

ORIGINAL CIVIL.

Before Mr. Justice Phear.

1876
Jan. 24.

THAKOOR KAPILNATH SAHAI (PLAINTIFF) v. THE GOVERNMENT (DEFENDANT).

Appeal to Privy Council—Dismissal of Appeal for Default in Deposit of Security, and in transcribing Record—Act VI of 1874, ss. 11, 14, § 15.

On an application to stay proceedings in an appeal to the Privy Council, which had been presented on 2nd July 1874 from a decision of the High Court on its Original Side, it appeared that no deposit had been made by the appellant to defray the costs of transcribing, &c., as provided by s. 11, Act VI of 1874; that no steps had been taken to prosecute the appeal; and that no security had been deposited for the costs of the respondent, since the petition of appeal was presented. The Court granted a rule calling on the appellant to show cause why the proceedings on appeal should not be stayed, and on his not appearing to show cause, ordered that the appeal should be struck off the file (1).

In this case, which was decided by the High Court (Couch, C.J., and Birch, J.), in its original jurisdiction, on 5th May 1874, an appeal to Her Majesty in Council was presented by the plaintiff on 2nd July 1874, and a certificate was granted, that the appeal related to property of a value exceeding Rs. 10,000, and was a fit one for appeal.

On 13th January 1876, an application was made by the *Advocate-General*, offg. (Mr. Paul), for a rule calling on the appellant to show cause why the proceedings in the appeal should not be stayed, or such other order made as might seem proper. The application was supported by the affidavit of the Government Solicitor that the plaintiff had, as appeared from a certificate from the Registrar, made no deposit to defray the cost of translating, transcribing, and transmitting the record in the suit to the Privy Council as required by s. 11, cl. 6, of Act VI of 1874, relating to appeals to the Privy Council; that, as

(1) See *Gobardhan Barmano v. S. M. Manun Bibi*, 3 B. L. R., O. C., 126; S. C., on appeal, 5 B. L. R., 76.

appeared from the same certificate, he had not, since filing his petition of appeal, taken any steps to proceed therewith; and that he had not deposited security for the costs of the respondent in the said appeal.

A rule was accordingly granted, and an affidavit of service of the rule on the appellant's attorney was filed.

The *Standing Counsel* (Mr. Kennedy) now applied that the rule might be made absolute.

The appellant did not appear.

The *Standing Counsel* submitted that, although there was no express provision either in Act VI of 1874 or in the rules of the Court for the stay of proceedings in such a case as the present, the Court had power to make an order staying the proceedings. S. 15 of Act VI of 1874, providing for stay of proceedings, apparently only applied to the failure to obey an order to deposit further security, but its provisions might well be extended to a case where no security at all had been deposited within the time limited by s. 11. The rules in force before the passing of the Act were not repealed thereby, see s. 22.

PHEAR, J., ordered that the appeal should be struck off the file.

Application granted.

Attorney for the respondent: The *Government Solicitor*, Mr. Sanderson.

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