

only consequence of failure to show such cause, but it is not a punishment, and the imputed criminal habit is not a charge of an offence. Therefore Hira was not discharged or acquitted of an offence, and therefore there is no order of the Magistrate which could be made the vehicle of a lawful order of compensation as required by s. 560. There is authority relating to the corresponding section of the former Code of Criminal Procedure to the effect that compensation cannot be granted to a person respecting whom a rule similar to that issued under Chapter VIII of the present Code has been discharged.

The District Magistrate, who was not called on for an explanation in the matter, has interposed an observation to the effect that he remembers "a late ruling of one of the High Courts in which a charge under s. 110 of Criminal Procedure Code was treated as a charge of offence committed." He has omitted to indicate the ruling he refers to. The order of compensation is set aside, and if any money has been levied under it, it shall be returned.

APPELLATE CIVIL.

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May 17.

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

RUDR PRASAD (PLAINTIFF) v. BAIJNATH AND ANOTHER (DEFENDANTS).*

Civil Procedure Code, ss. 54, 55, 543, 551, 582, 584, 585—Second appeal, summary rejection of memorandum—Reasons for rejection to be recorded.

Per EDGE, C.J.—A Judge to whom a memorandum of appeal from an appellate decree is presented for admission is entitled to consider whether any of the grounds mentioned in s. 584 of the Code of Civil Procedure in fact exist and apply to the case before him, and if they do not to reject the memorandum of appeal summarily.

Section 551 of the Code of Civil Procedure applies to appeals which have been admitted.

Per AIKMAN, J.—When a memorandum of appeal is summarily rejected, whether under s. 543, or under s. 54 read with s. 582 of the Code of Civil Procedure, the reasons for such rejection should be recorded: *sed quare* whether, unless it appears from the memorandum of appeal taken by itself that a second appeal does not lie, a

*Appeal No. 26 of 1892 under s. 10 of the Letters Patent.

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second appeal can be summarily rejected and should not rather be dealt with under s. 551 of the Code.

Seemle that a ground of appeal to the effect that the lower appellate Court has misconstrued a document is not one of the grounds of second appeal contemplated by s. 584 of the Code of Civil Procedure.

THE facts of this case sufficiently appear from the judgment of Edge, C.J.

Pandit *Ratan Chand*, for the appellant.

Munshi *Gobind Prasad*, for the respondents.

EDGE, C. J.—The memorandum of appeal in this case was presented to my brother Blair for admission. He rejected it. He did not state his reasons for rejecting it, but it is obvious that he made his order of rejection, because the proposed appeal did not come within s. 584 of the Code of Civil Procedure. It is enacted by s. 585 that “no second appeal shall lie except on the grounds mentioned in s. 584.” That section has been emphasized by their Lordships of the Privy Council who have told the Courts in India that they have no power to admit as a second appeal an appeal which does not fall within s. 584. I regard s. 585 as a positive prohibition by the Legislature to the Courts which are bound to act under the Code of Civil Procedure against admitting, as second appeals, appeals from appellate decrees which do not come under s. 584. It is obvious to my mind that when the Legislature enacted s. 584 and s. 585, they did not intend that those sections should be made futile by an unfounded allegation in a memorandum of second appeal of a ground mentioned in s. 584. If the question as to whether an appeal from an appellate decree lay, depended merely on the statement of a proposed appellant of one of the grounds mentioned in s. 584 in his memorandum of appeal, s. 585 would not come into operation until the appeal had been admitted, and had been argued, whereas that section distinctly says that no appeal from an appellate decree not falling within s. 584 shall lie. It is the duty of the Judge to see, when a memorandum of appeal from an appellate decree is presented to him for admission, that the appellant does not, through inadvertence or otherwise, seek to obtain admission of an appeal by stating in his

memorandum of appeal one of the grounds mentioned in s. 584, when such ground plainly does not arise. Section 584 gives an appeal when those grounds actually exist, not in cases in which they do not exist as objections to the decree and appeal below except in a false or erroneous statement made in a memorandum of appeal. If s. 584 is intended to give an appeal from an appellate decree when any of the grounds mentioned in that section are stated in a memorandum of appeal, that section might have said so. If it had it would have reduced the law to an absurdity, because then the appeal would succeed, not because any good ground was shown why it should succeed, but simply because the appellant chose to allege in his memorandum of appeal that one of the grounds mentioned in s. 584 existed in the case. I am consequently of opinion that a Judge taking an application for the admission of an appeal from an appellate decree is entitled to consider whether any of the grounds mentioned in s. 584 in fact exist and are applicable to the case before him. It might be suggested that all such cases should be sent up for a Bench under s. 551 of the Code. I wish to point out that s. 551 applies to appeals, *i. e.*, to cases in which the memorandum of appeal has been admitted and the appeal has been registered. Of course, as frequently happens, an appeal which is prohibited by s. 585 may get through without the attention of the Judge being drawn to the fact that in it none of the grounds mentioned in s. 584 exist. By way of example, a memorandum of appeal from an appellate decree might be presented, and in it might be alleged every single ground mentioned in s. 584. The copy of the judgment and decree, which necessarily accompany the memorandum, might show that, by reason of some finding of fact of the lower appellate Court, not one of those grounds could possibly apply. Another objection has been taken by Mr. *Ratan Chand* to the order of my brother Blair rejecting the memorandum of appeal in this Court. It is contended that as the subject-matter of the appeal exceeds 100 rupees in value, my brother Blair had no jurisdiction to reject the memorandum of appeal. That objection is based upon a very casual reading of, or possibly upon a total omission to read, rule 1 of the Rules of this Court of the 30th of November 1889.

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Sub-rule (1) of rule 1 gave my brother Blair, as far as this Court had power to do so under s. 652 of the Code of Civil Procedure, authority or jurisdiction to hear and dispose of an application such as this. Sub-rule (2) of rule 1 relates to second appeals. Now to come to the merits. The question between the parties was as to a wall. The plaintiff, appellant here, brought his suit on the allegation that the wall was exclusively his, and that the defendant had committed trespass by interfering with the wall. The two Courts found on the evidence that the wall was a party wall, *i. e.*, the common property of the plaintiff and the defendant. The lower appellate Court, before coming to that finding, actually inspected the wall as it stood. So far as appears by anything before us it is a pure question of fact. The title on which the plaintiff claimed was found against him, and there was nothing in the case to bring it within s. 584 of the Code of Civil Procedure. Consequently, in my opinion, my brother Blair acted according to law in rejecting the memorandum of appeal, and I would dismiss this appeal with costs.

AIKMAN, J.—This is an appeal under s. 10 of the Letters Patent against an order of my brother Blair, rejecting a memorandum of second appeal. The order appealed against consists of the single word “rejected.” No reasons are given for the rejection. A memorandum of appeal may be rejected under the provisions of s. 543 if it is not drawn up in the manner prescribed by law. It may also be rejected on any of the grounds set forth in s. 54, reading that section with s. 582 of the Code of Civil Procedure; but whether rejected under s. 543, or under s. 54 read with s. 582, the reasons for the rejection ought to be recorded. (*Vide* second paragraph of s. 543 and s. 55). Apparently the reason for the rejection in this case was that, in the opinion of my brother Blair, no second appeal lay with reference to the provisions of ss. 584 and 585 of the Code. By cl. (c) of s. 54 read with s. 582 a memorandum of appeal must be rejected if the appeal appears from any statement in the memorandum to be barred by any positive rule of law. If the grounds set forth in the memorandum of second appeal were such as could not by any chance come within any of the clauses of s. 584, it would be

the duty of the Court to reject it, because in such a case it would appear from the statement in the memorandum that the appeal would be barred by the prohibition in s. 585. One of the grounds set forth in the memorandum of appeal in question was as follows: "That the sale-deed produced by the plaintiff has not been properly construed. It proves the wall to belong to the plaintiff." It has been the practice of the Court to allow questions regarding the construction of documents to be raised in second appeals, though, speaking for myself, I have some difficulty in understanding under which clause of s. 584 a question as to construction of a document would fall. Unless it appears from the statement in the memorandum of appeal taken by itself that a second appeal does not lie, I am doubtful whether a second appeal can be summarily rejected under cl. (a) of s. 54 read with s. 582 of the Code of Civil Procedure. I am inclined to think that when it is necessary to refer to the judgment appealed against to see whether a second appeal will lie, it would be better in such a case to fix a date under s. 551 of the Code for hearing the appellant or his pleader before throwing out the appeal. In the present case, however, after comparing the judgment appealed against with the grounds stated in the memorandum of appeal, I have no hesitation in saying that this was not a case in which a second appeal lay, and I concur with the learned Chief Justice in the order proposed by him.

Appeal dismissed.

Before Mr. Justice Knox.

GULAB KUAR (JUDGMENT-DEBTOR) vs. BANSIDHAR AND OTHERS (DECREE-HOLDER.)*

1893
May 18.

Hindu law—Hindu widow—Maintenance—Attachment of property assigned in lieu of maintenance—Civil Procedure Code, s. 266 cl. (1).

Held that an interest in the income of immovable property assigned by way of maintenance to a Hindu widow by the members of her family is not capable of being attached and sold in execution of a decree against the widow. *Divali v. Apaji Gansh*, (1) referred to.

* First Appeal No. 131 of 1892 from a decree of Maulvi Shah Ahmad-ullah, Subordinate Judge of Meerut, dated the 5th March 1892.

(1) I. L. R., 10 Bom, 342.