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23rd June 1875, and possession of which was awarded in execution to her by the Court in the same suit.

Let the Court make such inquiries and take such accounts as are proper for carrying the above declarations into effect, and fix reasonable periods of time within which the plaintiff and Zahur respectively shall exercise the rights of redemption hereby declared to belong to them.

Declare that if the plaintiff and Zahur respectively do not exercise their rights of redemption within such time as the Court by its final order in that behalf may direct, they shall respectively be foreclosed and debarred from all right of redemption.

In all other respects let the decree of the 17th September 1883 stand affirmed.

Order Zahur to pay to the plaintiff the costs of the appeal to the High Court. Zahur must pay the costs of this appeal.

*Appeal allowed.*

Solicitors for the appellant: Messrs. *Wrentmore & Swinhoe.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

## APPELLATE CIVIL.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.*

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Aug. 15.

KISHEN PERSHAD PANDAY (PETITIONER) v. TILUCKDHARI  
LALL AND OTHERS (OPPOSITE PARTY)\*

*Appeal—Letters Patent, clause 15—Appeal from order of Judge in Privy Council Department refusing to extend time for furnishing security for costs—"Judgment," meaning of—Rule 33, Rules of 1st September 1877—Code of Civil Procedure (Act XIV of 1882), s. 602.*

No appeal will lie from an order of a Judge in the Privy Council Department refusing to extend the time prescribed by law within which an appellant is required to furnish security for the costs of the respondent, and directing the appeal to be struck off by reason of such security not having been given within the prescribed time.

Such an order is not a "judgment" within the meaning of clause 15 of the Letters Patent of 1865.

\* Letters Patent Appeal in Privy Council Appeal No. 9 of 1889 against the order of Mr. Justice Macpherson, dated the 4th of December 1889.

*Held*, upon a review of the authorities, that where an order decides finally any question at issue in the case or the rights of any of the parties to the suit, it is a "judgment" under clause 15 of the Letters Patent and is appealable, but not otherwise.

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THIS was an appeal under clause 15 of the Letters Patent of 1865 against an order of Mr. Justice Macpherson sitting in the Privy Council Department. The order appealed from was as follows:—

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"In this case the security bond was admittedly filed some days after the expiry of the time specified in section 602 of the Civil Procedure Code, and Rule 33 of the Rules of this Court, dated the 1st September 1877. I have undoubtedly the power, upon good and sufficient cause being shown, to extend the time; but in the present case no reasonable cause has been shown. There is no affidavit, and there is nothing but a bare statement on the part of the appellant of ignorance or misconception, regarding a Rule which has been in existence since 1877. Under these circumstances I cannot hold that any reason for extending the time has been shown. The application for leave to appeal to Her Majesty in Council must therefore be struck off the file."

Rule 33 corresponds with Rule 244 of Belchambers' Rules and Orders (p. 433).

Baboo *Mohini Mohun Roy* for Baboo *Nil Kant Sahai* appeared for the appellant.

Mr. *Pugh* (with him Baboo *Durga Mohun Das* and Baboo *Tarruck Nath Palit*) appeared for the respondents.

At the hearing a preliminary objection was taken by Mr. *Pugh* on behalf of the respondents that no appeal would lie under clause 15 of the Letters Patent. The judgment of the Court (PETTERAM, C. J. and GHOSE, J.) was delivered by—

GHOSE J.—This is an appeal under clause 15 of the Letters Patent from an order passed by Mr. Justice Macpherson sitting in the Privy Council Appeal Department, refusing to extend the time prescribed by law within which an appellant is required to furnish security for the costs of the respondent, and directing that the appeal to Her Majesty in Council be struck off the file, by reason of such security not having been given within the prescribed time.

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A preliminary objection is raised on behalf of the respondent to the effect that no appeal lies under clause 15 of the Letters Patent against the order complained of.

Clause 15 of the Letters Patent is as follows:—"And we do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal, from the judgment, not being a sentence or order passed or made in any criminal trial of one Judge of the said High Court, or of one Judge of any Divisional Court, pursuant to section 13 of the said recited Act, and that an appeal shall also lie to the said High Court," and so on.

The question which we have to consider is, whether the order passed by Mr. Justice Macpherson is a "judgment" within the meaning of clause 15 of the Letters Patent.

The question as to the true construction of this clause has frequently been both before this Court and the Judicial Committee of the Privy Council. In the case of the *Justices of the Peace for Calcutta v. Oriental Gas Company* (1), Sir Richard Couch, the then Chief Justice, sitting with Mr. Justice Markby, expressed himself as follows:—"We think that 'judgment' in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final, or preliminary, or interlocutory; the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined."

Then in a subsequent case, *Kalisunderi Debi v. Hurrish Chunder Chowdhry* (2), another Division Bench of this Court, in construing the same section with reference to an order made by Mr. Justice Pontifex refusing to transmit an order of the Privy Council to the lower court for execution, because, in his opinion, the person applying for execution of the decree was not entitled to execute it, held that Mr. Justice Pontifex had exercised a judicial discretion, and had come to a decision that the applicant was not entitled to execute the decree, and that therefore the order passed by him was a "judgment" within the meaning of clause 15 of the Letters Patent.

(1) 8 B. L. R., 433 (452).

(2) I. L. R., 6 Calc., 594.

The principle followed in this case was approved of by the Privy Council in *Hurrish Chunder Chowdhry v. Kalisunderi Debi* (1). Their Lordships observe as follows (p. 493.) :—“Those learned Judges,” namely, Mr. Justice White and Mr. Justice Mitter, “held (and their Lordships think rightly) that, whether the transmission of an order under section 610 would or would not be a merely ministerial proceeding, Mr. Justice Pontifex had in fact exercised a judicial discretion, and had come to a decision of great importance, which, if it remained, would entirely conclude any rights of Kalisunderi to an execution in this suit.”

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In the case of *Manly v. Patterson* (2) it has been held (Garth, C.J. and McDonnell, J.) that no appeal lies to this Court under clause 15 against an order of the Judge in the Privy Council Department, refusing an application for leave to appeal to the Privy Council.

And in the recent case of *Lootf Ali Khan v. Asgur Reza* (3), where the question was whether an appeal lay against an order of a Judge granting a certificate to the effect that the case was a fit and proper one for appeal to the Privy Council, the learned Judges (Wilson and Pigot, JJ.) before whom the appeal came on for hearing, held that there was no appeal under section 15; and they observed, with reference to the case of *Kalisunderi Debi v. Hurrish Chunder Chowdhry* (4) which was quoted before them, as follows (p. 458) :—“That is a very different case from the present, where the order against which this appeal is brought is not one deciding finally or otherwise any question at issue in the case or the rights of any of the parties to the suit. It is merely a step taken to enable the parties to go before the Privy Council, and obtain from that tribunal a decision on the merits of the case.”

The principle that is to be gathered from the cases which I have referred to is this, that where an order decides finally any question at issue in the case, or the rights of any of the parties to the suit, it is appealable to this Court, otherwise not.

Now, the order complained of in the present instance is to this effect, that the applicant has failed to show sufficient cause for

(1) I. L. R., 9 Calc., 482.

(3) I. L. R., 17 Calc., 455.

(2) I. L. R., 7 Calc., 339.

(4) I. L. R., 6 Calc., 594; I. L. R., 9 Calc., 482.

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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.