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extending the time within which security is required to be furnished; and therefore the application for leave to appeal should be struck off the file. It should be borne in mind that at the time when this order was made the appeal had not been admitted, but only a certificate had been granted to the applicant, that the case was a fit one for appeal to Her Majesty in Council. The applicant was bound under section 602 of the Code of Civil Procedure to furnish security within six weeks from the date of such certificate. He failed to do so, and he failed to satisfy the Judge in the Privy Council Department that there was sufficient reason for extending the time in his favour. The learned Judge in this circumstance was not in a position to allow any further proceedings being taken in the matter. He was not in a position to declare under the provisions of section 603 of the Code of Civil Procedure, that the appeal be admitted; and we think that, practically, he had no other alternative left to him than to direct that the application be removed from the file—for that is what the order really amounts to. It is an order which would follow as a matter of course upon the order he had made refusing to extend the time for furnishing security. We think that this order does not determine any question of right between the parties to the suit, and is not a “judgment” within the meaning of section 15 of the Letters Patent. It follows, therefore, that no appeal lies to this Court; and, accordingly, we reject this appeal with costs.

Appeal dismissed.

A. A. C.

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Wilson.

HIRAMAN DE v. RAM KUMAR AIN.*

1890
 October 14.

Practice—Reference to High Court—District Magistrate, Competency of, to refer—Criminal Procedure Code (Act X of 1882), s. 438.

When a case has been decided by the Sessions Judge on appeal from a Sub-divisional Magistrate, the District Magistrate should not refer the case to the High Court on the ground that the Sub-divisional Magistrate acted

* Criminal reference No. 244 of 1890 made by A. T. Gupta Esq., Magistrate of Mymensingh, dated the 12th of September 1890.

without jurisdiction. If he desires to move in the matter, he should proceed through the Legal Remembrancer.

Observations of Straight, J., in *Queen Empress v. Shere Singh* (1) referred to with approval.

THIS was a reference by the District Magistrate of Mymensingh under section 438 of the Code of Criminal Procedure. The accused was convicted by the Sub-divisional Magistrate of Netrokonah, under section 448 of the Indian Penal Code, and sentenced to two months' rigorous imprisonment and a fine of Rs. 10. While in jail he appealed to the Sessions Judge, who summarily rejected the appeal. Another appeal appears then to have been filed through a pleader. That appeal was admitted and the Sessions Judge enlarged the prisoner on bail. A few days later the District Magistrate received a letter from the Sessions Judge, asking him to rearrest the accused and commit him to jail, as the appeal had been rejected. The District Magistrate, however, considered that the sentence passed by the Sub-divisional Magistrate was without jurisdiction and illegal, and he accordingly enlarged the prisoner on bail and referred the matter to the High Court under section 438 of the Criminal Procedure Code, with a recommendation that the conviction should be quashed.

No one appeared on the reference.

The judgment of the Court (PRINSEP and WILSON JJ.) was delivered by—

PRINSEP, J.—We decline to consider this reference as a Court of Revision. The Sessions Judge as the Court of Appeal has rejected the appeal, and the District Magistrate has afterwards, notwithstanding the finality of that order by a superior court, raised the objection as to the jurisdiction of the Subordinate Magistrate. An objection in this form is not sustainable. If the District Magistrate is inclined to move further in the matter, he should proceed through the Legal Remembrancer.

We would direct his attention to the observations of Straight, J., in *Queen Empress v. Shere Singh* (1).

The District Magistrate not being competent to refer such a case under section 438 had no authority to admit the accused to bail. He should therefore be remitted to jail.

H. L. B.

(1) I. L. R., 9 All., 362.

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