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PRIVY COUNCIL.

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CHATRAPAT SINGH DURGA (DEFENDANT-PETITIONER) v. DWARKA-  
NATH GHOSE (DECREE-HOLDER.)

P. C.\*  
1894  
July 28.

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[On appeal from the High Court at Calcutta.]

*Execution of decree—Stay of execution—Order staying execution of a decree—Civil Procedure Code (Act XIV of 1882), section 608, sub-section (c)—Privy Council, Practice of.*

The High Court, having, under section 603, sub-section (a) of the Civil Procedure Code, declared the admission of an appeal from their decree, refused an order, applied for under section 608, sub-section (c), for staying execution pending the appeal, the two Judges constituting the Court differing as to whether or not the case was such that the application should be granted. Their Lordships decided that the execution of the decree should be stayed pending the appeal. An order of Her Majesty in Council followed to that effect.

PETITION for a stay of execution of a decree (20th April 1892) of the High Court, which by order (5th July 1892) admitted an appeal to Her Majesty in Council from that decree, and by order (27th April 1894) refused a stay of execution. Also for special leave to appeal from the last order.

The petition stated that in 1887 Chunder Narain Singh, under whose will the respondents were his executors, sued Rai Lachmiput Singh in the Court of the Subordinate Judge of Rajmahal and obtained a decree on the 13th May 1887 as *shebañt* of a temple for possession of a tract of alluvial land claimed by the temple and for mesne profits. On the defendant's appeal, the High

\* Present: LORDS WATSON, MACNAGHTEN and MORRIS and SIR P. COUCH.

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Court, having first, on the 4th September 1889, awarded one-fourth of the land, afterwards, on the 20th April 1892 in review, decreed the whole of the claim, 4,767 *bigas*, and Rs. 6,495, as mesne profits for three years. Pending the suit Rai Lachmiput died, and for him the petitioner was substituted; and Chunder Narain Singh having also died the respondents came on to the record.

On the 5th July 1892, the High Court declared the admission of an appeal under section 603. An order was then made in the Court of first instance for execution of the decree of 20th April 1892, whereupon the defendant applied under section 608, subsection (c) of the Civil Procedure Code, to the High Court for an order staying execution, and obtained, on the 12th December 1893, an order for cause to be shown why an order to that effect should not be made upon security being given. The grounds were these: *first*, that the land might deteriorate, if mismanaged; *secondly*, that landmarks and boundaries might be caused to disappear, thus giving rise to disputes with proprietors of adjoining land; *thirdly*, that as the decree-holders were executors of one who was the *shebait* of the institution to which the property had been awarded, difficulties might arise with any successor in office as to a refund of mesne profits, accounts, and other matters.

The decree-holders having been heard on the 27th April 1894, NORRIS, J., the senior Judge of the Bench, was of opinion that there were no special circumstances in the case to warrant a stay of execution. In this his colleague, BANERJEE, J., did not concur, holding that, in regard to the position of the decree-holders applying for execution and to the kind of land, a *chur*, which was in dispute, this was a fit case for an order staying execution upon security being given. The adverse judgment of the senior Judge prevailed, and the order was refused.

The petition was for special leave to appeal from the order of the 27th April 1894, as well as for a stay of execution of the decree of the 20th April 1892. The application was *ex-parte*.

Mr. J. H. A. Branson, in support of the petition, stated that it was made in its present form for leave to appeal from the order of the 27th April 1892 as well as for a stay of execution, because it had been understood that hitherto no stay of execution had

been granted here when the Court in India, admitting the appeal, had refused to stay execution; but a stay had been granted only when special leave to appeal had been obtained from their Lordships. A note on *Indur Kunwar v. Jaipal Kunwar* (1), in Wheeler's Privy Council Law, 446, related to this. He referred to the difference of opinion between the Judges below, contending that on the grounds taken before them they should have granted a stay in the discretion given them by section 608, sub-section (c).

Their Lordships were of opinion that, as the two Judges of the Court below had differed in opinion, their discretion had not been exercised, as they were empowered to exercise it, under section 608\* of the Civil Procedure Code, without there being occasion to grant special leave to appeal from the order of the 27th April 1894. The case was one in which a stay of execution should be ordered on this petition.

*Petition granted.*

The order of Her Majesty in Council followed, dated the 5th August 1894.

Solicitors for the petitioner: Messrs. *Barrow & Rogers*.

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## APPELLATE CIVIL.

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*Before Mr. Justice Trevelyan and Mr. Justice Ameer Ali.*

HAR NANDAN SAHAI (PLAINTIFF) v. BEHARI SINGH (DEFENDANT).\*

*Appeal—Order granting review of judgment—Civil Procedure Code (Act XIV of 1882), section 629.*

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 June 6.

No appeal lies from an order granting a review of judgment except as provided by section 629 of the Civil Procedure Code. *Bombay and Persia Steam Navigation Co. v. S. S. "Zuari"* (2) followed.

THE facts of this case, so far as they are material, are stated in the judgment of the lower Appellate Court, which was as follows:—

\* Appeal from Appellate Decree No. 1853 of 1893, against the decree of Babu Krishna Nath Roy, Officiating Subordinate Judge of Sarun, dated the 26th of July 1893, reversing the decree of Babu Upendro Nath Bose, Munsif of Chupra, dated the 12th of July 1892.

(1) I. L. R., 15 Calc., 725; L. R., 15 I. A., 127. (2) I. L. R., 12 Bom., 171.