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case to the Sessions Court. In the course of his investigation for that commitment Jagat Mal had been examined as a witness, and had then, in Mr. Watts' opinion, given false evidence, and Mr. Watts, having represented this state of things to the Magistrate, received sanction for Jagat Mal being included in the proceedings directed by the Judge under s. 193. Mr. Watts having concluded the inquiry committed the whole eleven accused for trial before himself, and convicted Ram Gholam, Gula Mal, and Jagat Mal, and another (deferring judgment as regards the remaining seven). There was an appeal to the Judge, but the result was its dismissal by him.

Ram Gholam, Gula Mal, and Jagat Mal now apply to this Court in revision, urging that Mr. Watts had no jurisdiction to try and convict them, because, according to the terms of s. 471 of the Criminal Procedure Code, he should have sent the case to another competent Magistrate. This, however, is a clearly mistaken view of the law, Mr. Watts being fully competent for all he did. The only case where a Criminal Court cannot itself try is that described in s. 473, which relates exclusively to contempts of Court. Here the charge was not for a contempt, but under s. 193 for false swearing. The conviction and sentence in the case of the three applicants are approved and confirmed, and their application to this Court is refused.

BEFORE A FULL BENCH.

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April 24.

(Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.)

RATAN SINGH AND ANOTHER (DEFENDANTS) *v.* WAZIR (PLAINTIFF)

Act VIII of 1859, s. 354—Remand—Objection—Procedure.

Where an appellate Court, under s. 354, Act VIII of 1859, refers issues for trial to a lower Court and fixes a time within which, after the return of the finding, either party to the appeal may file a memorandum of objections to the same, neither party is entitled, without the leave of the Court, to take any objection to the finding, orally or otherwise, after the expiry of the period so fixed without his having filed such memorandum.

On special appeal by the defendants in this suit to the High Court, the Court (Turner and Spankie, JJ.), under s. 354, Act VIII of 1859, referred certain issues for trial to the lower Court

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and fixed a period of one week within which either party to the appeal might file a memorandum of objections to the finding of the lower Court. No such memorandum was filed by the appellants within the time fixed. At the further hearing of the appeal it was contended on their behalf that, notwithstanding this omission, they were entitled to urge objections to the finding.

As it appeared to the Court that the rulings of the Calcutta High Court in *Ashrufoonnissa Begum* v. *Stewart* and *Woomesh Chunder Roy* v. *Jonardun Hajrah* and of this Court in *Munrakhun Lall* v. *Raheem Buksh* and *Sheo Gholam* v. *Ram Jeawun Singh* were at variance (1), the Court referred the question raised by the appellants' contention to a Full Bench.

Munshi *Hanuman Pershad* (with him Pandit *Nand Lal*), for the appellants.—An appellate Court can admit an appeal presented after time. It can also allow an objection to the decision of a lower Court not taken in the memorandum of appeal to be taken at the hearing. It can therefore allow a party who may not have filed a memorandum of objections under s. 354, Act VIII of 1859, within the time fixed, to urge objections at the hearing. The Court is not bound by its order fixing a period, but can extend the period.

(1) In *Ashrufoonnissa Begum* v. *Stewart*, 9 W. R., 438, the Calcutta High Court (Loch and Macpherson, JJ.) declined to allow [illegible] counsel to object to th[illegible] lower Court at the further hearing of the appeal, as no memorandum of objections had been filed within the time fixed. In *Sheo Gholam* v. *Ram Jeawun Singh*, II. C. R., N.-W. P., 1873, p. 114, this High Court (Pearson and Jardine, JJ.) held that the lower appellate Court was not bound to receive memoranda of objections presented after time. In the first mentioned case, however, it does not appear that the appeal was determined by the Court affirming without consideration the finding of the lower Court, and in the judgment in *Woomesh Chunder Roy* v. *Jonardun Hajrah*, 15 W. R., 235, it is stated that it was not the intention of the Court in *Ashrufoonnissa Begum* v. *Stewart* to take the view contended for and overruled in *Woomesh Chunder Roy* v. *Jonardun Hajrah*, viz., that, where a party has failed to file a memorandum of [illegible] the appellate Court is at liberty [illegible] the appeal without considering the finding. In the second mentioned case, although the [illegible] Court refused to receive [illegible] of objections, as further objections were offered at the hearing, but, on the contrary, the parties agreed to abide by the finding. In *Munrakhun Lall* v. *Raheem Buksh*, II. C. R., N.-W. P., 1872, p. 72, Sawyer, C.J., and Pearson, J., held that the Court was not precluded by anything in the law from hearing an objection taken after time. See, however, *Nowrun* v. *Khoda Buksh*, II. C. R., N.-W. P., 1866, p. 50, in which case this High Court (Morgan, C.J., and Pearson, J.) held where an appellate Court had remanded a case under s. 354, Act VIII of 1859, and fixed a time within which objections might be taken, that the appellate Court was not competent to interfere with that portion of the lower Court's revised judgment to which no objection had been taken within time.

Babu *Oprokash Chandar* (with him Lala *Ram Parshad* and Babu *Ram Das*), for the respondent.—The appellate Court has to fix a time within which the parties may file objections. This implies that the memorandum cannot be filed after that time. The section gives it no such discretion to extend such period as is given it to admit appeals presented after time or to hear objections not taken in the memorandum of appeal. The objections under s. 354 must be taken in writing and not orally.

STUART, C.J.—I am clearly of opinion that objections to findings on remand, whether in writing or taken orally at the hearing of the appeal, may, with permission of the Court, be considered. Whether such objections may be allowed as of right may be doubted. I am rather inclined to think that the hard line drawn by the language of the Code excludes them. But that, on the other hand, we may, in our judicial discretion and in the interests of justice and the legal requirements of a suit, permit such objections to be taken, I should be sorry to think there can be any doubt. This is a High Court of Judicature, and when the Code of Procedure is merely silent, and does not expressly prohibit any particular action, we are entitled to use all necessary and proper means and appliances the power to permit or refuse which must reside within the inherent authority of a Court of Record.

My answer to this reference, therefore, is that the objections to which it refers, whether in writing or taken orally, may, with permission of the Court, be received and considered, but that they cannot be admitted without such permission.

I may add that I have looked into the cases referred to in the order of reference and entirely concur in the rulings in the two cases of this Court (2). One of them, that of *Munrakhun Lall* v. *Raheem Buksh* (3), was decided by Mr. Justice Pearson and myself, and I firmly and advisedly adhere to every word of our judgment. There we said—"The terms of s. 354 are permissive; the parties *may* prefer objections within a specified time, after which the appellate Court shall proceed to determine the appeal. There is nothing in the law to the effect that an objection

(2) *Sheo Gholam* v. *Ram Jeawan Singh*, H. C. R., N.-W. P., 1873, p. 114; *Munrakhun Lall* v. *Raheem Buksh*, H. C. R., N.-W. P., 1872, p. 72.

(3) H. C. R., N.-W. P., 1872, p. 72.

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made after the time fixed shall not be listened to; and, indeed, when the Court proceeds to determine the appeal in reference to the evidence submitted, any objection made, or suggesting itself in the course of the hearing, would necessarily have to be considered, whether a memorandum of it had been previously filed or not, unless the Court determined the appeal by simply affirming without consideration the finding received. Such a course is not one which the section directs the Court to take in the event of no objection having been put forward in writing within the time specified. We are aware that it has been held that the objections cannot be received after the time fixed, but so strict a ruling is, in our opinion, beyond the terms, and not within the intention of the law. Here we allowed a week, and our meaning was that that should be the time *at least*; in other words, that a week should be allowed, subject to any further orders of the Court, for reasons assigned or cause shown." That to my mind is a most satisfactory statement of the law on this point. The Calcutta cases (1) do not seem to apply, but so far as I can understand them I dissent from their conclusions.

PEARSON, J.—On full consideration I am of opinion that the intention of the law was effectively to limit the time within which objections might be taken to the findings submitted to the appellate Court under s. 354. The words that either party may, within a time to be fixed by the appellate Court, file a memorandum of any objection to the finding, imply that the memorandum may not be filed after that time. It seems unreasonable to hold that, although an objection may not be preferred in writing, it may nevertheless be urged orally after the expiry of the fixed period. Such an interpretation would defeat the object of the law. Just as the law fixes a time within which the appeal against the original decree or decision must be presented, so in the like manner the objections to the supplementary findings on fresh issues remitted for trial under s. 354 must be put in within the time fixed for the purpose. The Court might probably, on application and sufficient cause shown, extend the time in the same manner as an appeal may be admitted after time on sufficient cause being shown for the

(1) *Ashrufoonissa Begum* v. *Stewart*, 9 W. R., 438; *Woomesh Chunder Roy* v. *Jonardun Hajrah*, 15 W. R., 235.

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delay in preferring it. The objections under s. 354 being of the nature of an appeal, s. 5, Act IX of 1871, might be applicable. I also presume that ss. 348 and 374 of the Code would be applicable in respect of findings under s. 354.

TURNER and SPANKIE, JJ.—If an appeal is presented from the decree of a subordinate Court and in the memorandum of appeal no objection is taken to the finding of the subordinate Court on a question of fact, the appellant cannot of right urge or be heard in support of the objection at the hearing; he must obtain the special leave of the Court. And although in deciding the appeal the Court is not confined to the grounds set forth by the appellant in his memorandum, it would not ordinarily, we apprehend, be justified in interfering with a finding of fact to which no objection had been taken in the memorandum of appeal, unless the appellant could show that from some sufficient cause the objection was not taken at the proper time. Now when it becomes necessary for the right determination of the suit on the merits that an appellate Court should remit an issue to the Court below for trial, the Code in s. 354 directs the Court below to try the issue and return its finding with the evidence to the appellate Court; it declares that such finding and evidence shall become part of the record and it authorises either party, *within a time fixed by the appellate Court*, to file a memorandum of any objection to the finding, and on the expiration of that period it directs the appellate Court to proceed to determine the appeal. There is no provision empowering a party to take objection to the finding at any other time than within the period fixed by the appellate Court. It cannot be contended then that either party is as a matter of right empowered to take an objection at the hearing which he has neglected to take within the period allowed him by law.

There remains the question, can he do so by leave of the Court? After the return of the finding and evidence which by the terms of the law form part of the original record, the appellate Court ought, in our judgment, to proceed as if the necessary issue had formed part of the record originally submitted to it, with this difference, that it must determine not only the pleas in appeal but also any objection preferred within due time to the finding on the

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issue remitted—and in determining the appeal the Court is not deprived of the powers conferred on it by s. 334. The finding on the issue remitted falls within those powers as much as the findings on the issues originally tried. If this be so, it follows that the Court might at the hearing allow a party to urge an objection to the finding which had not been taken at the proper time, and in deciding the appeal is not confined to the grounds set forth in the original memorandum or in any statement of objections to the finding on the issue remitted taken within due time; but the Court ought not as a matter of course to allow an objection to be urged which has not been taken at the proper time; it should satisfy itself that there are grounds which warrant the indulgence.

OLDFIELD, J.—It appears to me that a party who has failed to file a memorandum of objections within the time fixed by the appellate Court under s. 354, Act VIII of 1859, cannot afterwards claim as of right to be allowed to urge objections; but I do not consider that it was intended to leave no discretion to the Court whether it should admit objections, either orally or in writing, after the time fixed had expired. I apprehend that the appellate Court can always extend the time within which the written memorandum of objections can be filed.

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May 8.

BEFORE A FULL BENCH.

(*Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

GANGA BAI (PLAINTIFF) *v.* SITA RAM (DEFENDANT).

Hindu Law—Hindu Widow—Maintenance.

Held by the Full Bench that a Hindu widow is not entitled, under the Mitakshara, to be maintained by her husband's relatives merely because of the relationship between them and her husband. Her right depends upon the existence in their hands of ancestral property.

Held, on the case being returned to the Division Bench, that the fact that the defendant in this case was in possession of ancestral immoveable property at the death of his son and had subsequently sold such property to pay his own debts, did not give the son's widow any claim to be maintained by him.

The plaintiff was the daughter-in-law of the defendant Sita Ram. Her husband died in May, 1858. For about fifteen years