plaintiff, we are unable to certify that in our opinion this case is a fit one for appeal, and we therefore leave it to the petitioner, if so advised, to make an application to the Judicial Committee.

The application is refused with costs.

Application refused.

J. V. W.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

1891
 April 7.

KAZEM ALI (PETITIONER) v. AZIM ALI KHAN (OBJECTOR).*

Appeal—Act XX of 1863, s. 18—Order refusing leave to sue—Decree—Civil Procedure Code, 1882, s. 2.

An order refusing leave to institute a suit under section 18 of Act XX of 1863 is not a "decree" within the meaning of section 2 of the Civil Procedure Code, and is not appealable.

AN application was made to the Judge of Moorshedabad by the petitioner as one of the members of the Committee of Management of a Mahomedan endowment for leave to institute a suit under Act XX of 1863, section 18, the object of the suit being to get rid of the objector as President of the Committee of Management of the endowment, and to have another trustee appointed in the place of one who had died. The Judge gave on the 8th February 1890 the following judgment on the application:—

"This is an application under Act XX of 1863, section 18, for leave to the petitioner to institute a suit against the objector. The latter having received notice to show cause why leave should not be granted appears by pleader. The petition has been read and the pleaders have been heard. The application does not appear to me to be a *bonâ fide* one. The charges brought against the

* Appeal from Original Decree No. 82 of 1890, against the decree of R. H. Anderson, Esq., Judge of Moorshedabad, dated the 8th of February 1890.

Nawab are all couched in the vaguest terms, and it is a matter of extreme suspicion that for upwards of ten years during which the petitioner has been a trustee, he has not had a word to say against the Nawab's management until a quarrel has occurred regarding the renewal of an *ijara* lately held by Messrs. Watson and Company. I decline to sanction the institution of a suit and dismiss this application. I need not deal with the other prayers contained in the petition except the one which relates to the appointment of another trustee. Each party has named a gentleman. I will hear the pleaders on the 14th, and then decide which of the two should be appointed. Petitioner will pay objector's costs."

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The order made in accordance with this judgment was "that the prayer for bringing a suit against the objector be disallowed; that Nawab Syed Mozuffer Ali is appointed member in the place of Syed Amir Ali, deceased, who was a member in respect of the estate of Basant Ali Khan, deceased; and that the objector's costs be paid by the petitioner."

The petitioner appealed from this decision to the High Court.

Mr. *Woodroffe* and *Baboo Ram Churn Mitter* for the appellant.

The *Advocate-General* (*Sir Charles Paul*), *Baboo Mohini Mohun Roy*, and *Baboo Dwarka Nath Chuckerbutty* for the respondent.

The following cases were cited:—*Khuderam Singh v. Sham Singh Poojoory* (1), *Kalub Hossein v. Ali Hossein* (2), *Delrus Banoo Begum v. Abdoor Rahman* (3), *Kaviraja Sundara Murteya Pillai v. Nalla Naikan Pillai* (4), *In re Venkateswara* (5), *Civil Revision Petition 101 of 1882* (6), which were cases in which an appeal from an order refusing leave to sue under Act XX of 1863 was held not to lie; *Minakshi Naidu v. Subramanya Sastri* (7), a Privy Council case, in which it was held that no appeal lay from an order under section 10 of the Act appointing a member of a Committee of Management; and *Acken Sahib v. Bava Malimiyar* (8), in which an appeal was allowed against the order of a District Court, under section 5 of the Act, appointing a trustee.

(1) W. R., 1864, Mis. 25.

(2) 4 N. W., 3.

(3) 21 W. R., 368.

(4) 4 Mad., 93.

(5) I. L. R., 10 Mad., 98.

(6) I. L. R., 10 Mad., 98, note.

(7) I. L. R., 11 Mad., 26.

(8) I. L. R., 4 Mad., 295.

1891 The judgment of the Court (PRINSEP and BANERJEE, JJ.) was
 KAZEM ALI as follows:—

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This matter arises out of an order by the District Judge under section 18 of Act XX of 1863, refusing to give leave to the petitioner to institute a suit having reference to a Mahomedan endowment.

The first question raised for our decision is, whether there is any right of appeal. There is no such right conferred by the Act, but it is argued that, under the new definition of a decree given in the Code of Civil Procedure of 1882, a right of appeal against such an order is given, because such an order would amount to a decree.

We are not prepared to accept such an interpretation of this definition of a decree. The order in question is a refusal to give leave to institute a suit. It does not come within the definition of the term "decree," either as amounting to a formal expression of an adjudication upon a right claimed, or as amounting to an order rejecting a plaint. The order, as we understand it, merely determines that there are no *prima facie* grounds for instituting a suit. There is no adjudication of any right inherent in the petitioner. Nor can it be regarded as an order rejecting a plaint, because it is an order refusing leave to file a plaint. In that view we think there is no ground of appeal.

In giving a special order for the admission of an appeal subject to any objections that may be taken at the hearing, another Division Bench of this Court gave permission to the petitioner to move the Court under section 622 of the Code of Civil Procedure, or under section 15 of the Charter Act, with a view to set aside the order of the District Judge. We have accordingly heard all the arguments which could be raised against the merits of the order passed. We think, however, that there are no sufficient grounds for our interference with the order under the special powers thus conferred on this Court, nor do we think, if we were to consider the case of the petitioner on the merits, that there is any sufficient ground to question the correctness of the District Judge's order. The allegations contained in the petition were of the vaguest description, and not such as would warrant the Judge to give permission to the petitioner so as to make any of those allegations

the foundation of a suit for misconduct against the President of the Committee. We further have the satisfaction of learning that in the course of these proceedings, a third member has been appointed to the Committee, who will thus afford the means of forming a quorum, so as to guarantee the proper management of the endowment and satisfy any complaints that may arise.

The appeal must therefore be dismissed with costs.

Appeal dismissed.

J. V. W.

Before Mr. Justice Norris and Mr. Justice Beverley.

SURENDRA NANDAN *alias* GYANENDRA NANDAN DAS,
MINOR, BY HIS GUARDIAN SANTOMONI DAS, AND ANOTHER
(DEFENDANTS) *v.* SAILAJA KANT DAS MAHAPATRA,
MINOR, BY HIS GUARDIAN CHOWDHURY RADHA
KANT DAS MAHAPATRA (PLAINTIFF).*

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v.
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KHAN.

1891
February 27.

Hindu Law—Adoption—Validity of adoption—Effect of adoption—Divesting of estate already vested—Mitakshara Law.

The will of *B*, a Hindu, appointed one *K* manager of all his property, and gave his widow *S* power to adopt a son, and went on to state that *S* “shall manage all the affairs with the consent of the said manager” (*K*), “and she will not be able to do any wrongful act or alienate and waste property uselessly and without his consent. If she do so, it will be cancelled by the said manager or the adopted son; and she will adopt a son with the good advice and opinion of the manager.” *S*, wishing to adopt the plaintiff, sent a registered letter to *K*, who had refused to give *S* any advice or assistance, intimating her intention and asking him to come and see the ceremony performed, but he declined to receive the letter which was returned to *S* by the postal authorities, and the plaintiff was eventually adopted without the consent of *K*. *Held*, that the consent of *K* was not a condition precedent to the validity of the adoption, and that it was not invalid by reason of its having been made without *K*'s advice and consent.

B and *B* were living as a joint-family subject to the Mitakshara law. *B* died on the 28th February 1884, leaving him surviving a widow *S*, to whom he gave power to adopt a son to him, and *R* who succeeded by survivorship to *B*'s share in the joint-family property. *S* adopted the plaintiff on

* Appeal from original decree No. 88 of 1890, against the decree of Baboo Juggo Bandhu Gangully, Subordinate Judge of Midnapore, dated the 27th of December 1889.