

APPELLATE CIVIL.

Before Mr. Justice Glover and Mr. Justice Mitter.

IN THE MATTER OF THE PETITION OF POONA KOOER.*

Act XXVII of 1860—Review.

1875
Aug. 25.

A review of judgment is admissible in proceedings under Act XXVII of 1860, although no express provisions for reviews are contained in the Act.

A CERTIFICATE under Act XXVII of 1860 was applied for by Mussamat Khatun Kooer, the younger widow of one Toondun Singh, claiming as representative of her husband by virtue of a will in her favor, dated 25th November 1874.

The Judge refused the application, and from his decision Khatun Kooer appealed to the High Court.

The High Court granted her a certificate, but no order was made as to her giving any security. An application for review of this judgment was made, on the ground that it was defective in making no provision for the taking of security from Khatun Kooer to whom the certificate had been granted: but on the argument of the application, it was objected that a review was not admissible under Act XXVII of 1860, and the provisions of Act VIII of 1859 as to reviews did not apply.

Mr. *Branson* (with him Mr. *R. T. Allan* and Mr. *Mendies*) for Poona Kooer.

Baboo *Moheshchunder Chowdry*, *Bamachurn Banerjee*, *Hem Chunder Banerjee*, and *Probodh Chunder Mitter* for Khatun Kooer.

The judgment of the Court, which was delivered by Glover, J., in so far as it related to the above objection, was as follows:—

GLOVER, J. — Baboo Moheshchunder Chowdry, who has appeared for the opposite party, contends that the law does not

* Application for Review, No. 8 of 1875, against the judgment of Glover and Mitter, JJ., passed on the 22nd of July 1875, in Miscellaneous Regular Appeal No. 138 of 1875.

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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.