

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kuar Balwant Singh v. Kuar Doulut Singh from the High Court of Judicature for the North-Western Provinces, Allahabad ; delivered on the 17th February 1886.

Present :

LORD BLACKBURN.

LORD MONKSWELL.

LORD HOBHOUSE.

SIR RICHARD COUCH.

THIS comes before their Lordships in rather a peculiar way, and there is some difficulty in saying what in substance is the proper course to be taken. It appears that the Appellant is seeking to recover property in the possession of the Respondent, and that being defeated before the Commissioner of Jhansi, he appealed to the High Court. The Respondent applied that the Appellant might give security for costs, and on the 3rd June 1882 the High Court made an order directing the Appellant to show cause why the Respondent's petition should not be granted. That order to show cause was not properly served upon the Appellant, and on the 26th June, the Appellant then as it would seem knowing nothing about the Order, a further Order was made by the High Court in these terms :—“ Appellant has not appeared, and he is “ hereby required to deposit security to the extent “ of Rs. 2,500 within six weeks from this date :” viz., by the 8th August. On the 5th August the Appellant presented a petition showing cause why he should not be ordered to give security, and on the 14th August another Order was made by

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the High Court. It is simply in these terms :—
 “ Security has not been filed within the time
 “ prescribed by the Court. The appeal is therefore
 “ of necessity struck off the file with costs.”
 Whether the Court considered the merits of the
 cause then for the first time shown by the Ap-
 pellant, does not appear ; but if they did, he was
 not allowed any time at all to tender his security.
 On the 9th of September the Appellant presented a
 petition in which he stated the non-service of the
 original Order to show cause of the 3rd June,
 and his ignorance of it until he got information
 in time to file his petition on the 5th August ;
 and he prayed for the restoration of the appeal.
 It would seem that, on that petition, an Order was
 made dated 13th September 1882 ; but their Lord-
 ships cannot tell certainly upon what proceedings
 that Order was made, nor can they do more than
 guess at the terms of it, for by some omission which
 is entirely unexplained that Order has not been
 transmitted to this country. The direction given
 by Her Majesty on the petition for leave to appeal
 was that the High Court should transmit the
 prior Orders and also all subsequent Orders
 relating to the refusal to restore the appeal, but
 for some reason or other this Order has not been
 transmitted, The nature of it can only be
 gathered from a subsequent Order which was
 made in this way. On the 27th November 1882
 the Appellant again petitioned the High Court,
 and in that petition he states that “ in obedience
 “ to the Order of the Court, dated 13th Septem-
 “ ber 1882, the Petitioner submits herewith two
 “ security bonds for Rs. 2,500, as detailed below,
 “ and prays that proper Order may be made for the
 “ restoration of the appeal to its original number
 “ of file.” Therefore it would seem that by the
 Order of the 13th September the Court had held
 that the Appellant must give security, and had
 allowed time for the purpose. On the 27th Novem-

ber he tenders the security and asks that the proper Order may be made for the restoration of the appeal. Upon that there comes an Order of the 29th November, which their Lordships have great difficulty in understanding. It is a very short one. It does not say on what petition or proceedings it was made except that it was on a petition of the Appellant. It does not state who appeared upon it. The whole of the Order is this :—“The Petitioner’s appeal was not dismissed under sections 556 or 557 of the Civil Procedure Code. This petition therefore is not entertainable under section 558 of that Code, and it is inapplicable to an Order made as ours was made, under section 549 of the Code.” It is extremely difficult to apply the terms of this Order to the petition of the 27th November, and is a matter now of uncertainty and dispute what petition the Order speaks of and what Order it speaks of. The effect of it is apparently to maintain in full force the Order of the 14th August, by which the appeal was struck off the file.

It appears to their Lordships that the case has never been fully considered by the High Court.

The question is, first, whether the Appellant should give security ; and their Lordships assume that on the 13th September he was ordered to give security after hearing him ; and next, whether, on giving security, the appeal should be restored to the file. That seems never to have been considered by the High Court, because they held that the petition of the 27th November, which was to restore after tendering security, was not entertainable and could not be listened to. Their Lordships will humbly advise Her Majesty to make an Order that the Appellant may give security for the costs mentioned in the Order of the 3rd of June 1882, of such nature as shall be satisfactory to the High Court, and within such reasonable

time as shall be fixed by that Court; and that upon his giving such security his appeal shall be restored to the files of that Court. There will be no costs of this appeal.