Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Babu Budri Narain, a minor, represented by his mother and next friend, Mussummat Manki Koer v. *Mussummat Sheo Koer, from the High Court of Judicature at Fort William in Bengal; delivered November 15th*, 1889.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

THIS is an appeal from a decree of the High Court of Calcutta, made on the 2nd of June 1885.

On the 12th of February 1885 an order was made by that Court, directing that the Appellant should within two months furnish security to the extent of Rs. 5,000 in respect of the costs of the appeal before it, and of the original suit. It appears that on the 10th April, two days before the expiration of the period of two months, the Appellant offered as security a bond by two parties of two sets of properties, and on the 13th April the pleader of the Respondent asked that the matter might stand over, and that it should be referred to the Registrar to inquire whether the security was sufficient, that being the day after the expiration of the two months. The matter went to the Registrar. There was first an extension of time until the 20th of April, and on the 18th of April a further extension until the 27th. On the 28th of April the Registrar submitted a report in which he stated that each of the two sets of

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properties included in the security bond, which had been executed on the 24th March 1885, and registered on the 1st April, was of sufficient value, but he submitted for the judgment of the High Court questions of law which had been raised before him with regard to the power of the parties executing the bond to deal with the properties. On the 2nd of June the High Court, on the matter coming before them, made a decree by which they said: "It is ordered, "under the provisions of section 549 of the "Code of Civil Procedure, that this appeal "be and the same is hereby dismissed." Their reason for dismissing it appears in their judgment, in which they say: "We find that it has "been decided by the Allahabad High Court in "the case of *Haidri Bai* v. *The East Indian* "*Railway Company*, I. L. R. 1., Allahabad, 688, "that where the High Court orders an Appellant "to give security for costs, the Court may extend "the time within which it orders the security "to be furnished, if an application is made within "that time, but if the security is not given within "the time ordered by the Court, and no applica- "tion is made within that time to extend the "time for giving security, the Court is bound, "by Section 549 of the Civil Procedure "Code, to reject the appeal." It is contended before their Lordships that the effect of that section is that the security which was tendered on the 10th April is the only security which can be looked at, and if, upon the inquiry which was afterwards made, it turns out to be insufficient, the Court has no power under the Act to extend the time for giving security so as to enable the Appellant to do what, when it appeared that there was this doubt about the right of the parties to pledge the property included in the bond, he was willing to do, namely, deposit the sum of Rs. 5,000.

In the present case this observation arises, that, in fact, the Court did give an extension of time beyond the 12th April, and, if the Appellant is right, the proceedings by which the matter was referred to the report of the Registrar on the 13th, on the application of the Respondent's pleader, would be altogether nugatory and idle. The Court, up to the time of the Registrar making his report, did give time for inquiry, and substantially did give an extension of time up to that period. The question is this: Is the Act so framed as to make it imperative upon the Court to reject the appeal if it turns out, upon the inquiry, that the security is insufficient? The words do not seem to be such as to require that conclusion. The section says: "That the Appellate Court may, at its discretion, either "before the Respondent is called upon to "appear and answer, or afterwards, on the "application of the Respondent, demand from "the Appellant security for the costs of the "appeal, and if such security be not furnished "within such time as the Court orders, the "Court shall reject the appeal." Those words appear to be consistent with the Court having power to make fresh orders with regard to the time within which the security should be furnished, and not to fetter it in the way that is contended for by the learned counsel, that having once made an order and fixed a time they can make no alteration in it, no matter what circumstances might occur which would render it impossible for that order to be complied with. That would not be a reasonable construction of the Act. The other construction is a reasonable one, that the application to the Court to enlarge the time for giving security may be made either before or after the expiration of the time within which the security has been

ordered to be furnished, and the Court may thereupon enlarge the time according to any necessity which may arise where it is just and proper that they should do so. If ultimately the order is not complied with, and the security is not furnished, the appeal may be dismissed. That agrees with the view which their Lordships have taken of the section in a case in which judgment was delivered on the 3rd of April last of *Syed Rajab Ali* v. *Syed Amir Hossein and others*.

In the present case it appears to their Lordships that the High Court were wrong in holding that they had no power to extend the time for giving the security, and that they were bound, by the section 549, to reject the appeal. It was certainly a case in which they might properly have considered whether they should not allow the Appeal to be heard. There was an application for review after the order of the 2nd of June was passed, and it then appeared that the party was ready to give the security by deposit of the Rs. 5,000. It is to be regretted that the Court did not allow that to be done, but adhered to its view of section 549, which appears to their Lordships to be erroneous.

With regard to what should be done in the present case, the decree of the High Court of the 2nd June 1885 should be reversed, and an order similar to that which was made in the case of Kuar Balwant Sing *v.* Kuar Doulut Sing in the 13 Indian Appeals, page 57, should be made. That was: "That the Appellant may give security for "the costs mentioned in the order of the 3rd of "June 1882"—in this case it will be the order of the 12th of February 1885—"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." The appeal will then

be heard by the High Court. It should be also ordered that the Respondent should pay the costs of the petition of the 2nd July 1885, and the hearing thereon. Their Lordships will humbly advise Her Majesty to that effect.

The Respondent will pay the costs of the present appeal, but when those costs are taxed it will be proper for the Registrar, in considering what should be allowed for the cost of perusal of the record, to allow only so much as is applicable to the question which has been argued before their Lordships and now decided.