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RAJA RAM SINGHJI v. CHUNNI LAL.

We allow this appeal with costs, and, setting aside the order under appeal, we dismiss the application of Chunni Lal with costs. This decision will not preclude Chunni Lal from availing himself of such rights as he may have under the Code of Civil Procedure.

Appeal decreed.

PRIVY COUNCIL.

P.C. 1896 *November* 21.

LALTA PRASAD AND OTHERS (PETITIONERS) *v.* SHEIKH AZIZ-UD-DIN AND OTHERS (OBJECTORS).

On petition from the High Court at Allahabad.

Alleged want of notice to respondent—Appeal heard ex parte—Practice.

THERE is no rule, among those made by the High Court under the authority of law, that the respondent in an appeal to the Queen in Council shall receive formal notice of the transmission of the record of the appeal, of the pendency whereof he has had notice.

The mere allegation that the respondents in this appeal had, in consequence of their having had no express notice that the appeal had been set down for hearing, allowed the hearing of the appeal to take place *ex parte* was not considered sufficient to entitle them to a re-hearing thereof.

THIS was a petition filed on the 28th May 1896 for the re-hearing of an appeal heard by the Judicial Committee in 1895, according to whose opinion by order in Council, (5th August 1895) the appeal was allowed, the decree of the High Court (1st March 1891) was reversed, and it was directed that judgment for the appellants should be entered.

The petition alleged that the hearing had been *ex parte;* that no notice had been received by the respondents, or their agents, of the transmission of the record to the office of the Privy Council; and that no notice had been given to them that the appeal had been set down for hearing, of which they first heard on the 29th August 1895. Had they known beforehand, they would have appeared in support of the High Court's judgment.

Present:—LORDS WATSON, HOBHOUSE, and MORRIS and SIR R. COUCH.

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Mr. *Sydney Hastings*, for the petitioners, relied on affidavits, affirmed and attested at Bareilly on the 18th December 1895, by two brothers, respondents in the appeal. They stated that the first notice which they had of the appeal having gone to England was through a report of it in an Indian newspaper published on August 20th, 1895. They knew that the appeal was pending, and were not, according to the rules, entitled to have every step formally notified to them. But, as the facts were, an order was made by the Judicial Committee calling on the respondents to appear on the 22nd March 1895, and, afterwards, a confirmatory order was issued; but neither of those orders reached the respondents.

The case of *Mussumat Ranee Surnomoyee* v. *Shooshee Mokhee Burmonia* (1) was distinguishable: that was a case of negligence of the party not appearing. Here, the respondents, according to the affidavits, would have appeared had they known that the hearing was coming on. It was submitted that the appellant should have given notice to the respondent.

[Their Lordships referred to the rules in force in the High Court made under the Code of Civil Procedure. They also heard a statement in Court, from the Deputy Registrar, to the effect that the letters sent from England, acknowledging the transmission of the records, contained intimation that the appellants should proceed with the appeal within six months, and that the practice was for the Registrar of the High Court to let the parties know this. In every case there was a period, more or less long, during which the record was being prepared, and with this preparation the Registrar of the High Court could not go on without the parties on both sides, or their representatives, being informed with a view to their presence. The vakils, on either side, in the High Court, could inspect the record.]

Counsel for the petitioners continued. It was no part of the case that the parties had not, by their vakil, inspected the record. But the present contention was that the peremptory order made

(1) 12 Moo., I. A. 254.

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and issued by this Committee on the 24th March was meant to reach the respondents It had not reached them. They, therefore, might have supposed that the date of the hearing was not yet, and had not been fixed. The real ground of this application was that, this case having been heard *ex parte*, there was evidence that the respondents did not receive, as it was meant that they should receive, intimation of the day of the hearing. From the issue of the order to appear on the 22nd March, and the confirmatory order following it, there was ground for assuming that notice was intended to be given.

Mr. *Herbert Cowell*, for the objectors, was not heard.

Their Lordships intimated that, in their opinion, the petitioners had sufficient notice No formal notice was required by the rules of the High Court of the transmission of the appeal. The petition was dismissed with costs.

Solicitor for the petitioners: Mr. *R. M. Turnbull.*

Solicitors for the objectors: Messrs. *Ranken Ford, Ford, and Chester.*

APPELLATE CIVIL.

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December 19.

Before Mr. Justice Blair and Mr Justice Banerji.

PHUL CHAND (DEFENDANT) *v.* AKBAR YAR KHAN AND ANOTHER (PLAINTIFFS).*

Muhammadan law—Waqf—Illusory dedication—Fat ha ceremony—Custom as a guide to interpreting the intention of a waqif.

In determining whether a disposition of property made by a Muhammadan is or is not a valid *waqf* the intention of the *waqif* may be interpreted by reference to custom prevailing at the time the *waqf* was made; and, if there is found to be a substantial dedication of the property dealt with to charitable uses, that dedication will constitute a valid *waqf*. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu* (1) and *Abul Fata Mahomed Ishak* v. *Russomoy Dhur Chowdhry* (2) referred to.

* Second Appeal, No 820 of 1893, from a decree of Maulvi Jafar Husain, Subordinate Judge of Bareilly, dated the 2nd May 1893, reversing a decree of Babu Girraj Kishore Dat, Munsif, Haveli, Bareilly, dated the 22nd September 1892.

(1) I. L. R., 17 Calc., 498. (2) L. R., 22 I. A., 76.