Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Reasut Hossein v. *Hadjee Abdoollah and another, from the High Court of Judicature at Fort William, in Bengal; delivered the 24th May* 1876.

Present:

SIR J. W. COLVILE.
SIR BARNES PEACOCK.
SIR M. E. SMITH.
SIR R. P. COLLIER.

THIS is an appeal against an order of the High Court of Calcutta, dated the 2nd April 1873, by which that Court, in the exercise of its extraordinary and statutory jurisdiction of superintendence over the inferior Courts, set aside an order of the Judge of Gya, dated the 4th January 1873.

The contest between the parties related to the registration under the provisions of the Registration Act, 1871, of a deed purporting to have been executed by a Mahommedan lady of the name of Beebee Noorun in favour of her grandchildren, on the 19th of November 1871. She died on the 18th December 1871, and on the 5th January 1872 the Appellant as the father and guardian of the donees presented the deed for registration in the registrar's office at Gya. The Respondents, who were the heirs at law of the alleged donor, were cited in the usual way, and came in and denied the execution of the deed. It is admitted to be one which can have no force or validity, or be capable of being produced in any court of justice in evidence, unless it be registered; and the heirs of the

party, who is alleged to have executed it, having denied the execution of it by her, the registering officer was under the Act bound to refuse to register it. The Act gives an appeal from the sub-registrar to the principal registrar, but, as he was equally bound to refuse registration of an instrument of which the execution was thus disputed, such an appeal would have been obviously unfructuous; and the Appellant accordingly took the course of applying, under the 73rd and following sections, to the Zillah Judge at Gya, for an order upon the registrar to register the deed.

The Judge proceeded under the Act, and several witnesses were produced and examined in support of the deed. No witnesses were tendered on the other side. The Judge disbelieved the witnesses called, and for the reasons given in his judgment rejected the application made to him; and consequently the deed was not registered.

Within 90 days after the date of this order, Mr. Tayler, the Judge who rejected the application, was succeded as Judge at Gya by Mr. Craster; and an application was made to the latter to review his predecessor's order. That application in terms purported to be made under sections 376 and 378 of Act VIII. of 1859, and the counter petition filed by the Respondents seems to admit that the application was so made, and that a review of such an order might be had under those sections upon proper grounds, although it contends that what the petition sought in the particular case was in the nature rather of an appeal than of a review within the meaning of the Act.

Upon hearing the parties Mr. Craster made an order admitting the review. His judgment was in these words: "I consider this case may be ad-
" mitted for argument. According to the general
" practice a Court is at liberty to hold a review of

" the order passed by it. The argument which is " now made does not show me any reason to " believe that this Court has no power to have a " review of its order in this case, although there " is not any particular rule laid down for such " a proceeding in the law according to which the " above order was passed." The law to which he refers is obviously the Registration Act. After the order admitting the review was passed, but before the case was re-heard in pursuance of it, the Respondents applied to the High Court, invoking its extraordinary jurisdiction; and that Court granted a rule to show cause why the order of the 4th January admitting the application for the review and directing it to be placed on the review file for argument, should not be set aside on the ground that it was made without jurisdiction; staying, pending the rule, all further proceedings under the order. The case was then argued in the High Court, the judgment under appeal was pronounced, and the rule for setting aside the order of the Judge as made *ultra vires* and without jurisdiction was made absolute.

A point was taken, though not very strongly pressed, at the Bar, to the effect that this order of the High Court was itself *ultra vires*, inasmuch as the order which it set aside must be taken to have been made, not by one of the ordinary Zillah Courts, over which the High Court has an unquestioned power of superintendence, but by a district Court created by the Registration Act, over which it has no such power. Their Lordships can see no ground for this contention. It appears to them, looking at the Act of 1871, that although power is there given to the Government to appoint districts and sub-districts for the purpose of registration, the district Courts mentioned in the Act (except where the High Court is said to be, when

exercising its local jurisdiction, a district Court within the meaning of the Act), must be taken to be the Courts exercising the ordinary civil jurisdiction within that district; and, therefore, in the case of a regulation province, to import the ordinary Zillah Courts.

Another question raised was whether under the 76th section (of which the final words are, "no "appeal lies from any order made under this "section,") an order against which no appeal can be preferred must not be taken to mean only one by which the Judge directs the registrar to register a deed, and whether there may not be an appeal from an order like that passed by Mr. Taylor rejecting the application for registration. Their Lordships would have great difficulty in saying that an order of rejection does not fall within the term "an order made under this section;" because if the Judge does not make his order of rejection under the 76th section, it is difficult to see what other section gives him jurisdiction to make it. They do not, however, think it necessary to decide the question, because it is obvious that, whether an appeal lies from the order or not, the right, if it exists, of reviewing an order may co-exist with the liberty to appeal; and, consequently, that the question whether the power of the Judge of First Instance to review his order exists cannot be affected by the consideration whether an appeal lies from that order.

Another question raised, which it is equally or perhaps still more unnecessary to decide, is that suggested by Mr. Arathoon, viz., that, although a final order rejecting the application for registration may be made in this summary way, it would still be open to the parties benefited by the deed to propound it in a regular suit, and to obtain its registration by means of such suit. Their Lordships conceive

that it will be time enough to decide this question when it arises. They only desire to observe that the case of *Futteh Chund Sahoo* v. *Leelumber Singh Doss and others*, 14 Moore's I. A., p. 129, is no authority upon it. In that case the suit was for the specific performance of an unregistered agreement for sale, and sought to have, not the agreement, but the conveyance to be executed in pursuance of it, registered; and all that was decided was that the agreement not having been registered could not be given in evidence in the suit.

The principal question which their Lordships have to decide upon this Appeal is whether the power to admit a review which is given by the Act of 1859, (sections 376 to 378, and the following sections,) does exist in such a proceeding as that under consideration, as it would unquestionably exist in a regular suit. If the general power is found to exist, a subordinate question may arise, whether if the exercise of the power is not in strict accordance with the provisions of those sections, the order admitting the review can be quashed as one made wholly without jurisdiction.

Their Lordships are disposed to think that an order rejecting an application for registration under the Act of 1871 must be taken to be so far in the nature of a decree within the meaning of Act VIII. of 1859 as to fall within the operation of the sections in question. The proceeding may be what is technically called in India a miscellaneous proceeding, or it may be a summary suit; but the order made upon it is, so far as concerns the matter in dispute, final between the parties. Whether it is subject to appeal or not, it is, so far as the Court pronouncing it is concerned, a final order of adjudication between the parties.

But it seems to their Lordships that the

determination of this question does not depend upon the mere construction of Act VIII. of 1859, because by the 38th section of the amending Act of 1861 it is expressly enacted, "that the procedure described by Act VIII. of "1859 shall be followed as far as capable in all "miscellaneous cases and proceedings which "after the passing of the Act shall be instituted "in any Court." This provision, their Lordships conceive, expressly makes applicable to a proceeding to compel registration under the Registration Act the whole procedure of Act VIII. of 1859, including the power of admitting a review. And this was in fact almost admitted at the bar by Mr. Bell, when he was contending that the right of appeal to the High Court would, under the 23rd section of the Act of 1861, have existed in this case.

It is argued, however, that if the 376th and following sections of Act VIII. of 1859 do apply to an order rejecting an application for registration, they do not justify the particular exercise of jurisdiction in this case. The 376th section says, "Any person considering himself aggrieved by a "decree of a Court of original jurisdiction from "which no appeal shall have been preferred to a "superior Court, or by a decree of a district "Court in appeal, from which no special appeal "shall have been admitted by the Sudder Court, "or by a decree of the Sudder Court from which "either no appeal may have been preferred to "Her Majesty in Council, or, an appeal having "been preferred, no proceedings in the suit have "been transmitted to Her Majesty in Council, "and who from the discovery of new matter or "evidence which was not within his knowledge, "or could not be adduced by him at the time "when such decree was passed, or for any other "good and sufficient reason, may be desirous of "obtaining a review of the judgment passed

" against him, may apply for a review of judg-
" ment by the Court which passed the decree."
The application is to be made within 90 days of the date of the decree, unless the party can show just and reasonable cause for having delayed his application. Then the 378th section enacts:
" If the Court shall be of opinion that there are
" not any sufficient grounds for a review, it shall
" reject the application; but if it shall be of
" opinion that the review desired is necessary to
" correct an evident error or omission, or is
" otherwise requisite for the ends of justice, the
" Court shall grant the review, and its order in
" either case, whether for rejecting the applica-
" tion or granting the review, shall be final."
And then follows a provision that the opposite party is to have notice. And the Respondents contend that the order admitting a review in this case, though not the proper subject of appeal, was liable to be quashed, on the ground that the Judge had no jurisdiction to entertain the application, inasmuch as there was before him no distinct allegation of an error of law, nor any suggestion of the discovery of new evidence.

Their Lordships, looking to the original application to review, are by no means satisfied that it does not contain enough to give the Judge cognizance of the matter upon the strictest construction of Act VIII. of 1859. They allude particularly to the ninth ground of the petition, which refers to certain deeds and to certain evidence which seems to have been tendered in the course of the inquiry before Mr. S. H. C. Tayler, and rejected by him as unnecessary. That evidence, if not very material to the general question, was by no means immaterial with reference to one ground which the learned Judge gave for rejecting the application, because he dealt with the fact of one deed being for consideration, whereas that

which was propounded was not for consideration. Therefore, if he allowed that matter to influence his judgment, it seems to be reasonable that the parties should have the opportunity of explaining those circumstances, and of having that evidence which he refused to admit brought before the Court upon a review; the evidence in fact would be in the nature of evidence which they had been from some cause prevented from adducing on the original hearing.

Their Lordships however do not rest their decision upon that narrow ground, because looking to the extreme generality of the terms used in these sections, particularly to these terms: "other good and sufficient reason" and "necessary to correct an evident error or "omission, or is otherwise requisite for the ends "of justice," they are not prepared to say that there is an absolute defect of jurisdiction whenever the parties have failed to show that there was either positive error in law, or new evidence to be brought forward which could not be brought forward on the first hearing. They do not consider that the case in the Indian Jurist (*Nuseeroodeen Khan* v. *Indernarayan Chaudury*, Indian Jurist, p. 147,) and the other cases cited only limit the discretion of the Court in saying what reason is good and sufficient, or what may be so far requisite to the ends of justice as to support an application for review. Upon an appeal, where an appeal lies, it may be open to the Court of Appeal to say that the Judge ought not to have admitted a review; but that is a very different thing from ruling that he has acted wholly without jurisdiction. In the first case the Appellate Court reverses the order because the Judge has erred in the mode in which he has exercised a judicial discretion; in the latter

case it quashes the order because there was no discretion at all to be exercised.

Their Lordships, for these reasons, are of opinion that the order of the High Court which is under appeal cannot be supported; and they must humbly advise Her Majesty to allow this Appeal, to reverse the order of the High Court, and in lieu thereof to order that the rule to show cause why the order of Mr. Craster should not be set aside be discharged, with the usual costs in the High Court.

The Appellant who has been obliged to come here must of course have his costs of this Appeal.