

1875
 IN THE
 MATTER OF
 THE PETITION
 OF POONA
 KOOR.

provide for a review in a case like this, and has quoted in support of his argument the case of *Sivu v. Chenamma* (1), in which it appears to be laid down that the provisions of the Code of Civil Procedure regarding reviews of judgment are not applicable to orders passed under Act XXVII of 1860, but there is another case which has been decided in this Court, namely—that of *Hameeda Beebee v. Noor Beebee* (2), in which the contrary has been ruled, and which ruling we think we ought to follow. We see no reason why this Court should not exercise jurisdiction in the matter and consider the merits of the application for demanding security to be taken from Mussamut Khatun Koor to whom the certificate has been granted.

Application allowed, but without costs.

Before Mr. Justice Macpherson, Offg. Chief Justice, and Mr. Justice Jackson.

1875
 June 23.

MOWLA BUKSH (ONE OF THE DEFENDANTS) *v.* KISHEN PERTAB SAHI (PLAINTIFF).*

Appeal—Letters Patent, 1865, cl. 15—Act VI of 1874—Order granting Appeal to Privy Council.

Under cl. 15 of the Letters Patent, no appeal lies to the High Court from an order of the Judge in the Privy Council Department, granting a certificate that a case is a fit case for appeal to Her Majesty in Council.

THE plaintiff in this case preferred a petition of appeal to Her Majesty in Council, applied to the High Court for leave to appeal, and obtained a certificate under the provisions of Act VI of 1874 from Markby, J., that the case was a fit case for appeal.

From the order granting the certificate, the defendant appealed under the provisions of cl. 15 of the Letters Patent.

Moonsheé *Mahomed Yusoof* for the appellant.

The *Advocate-General*, offg. (Mr. *Paul*) for the respondent.

The *Advocate-General* raised a preliminary objection that, under the Letters Patent, cl. 15, no appeal lay from an order by a Judge in the Privy Council Department, granting a

* Appeal under cl. 15 of the Letters Patent from the decision of Markby, J., dated 9th April 1875, in Privy Council Appeal, 9 of 1875.

(1) 5 Mad. H. C. Rep., 417.

(2) 9 W. R., 394.

certificate under the provisions of Act VI of 1874. There is no appeal in any case, unless it is expressly given by some enactment. Moreover, Act VI of 1874 directs that, on the admission of an appeal, the proceedings shall be sent on at once. No provision is made there for an appeal, or for any delay for the purposes of an appeal.

Munshi *Mahomed Yusoof* contended that an appeal in such cases was expressly allowed by the provisions of cl. 15 of the Letters Patent. It was an appeal to the High Court from the judgment (1) of one Judge of that Court. An appeal being so allowed, it was unnecessary to make any provision in Act VI of 1874 for allowing an appeal. S. 6 of the Act only takes away the right of appeal to the Privy Council in certain cases.

The judgment of the Court was delivered by

MACPHERSON, J. — It appears to me that in this case, in which a certificate that the case is a fit one for appeal to the Privy Council has been granted by the Judge in the Privy Council Department, there is no appeal under cl. 15 of the Letters Patent. Reading ss. 11 and 12 of Act VI of 1874, it is clear that an appeal from an order granting a certificate was never contemplated. S. 11 provides that the proceedings shall go on at once upon the certificate being granted, and no provision is made for the delay which necessarily follows upon an appeal being preferred. It would moreover be very inconvenient, if there were an appeal under cl. 15 from these orders. The certificate being once granted, it certainly seems very unnecessary that the whole matter should be again discussed here before a different Bench. The appeal to the Privy Council being admitted, their Lordships will have the whole matter before them, and will dismiss the appeal if they think it has been improperly admitted.

Appeal dismissed.

(1) As to what is a "judgment" within the meaning of cl. 15 of the Letters Patent, see *DeSouza v. Coles*, 3 Mad. H. C. Rep., at pp. 387-8; *Raku Bibi v. Mahomed Musu Khan*, 4 B. L. R., A. C., 10; *The Justices v. The Oriental Gas Company*, 8 B. L. R., 433; *Sonbai v. Ahmed Bhai*, 9 Bom. H. C. Rep., 398.

1875
MOWLA BUKSH
v.
KISHEN
PERTAB SAHI.