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REFERENCE UNDER ACT No. I OF 1879.

THIS was a reference under s. 49 of Act No. I of 1879, made through the District Judge of Rae Bareli by the Munsif of Partábgarh of the question whether a certain document should or should not be stamped as a bond within the meaning of cl. (*b*), sub-s. (4) of s. 3 of Act No. I of 1879.

The terms of the document were as follows:—" To Swasti Sri Sahu Ram Adhin Nandu, resident of village Bachhla, taluqa Patti Saifabad, pargana Belkher, tahsil Patti, district Partábgarh (who tenders his) greeting (Ram Ram) to him. May God bless you. Further, I execute a promissory note (*rukka*) for Rs. 31-5-6 on account of the balance of my account which I promise to pay without any plea and objection on Aghan Badi 15th, 1296F., adding interest at Re. 1 per cent. and will make no objection.

Written on Miti Magh Sudi 2nd, 1295F., with the pen of Jamna Lal (of) Ram Ganj.

Signed (*Alabd.*).

Signature of Ramman, Ahir.

The promissory note (*rukka*) written is correct.

Rs. 31-5-6 taken is correct; with the pen of Jamna Lal (of) Ram Ganj.

The mark made by Ramman is apparent."

On this reference the Court (EDGE, C. J., MAHMOOD and KNOX, JJ.) made the following order :—

The case reported in I. L. R., 10 Mad. 158, does not apply to the facts of this case. The document in this case is not in our opinion "attested by a witness" within the meaning of cl. (*b*) of sub-s. (4) of s. 3 of Act No. I of 1879. What is said to be an attestation is merely a statement in writing by the scribe of the document that the document was correct and was written by his pen. We therefore answer the question referred to us by saying that the document in question cannot be treated as a bond as defined in cl. (*b*) of sub-s. (4) of s. 3 of Act No. I of 1879.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Tyrrell, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Burkitt and Mr. Justice Aikman.

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June 2.

WAJID ALI SHAH (Petitioner) v. NAWAL KISHORE (Opposite Party).*

Civil Procedure Code, ss. 623, 625, 541—*Review of judgment—Application for review not to be accompanied by copy of judgment, decree or order sought to be reviewed—Act No. XV of* 1877 (*Indian Limitation Act*), *s.* 12.

It is not necessary that an application for review of judgment should be accompanied by a copy of the decree, order or judgment sought to be reviewed.

This was a reference to the Full Bench made by Edge, C. J., and Aikman, J., of the question whether an application for review must necessarily be accompanied by a copy of the decree or order, and, unless the Court dispenses with it, by a copy of the judgment sought to be reviewed.

A second appeal (No. 578 of 1891) had been dismissed by the High Court on a point of limitation, and on the appellant (petitioner) applying for review of the judgment dismissing his appeal, the vakil for the respondent took objection that the application for review was not accompanied by a copy of the decree or of the judgment against which review was sought, one at least of which, he contended, was required by s. 625 read with s. 541 of the Code of Civil Procedure, and impliedly by s. 12 of the Indian Limitation Act, 1877. Hence the reference as above stated.

Mr. *J. Simeon*, for the petitioner.

Pandit *Baldeo Ram Dave*, for the opposite party.

Edge, C. J.—The question which has been referred to the Full Bench in this case is :—Is it necessary to the validity of an application for the review of a judgment under s. 623 of the Code of Civil Procedure that the application should be accompanied by a copy of the decree or order to which it relates, and by a copy of the judgment, unless the Court dispenses therewith ? The section upon which it is contended that an application for the review of a judgment must be accompanied by a copy of the decree or order, and, unless the Court dispenses with it, by a copy of the judgment is s. 625 of the

*Miscellaneous application in Second Appeal No. 578 of 1891.

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Code of Civil Procedure. That section is as follows:—"The rules hereinbefore contained as to the form of making appeals shall apply *mutatis mutandis* to applications for review." It is contended that the words "form of making appeals" as used in that section mean the manner of making appeals, and that "the form" in s. 625 is not restricted to the sense in which the word "form" is used in s. 541 of the Code of Civil Procedure. In the first paragraph of s 541 it is enacted that—"the appeal shall be made in the form of a memorandum in writing presented by the appellant and shall be accompanied by a copy of the decree appealed against, and (unless the appellate Court dispenses therewith) of the judgment on which it is founded."

The contention to which we have been referring has been supported by references to certain decisions anterior in point of date to the coming into force of Act No. VIII of 1859, by a reference to the Rules of the High Court of Calcutta, by a reference to the decision of Mr. Justice Marriott in *Adarji Edulji Golakhana* v. *Manikji Edulji*, (1) as to which it may be remarked that the learned Judge gave no reasons for his judgment, and by a reference to s. 12 of Act No. XV of 1877.

It appears to me that if the Legislature had intended that an application for a review of judgment should not merely be in the form of a memorandum setting forth concisely and under distinct heads the grounds of the application, but should be accompanied by a copy of the decree or order, or of the judgment, the Legislature would have said so in express terms. It also appears to me that, grammatically regarded, s. 625 has the same meaning as if it had been drafted as follows:—"The rules hereinbefore contained as to the form in which appeals may be made shall apply *mutatis mutandis* to applications for review." The form of making appeals mentioned in s. 625 in my opinion means the form in which appeals may be made, and consequently, if we look back to s. 541, we find that the appeal should be made in the form of a memorandum in writing presented by the appellant. The documents which must by

(1) I. L. R. 4 Bom., 414.

law accompany the memorandum in writing are not included in the form in which an appeal is to be made, as can plainly be seen from an ordinary reading of s. 541. That section prescribes the form in which an appeal should be made, and enacts that the appeal shall be accompanied by certain documents.

If the question depended solely on a construction and comparison of ss. 625 and 541 of the Code of Civil Procedure, I would have had no doubt that all which was required by s. 625 was the presentation of a memorandum in writing by the applicant containing particulars similar to those required in the case of a memorandum of appeal. My doubt, and I believe that of some of my brother Judges, has not been caused by anything to be found in the Code of Civil Procedure, but by a section contained in a separate Act, I refer to s. 12 of Act No. XX of 1877. Mr. *Baldeo Ram's* able argument based on s. 12 of Act No. XV of 1877 considerably impressed me. His argument was that as that section enacted that the time requisite for obtaining a copy of the decree or order and a copy of the judgment should be excluded from the period of limitation prescribed for an appeal or for an application for review of judgment, the inference was that such copies were equally necessary for the purpose of making an application for a review of judgment as for the purpose of presenting an appeal. It appears to me, however, that if we are to construe s. 625 of the Code of Civil Procedure by the second and third paragraphs of s. 12 of Act No. XV of 1877, we would have to put a similar construction on some section or other in Chapter XXXVII of the Code of Civil Procedure and hold that where an application to set aside an award is made it would necessarily follow from the fourth paragraph of s. 12 of Act No. XV of 1877 that with the application to set aside the award a copy of the award should be filed, as we find that the fourth paragraph of s. 12 of Act No. XV of 1877 excludes from the period of limitation prescribed for an application to set aside an award the time requisite for obtaining a copy of the award. There is nothing in Chapter XXXVII of the Code of Civil Procedure, so far as I can see, which suggests that it is necessary to the validity of an application to set

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aside an award that a copy of the award should be filed with the application, or at the time when the application is made.

It is possible that the second, third and fourth paragraphs of s. 12 of Act No. XV of 1877 were enacted, so far as applications for review of judgment or to set aside an award are concerned, to meet cases in which a person interested in applying for a review of judgment or to set aside an award might desire to inform himself accurately by a perusal of the copy of the decree or order or judgment, as the case might be, as to what its actual contents were and as to any legal or other objections there might be to it. The Legislature may have intended that persons under such circumstances should not by the law of limitation be compelled to hurry into an application for review of judgment or into an application to set aside an award until they had full opportunity of considering the terms of the decree or order or judgment.

I fully recognize the fact that statutes must, as far as possible, be construed so as to produce harmony and not discord, but in this case no discord would result from holding that an application for review of judgment need not under s. 625 of the Code of Civil Procedure be accompanied by a copy of the decree, order or judgment sought to be reviewed. It has never been the practice in this Court in applications for review of judgment to require that the applicant should file a copy of any decree, order or judgment. Under the rules of this Court, so far as they are concerned, it is not necessary to file a copy of any decree, order or judgment along with an application for review of judgment. My answer to this reference to the Full Bench is that in my opinion an application for review of judgment is perfectly legal, although it is not accompanied by a copy of the decree, order or judgment sought to be reviewed.

TYRRELL, J.—I quite agree. In the majority of cases of applications for review of a judgment, order or decree, copies of the judgment, order or decree would be superfluous and unnecessary to the purposes of the application, the records being usually in the record-room of the Court moved to review. To require the production of

such copies would be to impose a needless and therefore onerous outlay on litigants. I agree in the learned Chief Justice's answer to the reference.

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KNOX, J.—I agree in the learned Chief Justice's answer to the reference and in the reasons given by him for that answer.

BLAIR, J.—I quite agree with the learned Chief Justice's answer to the reference and with the reasons given by him.

BURKITT, J.—I concur in the interpretation put by the learned Chief Justice on s. 625 read with s. 541 of the Code of Civil Procedure, and in the reasons given for the conclusion at which he has arrived. In my opinion it cannot, be gathered from s. 625, read with s. 541, that these sections impose on a litigant the burden of procuring and paying for a copy of the decree order or judgment which he seeks to have reviewed. In the absence of any such precise provision I do not see why this Court should impose on an applicant for review the burden of procuring a copy of the judgment decree or order sought to be reviewed, which, I may add, in most cases might be superfluous as the record would be in the Court whose order was sought to be reviewed. I agree in the answer proposed by the learned Chief Justice.

AIKMAN, J.—The interpretation which Mr *Baldeo Ram* contends we should put on s. 625 of the Code of Civil Procedure, would have the effect of altering what I understand has been the settled practice of this Court for many years. It would impose additional expense on parties, which, as has been pointed out by my brother Tyrrell, would not be attended with any corresponding advantage, for the Court which has to deal with the application would in most cases have the record in its own custody. I should be very unwilling to put upon the section an interpretation which would have those results, unless it were quite clear to me that that was the meaning of the Legislature. I am not satisfied that the Legislature had this in its mind when it framed s. 625. I agree with the learned Chief Justice and my brother Judges.

Application allowed.