

words in section 588 of the Code of Civil Procedure, which was in force when the decision in the Full Bench case was given, differed from the words of the present Code. The only difference is that in the old Code the words were "The order passed in appeals under this section shall be final," whereas in the present Code the words are "No appeal shall lie." We cannot see how the change in the words can in any way help the appellant. Possibly the reason for the change is that under the words in the old Code it might have been argued that even a "revision" or a "review of judgement" would not lie against an order passed by an appellate court. We think the preliminary objection must prevail and we accordingly dismiss the appeal with costs.

Appeal dismissed.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pranada Charan Banerji.*

**BHAGELU SALU AND ANOTHER (JUDGEMENT-DEBTORS) v. RAM AUTAR
SHUKUL (DECREE-HOLDER).***

*Execution of decrees Limitation—Decree conditional on money being paid
into Court "within thirty days of the decree becoming final"—Interpretation
of condition.*

Where a decree was passed in favour of a plaintiff, conditional on his depositing a sum of money into court "within thirty days of the decree becoming final," it was held that this did not signify merely the bare period of limitation for an appeal, but included also the time necessary for obtaining the requisite copies.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case are sufficiently stated in the judgement under appeal, which was as follows:—

"In this case the present appellant had thirty days within which to deposit a certain sum of money from the date of the decree in the suit becoming final. Such decree was made on the 18th of August. The other side being dissatisfied with the decision applied to the court for a copy of the decree and judgement in order to enable them to appeal. At that time in such a hurry were they to appeal that the decree against which they proposed to appeal was not even ready. On the 22nd of August a copy of the judgement was issued to them. On the 31st of August a copy of the decree was issued to them. There is no provision in the Code or in the rules as to when a decree becomes final. In my opinion the real question for determination in this appeal is what is the meaning

*Appeal No. 25 of 1916, under section 10 of the Letters Patent.

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of the word 'final' in the original decree of the Munsif. Under article 152 of the Limitation Act the respondents before me, that is the defendants in the suit, had in any case thirty days to appeal from the decree. That thirty days expired at the end of the 18th of September, but under section 12 of the Limitation Act they also had the time requisite for obtaining a copy of the decree. There is no definition of the "time requisite" but it is conceded that it must be defined in each case according to the circumstances of the particular case. In this case it is obvious and has not been disputed that the time requisite was 13 days, namely, the interval actually occupied, that is to say from the 18th of August to the 31st of August. The defendants therefore had 43 days in all to appeal from the decree of the 18th of August. They had that period as a matter of absolute right, and it is admitted that during that period the decree could not become, as against them "final" within the meaning of the decree of the 18th of August. That 43 days took them into the vacation, the result of which was that their right of appeal subsisted until the 23rd of October, when the court re-opened. The appellant in this case deposited or tendered the required sum on 28th October, that is to say, well within thirty days of the expiration of his opponent's right to appeal. By so doing, in my opinion, he clearly complied with the terms of the decree. It is true that his own right of appeal had been extinguished, but the intention of the Munsif's order clearly was to give him 30 days within which to find and pay the money after the decree itself had become final in the sense that no-body could appeal against it and the rights of the parties were finally determined. I find it difficult to understand how it can be justly or reasonably held as against the plaintiff that he was required to pay the money within thirty days of the expiration of his own right of appeal. To hold that would be in my opinion to defeat the clear intention of the Munsif's order. The result would also be unjust in the highest degree, because at the time when, according to the contention of the other side, the appellant ought to make up his mind as to the payment of the money he could not possibly know whether the defendants would prosecute their appeal or not. I am, however, content to base my opinion upon one simple ground. The respondents say that they had a right to appeal on the 23rd of October because the decree was not then final. They say that the appellant had lost his right to deposit the money because the decree was final on the 18th of September. How a decree can be held to be both final and not final on the same day beats me altogether. Unfortunately the reported cases on this point have got into a tangle. If the authorities relied on in the lower appellate court were the only authorities on the point, I should be bound, however unwillingly, to follow them. In my opinion the lower appellate court having those authorities before it had practically no alternative but to hold itself bound by them. They can, however, be explained away as easily as the contention on behalf of the respondents. In a case which so far as I know is the earliest recorded instance in which this question was raised, *Sheikh Ewas v. Mohuna Bibi* (1), Mr. Justice Spankie and Mr. Justice Oldfield decided that a decision cannot be said to become final until the time for the last appeal allowed has expired, or if appealed, it has become final by the decree

of the High Court. I agree entirely with that decision and propose to follow it. That was in February, 1876. In November, 1876, the then Chief Justice and Mr. Justice OLDFIELD decided the other way. That decision may be justified on the equitable ground that the appellant who sought to deposit money had himself preferred the appeal, which, he contended, prevented the decree from becoming final, and had himself withdrawn it. It is, therefore, distinguishable from the earlier case. The next case is the case of *Disa Singh v. Jwala Singh* (1). It is practically undistinguishable from the present case. The *Munsi* originally took the view which I think is the right view; but the High Court overruled him, one of the Judges being Mr. Justice OLDFIELD who had been a party to both the previous decisions. No reasons are given in the judgement of the Court, which appears to have followed the latter of the two cases decided in 1876 to which I have referred. In doing so, it overlooked the principle clearly laid down in the earlier case and misapplied the exception to it created by the latter case. This fundamental error makes the decision of no value. I think it was wrongly decided and that the subsequent cases such as *Karam Khan v. Nathan Khan* (2) are probably attributable to it. In the presence of conflicting decisions upon a question of principle arrived at by the same Judge at different dates I think I am at liberty to give effect to my own view. To my mind the point is almost too clear for argument. I allow the appeal, and reversing the decisions of both the courts below, I send the case back to the first court to enable the appellant to enforce the decree. The appellant must have his costs in all courts."

The judgement-debtors appealed.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants.

Munshi *Haribans Sahai*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—In this case the plaintiff obtained a decree conditional upon his paying into court a certain sum of money within "thirty days of the decree becoming final." Thirty days is the time allowed for filing appeals. But this time is extended by section 12 of the Limitation Act, which provides that the time necessary for obtaining a copy of the judgement shall be excluded in computing the thirty days. The plaintiff did not deposit the money within thirty days, but he did deposit the money before the time had expired within which the defendant might appeal. The question, therefore, which arises for decision is this:—Was this money paid in within 30 days of the decree becoming "final"? A learned Judge of this Court has decided in the affirmative. We think that his view is correct. There is no doubt a considerable conflict of authority and we are entitled therefore to deal with the case from the point of view we think to be correct.

(1) Weekly Notes, 1881, p. 165. (2) Weekly Notes, 1888, p. 4.

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The whole object of the provision in the decree giving the plaintiff thirty days after the decree had become final was to obviate the plaintiff having unnecessarily to bring money into court and allow it to remain there idle during all the time that an appeal against the decree would be pending. The object, therefore, of the provision would be defeated if the plaintiff was obliged to bring his money into court before the time had expired within which the defendant might prefer an appeal. We dismiss the appeal with costs.

Appeal dismissed.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice
Sir Pramada Chavan Banerji.*

SUKH LAL (DEFENDANT). v. BISHAMBHAR (PLAINTIFF).*

*Act No. IV of 1882 (Transfer of Property Act), sections 6 and 58—Maha Brahmin
—Mortgage by—of right to receive dues of office.*

There is nothing in the law to prevent a *Maha Brahmin* mortgaging his right to offerings receiveable by him in his professional capacity. *Raghoo Pandey v. Kassy Parey* (1) referred to.

THIS was an appeal under section 10 of the Letters Patent from the judgement of a single Judge of the Court. The facts of the case sufficiently appear from the judgement under appeal, which was as follows :—

“This case has been very thoroughly argued. It is admitted by Mr. *Haidar* for the appellant that the case turns upon a single question, whether this mortgage is valid or not, which again turns upon a single question whether it is a mortgage of immovable property and therefore recognizable by law under section 58 of the Transfer of Property Act. It is usufructuary mortgage by one *Maha Brahmin* in favour of another *Maha Brahmin* of a certain share or shares in the *birt jizmani*, that is to say, his pecuniary interest receiveable by way of voluntary donation, under his right of, or enjoyment of, the function of officiating as priest at certain Hindu funeral ceremonies. It is desirable to make it perfectly clear that the question here is as between two such priests, as to whether the right and interest of the one to receive fees actually earned, or which he may qualify himself to receive, can or cannot be transferred to the other. It has been held by a Bench of two Judges in *Raghoo Pandey v. Kassy Parey* (1), that a right to officiate as priest at such ceremonies is by law immovable property. I understand that authority, which has not been subsequently questioned, to lay down two propositions: (1) that the nature and quality of the property involved in the

* Appeal No. 50 of 1916, under section 10 of the Letters Patent.

(1) (1883) I. L. R., 10 Cal., 73.