

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Markby.*

1877  
July 15.

IN THE MATTER OF THE PETITION OF JANOKEY NATH ROY.

*Appeal—Presidency Magistrates' Act (IV of 1877), s. 41—Prosecution—Sanction of Judge—Jurisdiction of High Court.*

No appeal lies from the order of a Judge directing a prosecution under s. 41 of the Presidency Magistrates' Act.

IN the suit of one Bhoobun Mohun Neogy *v.* Janokey Nath Roy an application had been made to Mr. Sconce, one of the Judges of the Calcutta Small Cause Court, to direct the prosecution of the defendant (the present appellant) for perjury and forgery. Mr. Sconce refused to direct such prosecution; and the plaintiff applied *ex parte* under s. 41 of Act IV of 1877 to Mr. Justice Kennedy, sitting on the Original Side of the High Court, for an order that he might be at liberty to prosecute the defendant, which was granted. Against this order the defendant presented a petition of appeal, on the grounds that the learned Judge had no jurisdiction to make the order; that, under the circumstances of the case, the order ought not to have been made; and that the appellant ought to have been allowed an opportunity of being heard against the order being made.

Mr. Branson (with him Mr. Bonnerjee) moved to admit the appeal.

Mr. Branson.—It is true that neither under the Criminal Procedure Code, nor the general law, has the Court any right to interfere with the discretion of a Judge, but the order amounts to a judgment. The word 'judgment' in clause 15 of the Letters Patent of 1865 has been held to mean a decision, whether final or preliminary, or interlocutory. This order is one creating jurisdiction, and is to that extent final; and so far there is a right of appeal. The learned Counsel referred to

*The Justices of the Peace for Calcutta v. The Oriental Gas Company* (1), *Hadjee Ismail Hadjee Hubbeeb v. Hadjee Mahomed Hadjee Joosub* (2); *Mowla Buksh v. Kishen Pertab Sahi* (3); and to *Barkat-ul-lah Khan v. Rennie* (4).

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NATH ROY.

The judgment of the Court was delivered by

GARTH, C. J.—We are clearly of opinion that no appeal lies in this case, and that we ought not to grant leave to admit the appeal. Leave granted by a Judge to institute proceedings is not a ‘judgment’ within the meaning of cl. 15 of the Charter. If authority were wanted, the case of *The Justices of the Peace of Calcutta v. The Oriental Gas Company* (1) would be ample authority for our judgment. But apart from that, this leave given by the Court is the creation of a late Statute. It is a power which did not exist when the Charter was passed. It is a power of a peculiar kind. The object is to check rash proceedings in criminal matters being taken. It gives power to take proceedings, which could not have been taken without leave. As the Legislature has not thought fit to give an appeal from such an order, we think that this appeal should not be admitted.

*Application refused.*

Attorneys for the appellant: Messrs. *Pittar and Wheeler*.

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

(3) I. L. R., 1 Calc., 102.

(2) 13 B. L. R., 91.

(4) I. L. R., 1 All., 17.