

REVISIONAL CIVIL.

1900
November 19.*Before Mr. Justice Blair and Mr. Justice Aikman.*KALLU AND ANOTHER (APPELLANTS) v. MANNI AND OTHERS
(RESPONDENTS).**Civil Procedure Code, section 561—Appeal—Objections filed by respondents against persons who did not appeal against them inadmissible.*

The objections allowed to be urged by a respondent under section 561 of the Code of Civil Procedure are limited to the person who has appealed against him, and his (the respondent's) rights are not enlarged by the mere addition to the list of such persons of other persons who should not have been put on the list at all. *Babu Chote Lall v. Kishun Suhoy* (1), referred to, *Timmayya Mada v. Lakshmana Bhaktia* (2), distinguished.

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

Munshi *Jang Bahadur Lal*, for the applicants.

Mr. *Abdul Raooif* and *Babu Durga Charan Banerji* for the opposite parties.

BLAIR and AIKMAN; JJ.—We think that this petition in revision is sound. The plaintiff sued two defendants for money. The Court of first instance added to the names of the defendants two other defendants under section 32 of the Code of Civil Procedure. The suit was dismissed as against the two defendants originally impleaded and decreed against the two added defendants. One of those added defendants appealed, and in his array of respondents are found, not only the plaintiff, who naturally must have been there, but also the other defendants. The plaintiff filed objections under section 561 of the Code of Civil Procedure, and in support of those objections urged what was practically an appeal against the dismissal of his suit against the two original defendants in the lower Court. That is the irregularity complained of in this application. It seems to us, as an ordinary rule, that the objections allowed to be urged by the respondents are limited to the person who has appealed against him, and his (the respondent's) rights are not enlarged by the mere addition to the list of persons of other persons who should not have been put on the list at all. There is a long course of

* Civil Revision No. 17 of 1900.

(1) S. D. A., N.-W. P., 1863, Vol. II, 360. (2) (1883) I. L. R., 7 Mad., 215.

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authority to that effect, and it seems to us that the words of section 561 indicate the intention of the Legislature with sufficient clearness. From the words of paragraph 3 of section 561, "unless the respondent files with the objection a written acknowledgment from the appellant or his pleader of having received a copy thereof, the appellate Court shall cause such a copy to be served," it is manifest that it would be contrary to the ordinary practice of the Court to allow objections to be made against persons who have not appealed. We cannot see why in this case there should be any exception. It seems to us that the decision of the first Court, acquiesced in by the plaintiff, practically operated as *res judicata* against him. A case has been cited to us which, though under another Act, is in effect an authority upon this question. It is the case of *Baboo Chote Lall v. Kishun Suhoy* (1), which was decided by a Full Bench of this Court. The case of *Timmayya Mada v. Lakshmana Bakhta* (2), has been cited to us on the other side by Mr. *Abdul Raoof*. We find ourselves wholly unable to apply to this case the reasoning of the learned Judges of the Madras High Court in that case, inasmuch as that reasoning is based upon the provisions of Act No. XII of 1879, the language of which materially differs from the Code of Civil Procedure now in force. We set aside the decree of the lower appellate Court in so far as it affects the applicants. The respondent Lal Das will pay the costs of this application.

Appeal allowed.

APPELLATE CIVIL.

1900
November 13.

Before Sir Arthur Strachey, Knight, Chief Justice and Mr. Justice Banerji.

BANKE LAL AND OTHERS (PLAINTIFFS) v. JAGAT NARAIN AND ANOTHER
(DEFENDANTS).*

Civil Procedure Code, section 596—Application for leave to appeal to Her Majesty in Council—"Substantial question of law."

The expression "involve some substantial question of law" as used in section 596 of the Code of Civil Procedure must be construed with reference to the practice of the Privy Council not to interfere with concurrent findings

* Privy Council Appeal No. 10 of 1900.

(1) S. D. A., N.-W. P., 1863, Vol. II, 360. (2) (1893) I. L. R., 7 Mad., 215.