NATHAN, *In re.*

There is, however, a further and fatal objection. It is founded on that disastrous provision of law, sub-section (8) of section 526 of the Code of Criminal Procedure, which is absolutely imperative in its terms. The petitioner, in the course of the trial, applied for an adjournment for the purpose of moving the High Court for a transfer, but the Bench rejected the application on the ground that it had been made after the trial had begun. That was, of course, no ground at all. Such an application can be made in the course of a trial, and must, unfortunately, be granted. To refuse it, contrary to the terms of the section, is to deny the applicant an absolute right conferred on him by the statute and vitiates the whole proceedings.

We set aside the conviction, but, as the case arises out of a family dispute, do not order a retrial.

B.C.S.

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## PRIVY COUNCIL.*

1929, December 3.

GUDIVADA MANGANNA (PETITIONER), APPELLANT,

*v.*

MADDI MAHALAKSHMAMMA (RESPONDENT), RESPONDENT.

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

*Code of Civil Procedure (Act V of 1908), sec. 110—Right of appeal to Privy Council—Value of subject-matter of suit.*

In section 110 of the Code of Civil Procedure, 1908, dealing with appeals to the King in Council from a decree or final order of a High Court, the words "the amount or value of the subject-matter of the suit in the Court of first instance" mean the amount or value at the institution of the suit, and not at the date of the decree in the Court of first instance; and that meaning is

* *Present*:—Viscount DUNEDIN, Sir GEORGE LOWNDES and Sir BINOD MITTER.

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not affected by the alternative condition which follows in the section. *Subramanya Ayyar* v. *Sellammal*, (1915) I.L.R., 39 Mad., 843, approved.

PETITION for special leave to appeal from a decree of the High Court at Madras (November 1, 1928), reversing a decree of a Subordinate Judge. The petitioner was plaintiff in a suit against the respondent, his sister, for a declaration of his title, and for possession of certain property which had belonged to their deceased mother. The property included certain promissory notes payable by persons not parties to the suit. For purposes of Court-fees the suit was valued at Rs. 7,200.

The Subordinate Judge decreed the suit, but upon appeal to the High Court it was dismissed.

An application by the petitioner to the High Court for a certificate enabling an appeal to the Privy Council was dismissed on the ground that the value of the subject-matter of the suit in the Court of first instance was not Rs. 10,000 or upwards so as to satisfy the requirements of section 110 of the Code of Civil Procedure applicable to the case. For the purposes of their decision the learned Judges accepted the petitioner's contention of fact that if interest upon the promissory notes to the date of the decree of the Subordinate Judge were included the value exceeded Rs. 10,000.

Section 110 of the Code is set out in the judgment of the Judicial Committee.

Under the established practice of the Board, the petitioner was entitled to contend upon a petition for special leave to appeal, and without appealing from the refusal of a certificate, that he had an appeal by right under the provisions of the Code.

*Narasimham* for the petitioner.—The value of the subject-matter of a suit for the purposes of section 110 of the Code is what would accrue to the plaintiff if he obtains a decree. That, in the present case, would include interest upon the promissory

notes. The judgment of the Board in *Moti Chand* v. *Ganga Prashad Singh*(1) did not reject the view that the value at the date of the decree was the test. It is well established that the valuation for Court-fees is not conclusive for the present purpose.

*W. Wallach* for the respondent.—For the purposes of section 110 the value of the subject-matter of a suit is the value at the date of the plaint: *Subramanya Ayyar* v. *Sellammal*(2). Although other High Courts have held otherwise, it is submitted that the view of the Madras High Court is correct. That case dealt with mesne profits and the same principle applies here. *Moti Chand* v. *Ganga Prashad Singh*(1) does not affect the present question. But in any case the petitioner has not shown that the value was Rs. 10,000 even at the date of the decree. The value of the promissory notes to the holder is purely problematic. The petitioner by his plaint claimed only possession.

*Narasimham* in reply.—*Subramanya Ayyar* v. *Sellammal*(2) is distinguishable as in that case mesne profits were not recoverable from the defendant but from others.



The JUDGMENT of their Lordships was delivered by Viscount DUNEDIN.—The case turned upon whether the widow, whose heir the respondent is, took an absolute interest in certain properties of the husband or only a life estate. If the latter, the respondent had no right. The Subordinate Judge held that the widow had only a life estate. The High Court reversed. The losing parties then applied for leave to appeal to the King in Council, which was refused upon the ground that the amount or value of the subject-matter of the suit was less than Rs. 10,000.

The appellant now asks for special leave to appeal on the ground that the decision of the High Court was wrong in the respect that the amount or value of the subject-matter of the suit was more than Rs. 10,000. The point arises in this way. Part of the property in

(1) (1901) I.L.R., 24 All., 174; L.R., 29 I.A., 40.
(2) (1915) I.L.R., 39 Mad., 843.

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question consisted of promissory notes. The promissory notes in the plaint were described as of their face value, and so valued together with the other subjects in dispute, the amount of Rs. 10,000 cannot be reached, but if to the face value of the promissory notes is added the interest up to the date of the decree of the first Court, then the sum of Rs. 10,000 is exceeded.

The section of the Civil Procedure Code which rules the matter is section 110, which is as follows :—

"In each of the cases mentioned in clauses (*a*) and (*b*) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

"or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

"and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law."

Case (*a*) of section 109 is an appeal from a decree passed on appeal by a High Court, and therefore the present case is within case (*a*). Now, it is a matter of history that the present section of the Code was an amended form of the enactment which prior to the Code controlled the matter. Up to 1874, appeals to the Privy Council were governed by the Order in Council of the 10th April, 1838. The words then were "amount or value of the subject-matter in dispute in appeals to Her Majesty in Council." Upon that there were decisions of the Privy Council that interest on money claims and mesne profits of immovable property subsequent to the date of the suit, but awarded by the decree, might be reckoned, but none subsequent to that date.

Then came the Privy Council Appeals Act (VI of 1874), and subsequently the Code of Civil Procedure, which imposed the additional condition as to the value in the Court of first instance, which is not included in the Order above quoted.

In 1901, in the case of *Moti Chand* v. *Ganga Prashad Singh*(1), their Lordships held that the word "and" meant "and" and not "or," so that each of the two conditions had to be separately fulfilled. In that case the amount recoverable even under the decree in the first Court did not amount to Rs. 10,000, so that the present position did not arise.

The question did, however, arise in India, and the Calcutta [see *Dalgleish* v. *Damodar Narain Chowdhry* (2)] and Madras Courts gave contrary decisions. Their Lordships consider that the Madras Court was right. The case is *Subramanya Ayyar* v. *Sellammal*(3). In that case the question was as to mesne profits. If mesne profits from the date of the institution of the suit to the date of the decree were added, the sum of Rs. 10,000 was exceeded, *secus* if not. The Courts held that they could not be added, and their Lordships agree with their reasoning, which, indeed, treated the question under the first part of the section as completely clear, but considered whether the second part, "or the decree or final order must involve," etc., made any difference, and held that it did not, for reasons which commend themselves to their Lordships.

Learned counsel for the petitioner sought to distinguish that case by saying that it applied to mesne profits and not to interest, and also that there the pecuniary claim was directly made and not, as here, a

(1) (1901) I.L.R., 24 All., 174; L.R., 29 I.A., 40.
(2) (1906) I.L.R., 33 Calc., 1286 (3) (1915) I.L.R., 39 Mad., 843.

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claim for a promissory note itself, leaving the pecuniary claim to be worked out by action against the maker of the promissory note. But, in truth, mesne profits are much more akin to the interest sought to be added by computation in this case than the case of interest directly sued for, for they are something attaching to the subject claimed and not what is the subject of a direct claim. Further, the point that there is here no direct action for the money, but only for the thing that will bring in the money, so far from helping the appellant, is all against him. Who can tell whether there will be any interest due under the promissory note? The maker of the promissory note may have many defences. The truth is that it is somewhat of a concession to allow the promissory notes to be ranked as at their face value. That concession is allowed, and that is the utmost that can be said to be the value as at the institution of the suit. To add what may eventually turn out to be accrued monies after that date and up to the decree is to go far beyond what has been conceded and is in the teeth of what their Lordships hold to be the true meaning of the Code.

Their Lordships will therefore humbly advise His Majesty that the application should be dismissed with costs.

Solicitors for petitioner: *Chapman-Walker & Shephard.*

Solicitor for respondent: *T. L. Wilson & Co.*

A.M.T.