PRIVY COUNCIL.

MUHAMMAD YUSUF KHAN (DEFENDANT) *v.* ABDUL RAHMAN KHAN (PLAINTIFF).

*P. C.** 1889 *February* 20.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Superintendence of High Court—Code of Civil Procedure (Act XIV of 1882), *s.* 622.

A decision by the judgment of a competent Court, whether right or wrong, which by law is final and without appeal, where the Court has not acted in the exercise of its jurisdiction illegally, or with material irregularity, cannot be set aside under s. 622 of the Civil Procedure Code.

APPEAL by special leave (31st December 1886) from an order (June 22nd, 1886), of the Judicial Commissioner of Oudh.

The suit out of which this appeal arose was brought on the 2nd April 1883, by the present respondent, in the Court of the Subordinate Judge of the Lucknow District, against the appellant, for a declaration that a document purporting to have been signed by the plaintiff on the 1st June 1882, and undertaking that he should pay Rs. 30 a month to the defendant, was a forgery. The defence was that the document was genuine, and to this was added that it had been decided, in a previous suit, so to be.

The Subordinate Judge, on 17th December 1883, found the document genuine, and dismissed the suit. This decree was upheld by the District Judge of Lucknow on the 11th June 1884. According to his judgment, two words, not however material to the effect of the writing, had been added. No appeal (ss. 584 and 585 of Act XIV of 1882) lay to any Appellate Court against these concurrent judgments, but the Judicial Commissioner, on application by the plaintiff, consented, as he conceived himself to be empowered by s. 622 of the Code of Civil Procedure to do, to revise the proceedings of the District Judge. He did so, reversing the decree which had been made in the defendant's favour, and granting to the plaintiff the relief which he sought, on 10th November 1884. His ground for doing so was that, as the District Judge had found that two

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words had been added to the disputed document, this threw upon the defendant the burthen of showing when they had been added, and as he had offered no evidence upon the point, it was the duty of the District Judge to assume that they had been added after execution, and therefore that he should have cancelled the document. This Judicial Commissioner, Mr. Young, left the Court shortly after this decision, and his successor, Mr. Tracy, on 23rd February 1885, reversed the decision of his predecessor, being of opinion that, even if the District Judge had been wrong, his error was not one that could be set right under s. 622. The Courts had found that the document which the plaintiff had sought to cancel was genuine. He quoted the judgment in *Amir Hassan Khan* v. *Sheo Baksh Singh* (1) as follows: "It appears that they had perfect jurisdiction to decide the case, and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity." This gave to him, as he considered, no alternative but to find that the order of 10th November 1884 was passed without jurisdiction, and obliged him to set aside this order, which seemed to have followed an erroneous ruling of a Full Bench of the Allahabad High Court, *viz.*, *Moulavi Muhammad* v. *Syed Hussan* (2). The result was to restore the decision of the District Judge dismissing the suit.

In 1886, Mr. Young resumed charge of the office of Judicial Commissioner, and to him the plaintiff applied to set aside the last order, *viz.*, that of 23rd February 1885. This application was granted on 22nd June 1886, by the order now under appeal. The Judicial Commissioner pointed out that the application was for the review of an order made in review, prohibited by s. 629; he also considered s. 622 to be inapplicable. But he referred to two cases in which orders made were revised, *viz.*, *Tafazzal Hossein Khan* v. *Raghonath Pershad* (3) and *Rajender Narain Rae* v. *Bejai Govind Singh* (4); and, on the supposed ground that the order of 23rd February 1885 was one which the Court

(1) I. L. R., 11 Calc., 6; L. R., 11 I. A., 237.
(2) I. L. R., 3 All., 203.
(3) 7 B. L. R., 186.
(4) 2 Moore's I. A., 209, 252.

would not have made, if it had been duly informed, reversed it, and restored the order of 10th November 1884.

Special leave to appeal was granted, in regard to the law, by order dated 31st December 1886.

Mr. *J. D. Mayne* for the appellant, submitted that, even if the decision of the District Judge of 11th June 1884 was wrong (which it was not), still his error could not be taken to be within the meaning of s. 622. The order of 23rd February 1885 was accordingly right. The final decision of the Judicial Commissioner of 22nd June 1886 was wholly without jurisdiction.

After his statement of the case, their Lordships called on Mr. *C. W. Arathoon*, for the respondent, who argued that Mr. Young's first order, *viz.*, that of 10th November 1884, was right. The question of the materiality of an addition to a document was a question of law,—*Yame* v. *Lother* (1); and the point that the District Judge had omitted to consider afforded ground for revision. He referred to *Amrit Lal* v. *Madho Das* (2); *Amir Hussan Khan* v. *Sheo Baksh Singh* (3).

No reply was called for.

The judgment of their Lordships was delivered by

LORD MACNAGHTEN.—In this case, on the 10th of November 1884, Mr. Young, the Judicial Commissioner of Oudh, set aside the judgment of a competent Court, which by law was final, and without appeal. In so doing, he proceeded on an erroneous interpretation which had been placed on s. 622 of the Civil Procedure Code by the Court of Allahabad, and in ignorance of the fact that the error had been corrected by a judgment of this Board in the case of *Amir Hassan Khan* v. *Sheo Baksh Singh* (3), to which Her Majesty gave effect by Her order of the 26th of June 1884. The order of Mr. Young was brought before Mr. Tracy, who happened at the time to be officiating as Judicial Commissioner in his place. On the 23rd of February 1885, Mr. Tracy, having regard to the decision of the Privy Council, discharged the order of Mr. Young. Fifteen months afterwards the matter was again brought before Mr. Young on an application purporting to be

(1) L. R., 1 Ex. D., 176. (2) I. L. R., 6 All., 292.
(3) I. L. R., 11 Calc., 6: L. R., 11 I. A., 237.

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made under s. 622. That application was incompetent as being a second application for review, and it would have been out of time if it had been regular in other respects.

On the 22nd of June 1886, Mr. Young discharged the order of Mr. Tracy on the singular ground that it was made *per incuriam*, and that it was an order which the Court would not have made if it had been duly informed. From that order of Mr. Young, special leave to appeal to Her Majesty has been granted.

Mr. *Arathoon*, who appeared for the respondent, admitted that he could not contend that Mr. Young had any jurisdiction to pronounce the order of the 22nd June 1886, but he argued that Mr. Tracy's order was wrong, and that Mr. Young's first order was right.

Their Lordships, however, are of opinion that Mr. Tracy was perfectly right in discharging the first order of Mr. Young; and that neither of Mr. Young's orders can be supported upon any ground whatever.

Their Lordships therefore are of opinion that the order of the 22nd of June 1886 ought to be reversed, and the order of the 23rd of February 1885 affirmed, and that the respondent should pay the costs of the proceedings before Mr. Young, in which the order of the 22nd June 1886 was made. They will therefore humbly advise Her Majesty accordingly; and the respondent must pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant: Messrs. *Young, Jackson, & Beard.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.