regard to the peculiar circumstances of the plaint and pleadings as appellant has chosen to put them in this case. I concur in the negative answer to the reference.

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On the case being returned to the Divisional Bench, the following judgment was delivered :—

OLDFIELD and BRODHURST, J.J.—With reference to the opinion of the Full Bench of this Court on the point referred, we set aside the order of the Judge and restore that of the first Court with costs.

Appeal allowed.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

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SUNDAR BIBI (PLAINTIFF) *v.* BISHESHAR NATH AND OTHERS (DEFENDANTS).*

Appeal to Her Majesty in Council—Civil Procedure Code, ss. 574, 596, 632, 633—*"Substantial question of law"—Judgment of High Court—Contents of judgment—Rules made by High Court under s.* 633 *for recording judgments.*

The intention of the Legislature as expressed in s. 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the interests of justice. The section does not merely give the High Court power to direct that judgments shall be recorded in a particular book, or with a particular seal.

Rule 9 of the rules made under s. 633, in March, 1885, is therefore not *ultra vires* of the Court, and it modifies the provisions of s. 574 in their application to judgments of the High Court.

With reference to the terms of Rule 9, it is not necessary, in a case where the High Court substantially adopts the whole judgment of the Court below, to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons for the decision.

Per EDGE, C.J.—Apart from Rule 9, it never was intended that s. 574 of the Code should apply to cases where the High Court, having heard the judgment of the Court below and arguments thereon, comes to the conclusion that both the judgment and the reasons which it gives are completely satisfactory, and such as the High Court itself would have given.

Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions.

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* Application for leave to appeal to Her Majesty in Council.

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The judgment of the High Court in a first appeal was as follows :—"This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The appellant applied for leave to appeal to Her Majesty in Council on the ground that the requirements of s. 574 of the Civil Procedure Code had not been complied with.

Held by the Full Bench that the objection involved no substantial question of law, and that the application for leave to appeal must therefore be rejected.

THIS was an application by the legal representative of the deceased appellant in F. A. No. 99 of 1884 for leave to appeal to Her Majesty in Council from the decree of the High Court, dated the 8th December, 1885, dismissing the appeal and affirming the decree of the lower Court (District Judge of Cawnpore). The judgments of the High Court were as follows :—

"PETHERAM, C.J.—This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons.

"OLDFIELD, J.—I am of the same opinion."

The first of the grounds upon which the application for leave to appeal to Her Majesty in Council was made was as follows:—

"Because the requirements of s. 574 of the Civil Procedure Code have not been complied with."

The application came on for hearing before Oldfield and Mahmood, JJ., who referred it to the Full Bench for disposal.

Mr. *G. T. Spankie*, for the applicant, contended that, with reference to s. 632 of the Civil Procedure Code, the provisions of s. 574, relating to the contents of the judgments of appellate Courts, applied to the High Court, there being no exception of these provisions to be found in Chapter XLVIII. S. 633 only empowered the Court to make rules as to the "recording" of judgments and orders, and therefore Rule 9 of the rules made in March, 1885 was *ultra vires*, so far as it purported to qualify s. 574, relating to the *contents* of judgments, in its application to judgments of the High Court in appeal. The neglect to comply with the requirements of s. 574 was a "substantial question of law" within the meaning of s. 596, such neglect having on many occasions been treated by

the High Court as a sufficient ground of second appeal within s. 584 (*c*). S. 652 did not apply to cases of this kind.

The Hon. *T. Conlan* and the Hon. Pandit *Ajudhia Nath*, for the opposite parties, were not called upon.

EDGE, C. J.—I am of opinion that this application must be rejected. It is an application for leave to appeal to Her Majesty in Council, and although four grounds were originally put forward in support of it, the first of them only is now before us. This is thus stated:—"Because the requirements of s. 574 of the Civil Procedure Code have not been complied with." Now s. 574 provides that "the judgment of the appellate Court shall state—(*a*) the points for determination; (*b*) the decision thereupon; (*c*) the reasons for the decision; and (*d*) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled." In the first place, I cannot conceive that it was intended that this section should apply to cases where the High Court, having heard the judgment of the Court below and argument upon that judgment, comes to the conclusion that it is right, and agrees with the reasons which it gives. It can never have been intended that where both the judgment and its reasons are completely satisfactory to the High Court, and such as the Court itself would have given, the Judges should be compelled to write out again "the points for determination," the "decision thereupon," and "the reasons for the decision." In this case the Judges have stated their decision, and have also stated their reasons by saying they agree with the reasons given by the Court below. Is it possible to maintain that in these circumstances the Judges of this Court, agreeing with all the substantial reasons contained in the judgment of the lower Court, should sit down and again write out these reasons at length? I further think that even if the rules framed by the Court in March, 1885 did not modify the provisions of s. 574, and if that section does apply to a case like the present, the judgment of Sir Comer Petheram and my brother Oldfield did substantially comply with these provisions. Their judgment, which was delivered by the Chief Justice, was in the following terms:—"This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The Judge's reasons

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ificlude the groundwork on which they are based; and the Judges of this Court virtually adopt and make their own his statement of the issues, his findings, and his reasons.

In the next place, this Court, in March, 1885—before the date of the judgment in question,—framed rules under s. 633 of the Code, which provides that "the High Court shall take evidence and record judgments or orders in such manner as it by rule from time to time directs." These words give us the widest discretion as to the mode of taking evidence in cases tried before the Court; and the taking of evidence is the most important step before judgment can be arrived at, because the judgments, both of this Court and of the Privy Council, might be materially affected by the mode in which it is done. It has been said that the expression "record judgments or orders" merely gives us the power of saying that judgments or orders shall be recorded in a particular book or with a particular seal. I entirely dissent from that contention. The intention of the Legislature, as expressed in s. 633, was that the Judges might frame rules as to how their judgments should be given, so that they might give them orally or in writing, or adopt any mode which might appear to them best in the interests of justice. I am therefore of opinion that there is nothing in the argument that these rules are *ultra vires*. Now, Rule 9 is as follows:—"The record of judgments or orders shall be, as far as possible, *verbatim*, and it shall state, as far as may be necessary for the purposes of the particular case, the points for determination, the decision thereupon, the reasons for the decision, and, when the decree appealed against is reversed or varied, the relief to which the appellant is entitled." The important words are "as far as may be necessary for the purposes of the particular case." How can it possibly be contended that, in a case where this Court substantially adopts the whole judgment of the Court below, it is necessary to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons? It has been said that in cases where this Court disagrees with the Court below, these observations would not apply; but I can only say that I cannot conceive that, in such cases, this Court would set aside the decree without stating its reasons fully. I am of opinion that this application must be refused with costs.

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STRAIGHT, J.—The only point put forward as the substantial question of law involved, which would entitle the petitioner to appeal to Her Majesty in Council, is that taken by the first ground of the memorandum of appeal. I am of opinon that, rules having been framed under the Civil Procedure Code in that behalf, this Court's judgments are not governed by s. 574 of the Civil Procedure Code, but by these rules, and therefore I do not think the objection relied on by the petitioner raises any substantial question of law. The application must be refused with costs.

OLDFIELD, J.—I entirely concur in the opinion of the learned Chief Justice.

BRODHURST, J.—I concur with the learned Chief Justice that there is no ground for granting the application for leave to appeal to Her Majesty in Council, and I would refuse the certificate, and dismiss the petition with costs.

TYRRELL, J.—I concur.

APPELLATE CIVIL.

1886
November 16.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

BHAGWAN SAHAI (DEFENDANT) *v.* BHAGWAN DIN AND OTHERS (PLAINTIFFS)*

Mortgage—Sale of mortgagee's rights and interests for the recovery of arrears of revenue—Suit for redemption—Act XV of 1877 *(Limitation Act), sch.* ii, *No.* 134—*Regulation XI of* 1822, *s.* 29—*Regulation XVII of* 1806.

It was not intended that property which would pass on the sale by a mortgagee of his interest should come within the scope of art. 134, schedule ii of the Limitation Act (XV of 1877). That article was intended to protect, after the expiration of twelve years from the date of a purchase, a person who, happening to purchase from a mortgagee, had reasonable grounds for believing, and did believe, that his vendor had the power to convey and was conveying to him an absolute interest, and not merely the interest of a mortgagee. *Radanath Doss* v. *Gisborne and Co.* (1), *Piarey Lal* v. *Saliga* (2), and *Kamal Singh* v. *Batul Fatima* (3), referred to.

Contemporaneously with the execution of a registered deed of sale of zamindari property in 1835 for Rs. 4,000, the vendee executed a deed in favour of the

* First Appeal No. 177 of 1885, from a decree of Syed Farid-ud-din Ahmad, Subordinate Judge of Cawnpore, dated the 2nd August, 1885.

(1) 14 Moo I. A. 1. (2) I. L. R., 2 All. 394.
(3) I. L. R., 2 All. 460.