

Hubert Rowan Hodge - - - - - *Appellant*

Shahebzada Mahomed Kamgar Shah and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM
IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 29TH JANUARY, 1937.

Present at the Hearing :

LORD THANKERTON.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* LORD THANKERTON.]

Counsel for the appellant in this case, submits two questions for consideration by their Lordships.

The first question raises a point as to the competency of the appeal taken to the High Court from the order of Mr. Justice Cunliffe. *Prima facie* there is good reason for that point, because, the period of limitation provided by article 151 being 20 days for appealing against the order, a period of 124 days in fact elapsed before the appeal was taken.

The contesting respondent's reply in excuse of his action was to say that, as provided by the terms of section 12, subsection (2) of the Limitation Act, a portion of the 124 days, the deduction of which would leave less than 20 days, was accounted for by the period which elapsed before he could obtain a copy of the order against which he was going to appeal. The learned Judges of the High Court have held that the respondent has succeeded upon that, and they have so held on a detailed examination of what occurred during that period. Their Lordships agree with the conclusion at which the High Court arrived. Indeed, it occurs to them that it might be arguable that the first period of seven days, the period from the 6th to the 13th February, which is disallowed as against the respondent, was not to be so charged against the respondent, as in the first letter he asks the registrar to do something and the second letter is a reminder that he had asked him, although in form it makes no reference to the previous letter.

Except as to the charging of that period against the respondent, their Lordships are constrained to agree with

the High Court. The first portion of the material period was occupied in an attempt to obtain a variation of the order as to costs. In fact a variation was made, although not the one asked for, and their Lordships think that it cannot be said that during that period the respondent here was failing to take reasonable and proper steps to obtain a copy of the order. With regard to the second period, that seems to have been mainly accounted for by an attempt by application to the registrar by the respondent here to get the order when issued dated not as of the 5th December, 1934, but as at 31st January, 1935, which was not the true date; but at any rate the main part of the judgment had been delivered on the 5th December, 1934. In that attempt he was unsuccessful; and, indeed, the application may have been doomed to failure from the first; but the fact remains that during that period the respondent was occupied in making application to the registrar for something which was connected with the settling of the order, and in fact the order was not ultimately settled and signed until the 12th March, 1935. Accordingly their Lordships agree with the High Court that the appeal was competent.

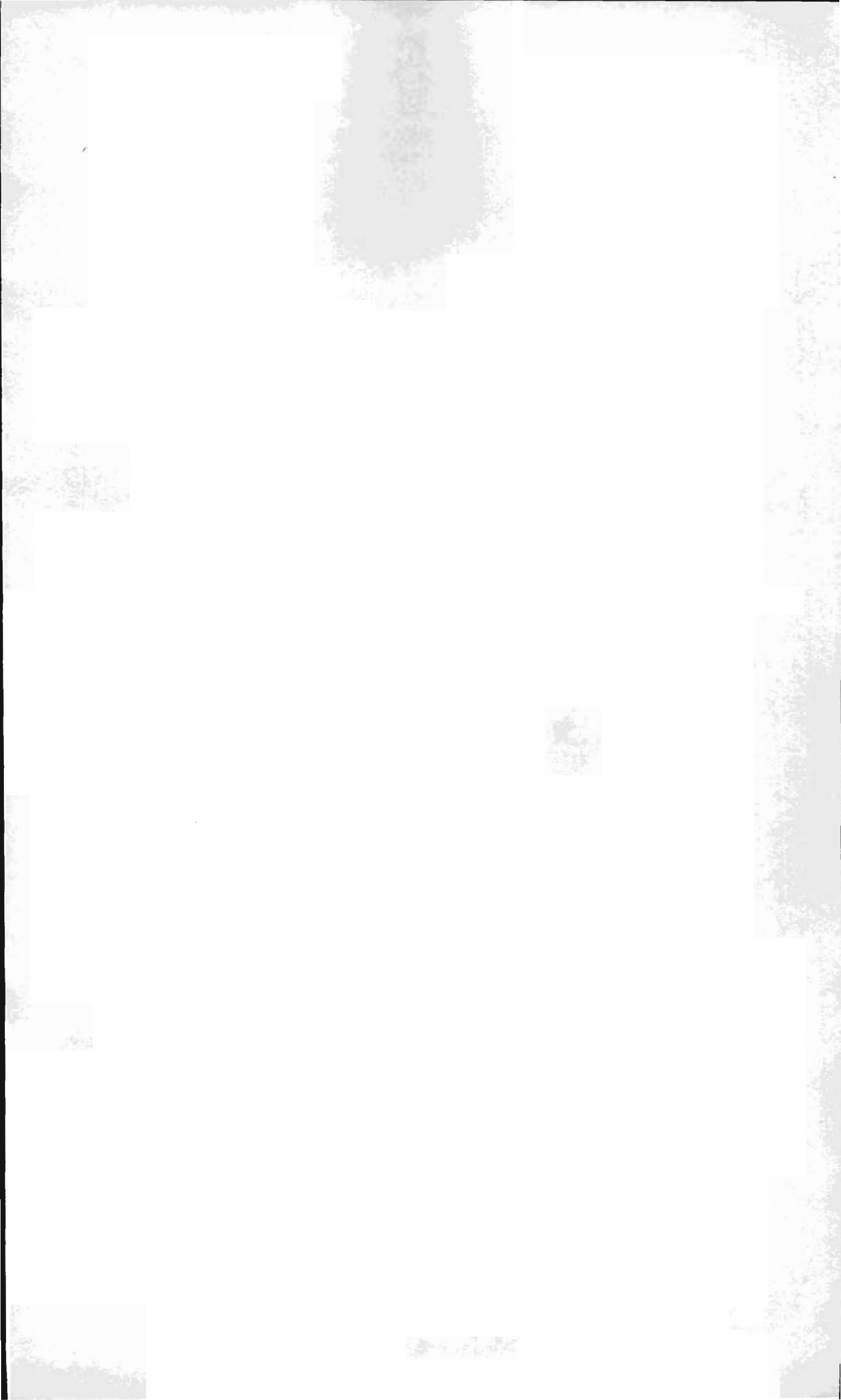
There remains a question on the merits of the appeal. Unfortunately, their Lordships are in difficulty here as to dealing with the decision of the High Court on the merits. A sentence from the opinion of the learned Chief Justice will make clear the point to which they are referring. The learned Chief Justice says:—

“ But the Judge did not, we are told, examine the valuer’s report of the property and did not see what the reserve price was and the reasons for fixing the reserve price. We sent for the registrar who produced to us the valuation which contains the suggested reserve price and we have perused it, particularly that part of it which deals with the reserve valuation itself and the reasons for arriving at that figure. I think if the learned Judge had done that in this case he would have come to the conclusion that bids that were offered in Court were too low and ought not to have been accepted. I am of opinion that the learned Judge although he acted with the best possible motive was wrong in this case in purporting to confirm the bid of Mr. Hodge.”

Their Lordships have not been provided with the material upon which the High Court came to that decision, and under those circumstances they are unable to form any conclusion as to whether the decision of the High Court on the merits was wrong or right.

Counsel did mention a third point, namely as to whether the order of Mr. Justice Cunliffe was an appealable order or not. This point does not appear to have been taken in the Court below and, indeed, no more need be said than that it was not pressed here.

Under these circumstances their Lordships are of opinion that the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.



In the Privy Council.

HUBERT ROWAN HODGE

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SHAHEBZADA MAHOMED KAMGAR
SHAH AND OTHERS

DELIVERED BY LORD THANKERTON.

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