

RADHA KRISHN DAS (PLAINTIFF) v. RAI KRISHN CHAND (MINOR,  
THROUGH HIS GUARDIAN, MATHI KUNWAR, REPRESENTATIVE  
OF DEPENDANT).

P. C.  
1901  
June 18.

[Appeal from the High Court, North-Western Provinces, Allahabad.]

*Appeal to Privy Council—Appeal below appealable value—Form of certificate of leave to appeal—Civil Procedure Code, sections 595, 596.*

To give the Court jurisdiction to grant leave to appeal to the Privy Council under section 596 of the Civil Procedure Code, it is essential that there should be in dispute, either directly or indirectly an amount of not less than Rs. 10,000. The mere existence of a substantial question of law, where the amount in dispute is less than Rs 10,000 is not sufficient to give the Court jurisdiction to grant such leave to appeal. *Banarsi Parshad v. Kashi Krishna Narain* (1) referred to.

The certificate of leave to appeal, and not the order for such certificate, is the document which the Judicial Committee are bound to consider and act upon in determining whether leave to appeal has been properly granted or not; and unless the certificate upon which the leave to appeal is based is in such a form as to justify that leave, they ought to hold that leave has not properly been given.

Where the order for a certificate was "let a certificate issue that the case is a fit one for appeal to Her Majesty in Council," but the certificate granting leave stated "it is certified that though the valuation of the case is below Rs. 10,000, yet as regards the value and nature of the case it fulfils the requirements of section 596 of Act XIV of 1882." Held that such a certificate was not a proper foundation for the leave to appeal, and that no proper leave had been given.

Even assuming that the order for the certificate might be looked at, the Judicial Committee would require to be satisfied that the Court had exercised its judicial discretion upon the matter in deciding whether, in order to comply with section 595 and section 600 of the Code, the case was a fit one for appeal to Her Majesty in Council, and in this case they were not satisfied (there being no reasons given and no grounds stated for the form of the certificate) that the judicial mind of the Court had ever been applied to that question.

The Judicial Committee in dismissing the appeal on a preliminary objection that it was not properly before them, intimated that they would not have shut out the appellant from stating his case to the Board, if his counsel had been in a position (which he admitted he was not) to ask, with any hope of success, for special leave to appeal.

APPEAL from a decree (17th May, 1897,) of the High Court at Allahabad, which reversed a decree (22nd August, 1895,) of the Subordinate Judge of Benares in a suit in which the present

*Present*:—LORD HOBHOUSE, LORD DAVEY, LORD ROBERTSON, and SIR RICHARD COUCH.

(1) (1900) L. R., 28 I. A. 11; I. L. R., 23 All., 227.

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appellant was plaintiff, and Rai Bishn Chand (now represented by his adopted son, Rai Krishn Chand, the respondent) was the defendant.

The suit was brought to recover Rs. 6,500, being part payment made in respect of a contract by the plaintiff to purchase from the defendant a decree for Rs. 13,000. It was admitted that the contract was never carried out, and that the defendant realized the amount of the decree himself. The only question was whether the contract was broken by the plaintiff or the defendant. Besides the principal sum the plaintiff claimed Rs. 418-5-3 as interest at the rate of 1 rupee per cent. per mensem from the 5th of February, 1894, to the 17th of August, 1894, the date of the institution of the suit; making the whole amount in suit Rs. 6,918-5-3.

The Subordinate Judge decreed the claim in full with interest and costs.

On appeal by the defendant to the High Court, a Division Bench (KNOX and BURKITT, JJ.) reversed the decree of the Subordinate Judge, but gave the plaintiff a decree for Rs. 4,500, which the defendant admitted to be due (and as to which he had not appealed) without interest or costs.

The High Court found that the contract had been broken by the plaintiff, and held as a matter of law on the authority of *Ex parte Barrell*, *In re Parnell* (1) and *Howe v. Smith* (2) that the breach of contract having been on the part of the plaintiff, he was not entitled to a refund of any portion of the purchase-money paid by him to the defendant.

From that decision the plaintiff petitioned the High Court for leave to appeal to the Privy Council.

In the petition he set out the facts as above, and stated that "though the valuation of the appeal is below Rs. 10,000 it involved substantial questions of law and fact"; and prayed the Court to grant a certificate under section 596 of the Code of Civil Procedure.

On the 20th of January, 1898, the High Court made the following order: "let a certificate issue that the case is a fit one for appeal to Her Majesty in Council"; and on the same day

(1) (1875) L. R., 10 Ch. App., 512. (2) (1884) L. R., 27 Ch. D., 89.

the following certificate was issued: "The Court having had before it an application for leave to appeal to Her Imperial Majesty the Queen in Her Privy Council, presented on behalf of the appellant aforesaid, it is certified, that though the valuation of the case is below Rs. 10,000, yet, as regards the value and nature of the case, it fulfils the requirements of section 596 of Act XIV of 1882."

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At the hearing of the appeal—

Mr. A. J. Wallach, for the respondent, took a preliminary objection that the appeal was not properly before the Committee. The certificate granting leave to appeal is not in proper form. The amount in dispute is less than Rs. 10,000. One of the requirements of section 596 of the Civil Procedure Code is therefore not satisfied, and the High Court had no jurisdiction to certify that the case fulfils the requirements of that section. The fact that there is a substantial question of law is not sufficient, where the appeal is of a value less than Rs. 10,000, to make the case a fit one for leave to appeal; *Banarsi Parshad v. Kashi Krishna Narain* (1). Leave should not have been granted, and the appeal should be dismissed.

Mr. J. D. Mayne, for the appellant, contended that an order having been made for the issue of a certificate that the case was a fit one for appeal to Her Majesty in Council the fact that the form of the certificate actually issued was defective was not material. The leave to appeal was granted by the order for a certificate of fitness to issue, and nothing else need be looked at. The case does not come under any clause of section 596 of the Civil Procedure Code: when certified as a fit case for appeal, it does not come under section 596 at all. There is no sufficient ground for dismissing the appeal.

The Judgment of their Lordships was then delivered by  
LORD DAVEY :—

IN this case their Lordships think that they cannot but give effect to the preliminary objection which has been made. The objection is that there is no proper certificate accompanying the leave to appeal, or forming a proper foundation for the leave to appeal.

(1) (1900) L. R., 28 L. A., 11; I. L. R., 28 All., 227.

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The circumstances may be stated very shortly. The petitioner, the present appellant, states in his petition that the valuation in the appeal is below Rs. 10,000, but that it involves substantial questions of law and fact. Then he goes on: "The petitioner, being desirous to appeal to Her Majesty in Council, humbly prays that this Honourable Court may be pleased to grant certificate under section 596 of the Code of Civil Procedure"; and then he sets out certain grounds. Then an order is said to have been passed in these terms by Mr. Justice Knox and Mr. Justice Banerji: "Let certificate issue, that the case is a fit one for appeal to Her Majesty in Council." That was on the 20th of January, 1898, and apparently on the same day the following certificate is made:—"The Court having had before it an application for leave to appeal to Her Imperial Majesty the Queen in Her Privy Council presented on behalf of the appellant aforesaid, it is certified that though the valuation of the case is below Rs. 10,000, yet as regards the value and nature of the case it fulfils the requirements of section 596 of Act No. XIV of 1882." That is signed by the same two learned Judges—Mr. Justice Knox and Mr. Justice Banerji.

Their Lordships think that the certificate, and not the order for the certificate, is the document which they are bound to consider and act upon; and unless the certificate upon which the leave to appeal is based is in such a form as to justify that leave, they ought to hold that leave has not properly been given.

Now the question arises under section 596 of the Civil Procedure Code. That section says:—"In each of the cases mentioned in clauses (a) and (b) of section 595, the amount or value of the subject-matter of the suit in the court of first instance must be Rs. 10,000 or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum, or upwards. Or the decree must involve, directly or indirectly, some claim, or question to, or respecting property of like amount or value." There is no difficulty in interpreting that, and it does not admit of any qualification. If any less value than Rs. 10,000 is directly, or indirectly, involved, it will not give the Court jurisdiction to grant leave to appeal. In a certain event, as was recently pointed out in the case of *Banarsi*

*Parshad v. Kashi Krishna Narain* (1) which was recently before this Board, there is an additional requirement, namely, that where the decree appealed from affirms the decision of the Court, the appeal must involve some substantial question of law. It is noticed, in the judgment of this Board, in the case to which their Lordships have just referred, that there was a prevailing impression in the High Court that the mere existence of a substantial question of law was sufficient to give the Court jurisdiction to give leave to appeal to Her Majesty in Council. Lord Hobhouse says:—"Their Lordships have found on previous occasions that the existence of a point of law has been supposed to give a right of appeal in the ordinary course of procedure under the Code. That is a mistake. Section 596 of the Code requires that in order to give such a right there must be in dispute, either directly or indirectly, an amount of Rs. 10,000. If the decree affirms the Court below another condition is affixed, namely, that the appeal must involve some substantial question of law. The presence of such a question does not give a right when the value is below the mark. The requirement of it restricts the right when the higher decree affirms the lower." It is only upon the assumption that there was such an impression in the minds of the learned Judges that this certificate can have any meaning attached to it at all, because it is difficult to understand how, if valuation is an essential part of the requirement under section 596, it can be said that though the valuation of the case is below the amount, yet it fulfils the requirement. It would be a contradiction in terms.

There is this further: Mr. Mayne pressed us to disregard the language of the certificate, and to look at the order directing the certificate to be made. Their Lordships do not feel satisfied that they are entitled to take that liberty; but assuming that they may do so, they would at least require to be satisfied that the Judges had exercised their judicial discretion upon the matter in deciding whether, in order to comply with section 595(c) and section 600, the case was a fit one for appeal to Her Majesty in Council. Now their Lordships are not by any means satisfied that the learned Judges were either asked, or did direct their

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minds judicially to that question. The petition asks, as has already been said, that the Court should grant the certificate under section 596, treating it as part of the ordinary ministerial jurisdiction of the Court; and no reasons are given, and no grounds are stated by the learned Judges, for holding that, although it did not comply with section 596, it was still a fit case to appeal to Her Majesty in Council.

Their Lordships, therefore, are not satisfied that the judicial mind of the Court has ever been applied to that question; still less that the certificate, which was signed by the learned Judges, does not carry out what they intended to order and direct.

They will only add that, if Mr. Mayne had been in a position, which he very fairly admitted he was not, to say that he could with any hope of success ask for special leave to appeal, their Lordships would not have shut out the appellant from stating his case to the Board; but as it is their Lordships will humbly advise His Majesty that the appeal be dismissed, and they will direct that the appellant pays the costs of the appeal.

*Appeal dismissed.*

Solicitor for the appellant:—Mr. T. C. Summerhays.

Solicitors for the respondent:—Messrs. Pyke and Parrott.

## APPELLATE CRIMINAL.

1901  
May 14.

*Before Mr. Justice Knox.*

KING-EMPEROR v. MUHAMMAD HUSAIN.\*

*Act No. XLV of 1860 (Indian Penal Code), section 232—Counterfeiting Queen's coin—Removing rings from coins used as ornaments, and restoring the same to circulation.*

It is not an offence under section 232 of the Indian Penal Code to remove the ring from a coin which has been used to form part of a necklace or other ornament, and to work up the face of the coin where the ring has been, it not being shown that any material part of the coin has at any time been removed.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. S. Sarbadhīcary, for the appellant.

The Government Advocate (Mr. E. Chamier), for the Crown.

\* Criminal Appeal No. 247 of 1901.