

# CALCUTTA HIGH COURT

Khatizan

Vs.

Sonairam Daulatram

(Asutosh Mookerjee, Acting C.J.)

23.04.1920

## JUDGMENT

### **Asutosh Mookerjee, Acting C.J.**

1. This is an appeal against an order made by Mr. Justice Greaves, under Clause 18 of the Matters Patent, for the transfer of a claim, suit from the Calcutta Small Cause Court to this Court.

2. A preliminary objection has been taken on behalf of the respondent that the appeal is incompetent, in as much as the order is not a "judgment" within the meaning of Clause 15 of the Letters Patent. There can be no question, in our opinion, that the proceeding which has been transferred is a suit within the meaning of Clause 13 of the Letters Patent. It was pointed out by Mr. Justice Wilson in the case of *Ismail Solomon Bhamji v. Mahomod Khan*<sup>1</sup> that, under the Rules of Small Cause Court, claims are not tried summarily; they are dealt with just as suits are and we find that the proceeding is described and is numbered as a suit pending in the Calcutta Court of Small Causes. The only question consequently is, whether the order of transfer is a judgment." We are of opinion that the answer must be in the negative.

3. In the case of the *Justices of the Peace for Calcutta v. The Oriental Gas Company*<sup>2</sup> Sir Richard Couah, C.J" said: "We think that judgment in Clause 15 means a decision which affects the merits of the question between the parties determining some right or liability. It may be either final, or preliminary or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined." In the case before us, the order for transfer does not involve a decision which affects the merits of the question between the parties, nor does it determine some right or liability. We do not overlook the later decision in the case of *Hadjee Ismail Hadjee Hubbese v. Hadjes Mahomed Hadee Joosub*<sup>3</sup> Where it was ruled that an order granting leave to sue, to the plaintiff, under Clause 12 of the Letters Patent, is a "judgment" and is appealable under Clause 15, It was explained that an order granting leave to sue was not a mere formal order or an order merely regulating the procedure in the suit, but one that had the

effect of vining a jurisdiction to the Court which it otherwise would no have and, from this point of view, it tigt fairly be said lo determine some right

<sup>1</sup>18 C. 296 : 9 Ind. Dec. (N.S.) 197

<sup>3</sup>13 B.L.R. 91 : 21 W.R. 303

<sup>2</sup>8 B.L.R. 433 : 17 W.R. 364

between the parties, namely, the right to sue in a particular Court, and to compel the defendants who were not within its jurisdiction to come in and defend the suit, or, if they did not, to make them liable to have a decree passed against them in their absence. These reasons, obviously, are not applicable to a case of the description row before us.

4. It has been contended, however, that the order under appeal not only directs the transfer of the suit, but also declares thus the defendant firm will be at liberty to proceed with the gale in execution of the decree of the Small Cause Court, made in a previous suit This declaration is merely ancillary to the order for transfer, and cannot be deemed appealable irrespective of the character of the primary order. We are accordingly of opinion, upon a construction of Clauses 13 and 15, that the order is not appealable.

5. It is worthy of mention that our attention has not been drawn to any case in which an appeal has been entertained from an order of this description. Orders for transfer have frequently been made for years past and many of them are to he found in the reports: but there is no trace that an appeal has ever been successfully maintained against an order for transfer under Clause 13 of the Letters Patent.

6. The result is, that the appeal is dismissed with costs.

7. The Rule is discharged with costs.

**Fietches, J.**

8. I agree.