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mortgagee appeared in court and definitely refused to accept the money. It seems to us that the mortgagor had done all that he was required to do under section 84 of the Act. In the Madras High Court in *Velayuda Naicker v. Hyder Hussan Khan Sahib* (1), this view was accepted. In *Krishnasami Chettiar v. Thippa Ramasami Chettiar* (2), it was held that on the withdrawal by the mortgagor on the mortgagee's refusal to accept the amount deposited in court, interest does not cease to run. Both these cases were considered in the later case in *Thevaraya Reddy v. Venkatachalam Pandithan* (3), the facts of which, however, are distinguishable from those of the present case. In the course of their judgments one learned Judge was of opinion that the case in I. L. R. 35 Madras, had been properly decided. On the other hand, Mr. Justice PHILLIPS thought that the earlier ruling in I. L. R., 33 Madras, was correct. For the reasons given by Mr. Justice PHILLIPS on page 808 we think that the decision of the learned District Judge in this case was wrong. We, therefore, decree the appeal with costs and modify the decree of the court below by directing that the amount payable by the mortgagor is only Rs. 787, and the usual decree giving six months for payment will be prepared.

Appeal allowed.

Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

KAMAL NATH AND OTHERS (DEPENDANTS) v. BITHAL DAS AND OTHERS (PLAINTIFFS)*.

Civil Procedure Code (1908), section 110—Appeal to His Majesty in Council—“Affirms the decision,” meaning of—Decree of lower court modified only in favour of the would-be appellant, but in other respects affirmed.

Held that an appeal to His Majesty in Council would not lie against a decree which, in so far as it modified the decree of the court below, was in favour of the would-be appellant, but, in so far as it was against the would-be appellant, agreed with the decree of the court below. *Bhajan Singh v. The Allahabad Bank, Ltd.*, (4) distinguished.

THIS was an application for leave to appeal to His Majesty in Council. The facts of the case, so far as they are necessary for the purposes of this report, appear from the order of the Court.

* Application No. 81 of 1921, for leave to appeal to His Majesty in Council.

(1) (1909) I. L. R., 33 Mad., 100.

(3) (1916) I. L. R., 40 Mad., 804.

(2) (1910) I. L. R., 35 Mad., 44.

(4) (1920) 19 A. L. J., 3.

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Munshi *Harnandan Prasad*, for the appellants.

Babu *Lalit Mohan Banerji*, for the respondents.

MEARS, C. J., and BANERJI, J. :—This is an application for leave to appeal to His Majesty in Council. The plaintiff in the suit claimed a large sum, exceeding Rs. 10,000, on the basis of a mortgage. This mortgage was denied by the defendant, the present applicant. The court of first instance decided against him and decreed the claim in full. He appealed to this Court and this Court affirmed the decision of the court below upon the question of the fact and the validity of the mortgage. This Court, however, reduced the rate of interest awarded against the appellant by the court of first instance. The result was that this Court modified the decree of the court of first instance to the extent of about Rs. 300. But that modification, so far from being prejudicial to the interest of the present applicant, was in his favour. On the ground of this modification he seeks to appeal to His Majesty in Council on the question of the genuineness of the mortgage and it is contended on his behalf that as this Court did not affirm the decree of the court below, he is entitled, as of right under section 110 of the Code of Civil Procedure, to appeal to His Majesty. We do not think that this contention is valid. So far as the question of the mortgage is concerned, the decision of the lower court was affirmed by this Court and there were concurrent findings of fact, against which there could be no appeal to His Majesty in Council. The modification of the decree was a modification in favour of the applicant, and as to this he certainly does not seek to appeal nor could he appeal. Therefore his application for leave to appeal relates in fact to the portion of the decree which was prejudicial to him but which was a decree affirming the decision of the court below and not modifying it. We have to look to the substance and see what is the subject-matter of the appeal to His Majesty in Council. In the present case the subject-matter of appeal to His Majesty in Council is, as pointed out above, that portion of the decree in respect of which the decree of this Court was a decree in affirmance of the decree of the court below and not in modification of that decree. Therefore in our opinion this is not a case in which the applicant is entitled as of right

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to appeal to His Majesty in Council. This case is distinguishable from the case of *Bhagwan Singh v. The Allahabad Bank, Ltd.* (1). There the decree was modified to the prejudice of the applicant and on that ground it was held that he was entitled to appeal to His Majesty in Council. In this view the present application must fail. We accordingly reject it with costs.

Application rejected.

Before Mr. Justice Walsh and Mr. Justice Stuart.

THE MUNICIPAL BOARD OF AGRA (DEFENDANT) v. ASHARFI LAL, (PLAINTIFF) AND SURAJ BEAN AND OTHERS (DEFENDANTS).*

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Municipal Board—Action against Board on account of misdescription of plaintiff in the roll of candidates, whereby he lost his right to offer himself for election—Liability of Board—Principal and agent—Discovery of documents—Civil Procedure Code (1908), order XI, rule 12.

If any duly qualified citizen, or person entitled to be upon the electoral roll of any constituency is omitted from such roll so as to be deprived of his right to vote and so as to give the returning officer an adequate ground for refusing him the right to vote on election day when the matter has to be decided summarily, and that refusal or omission from the roll, as the case may be, turns out on investigation to be wrongful, he has suffered a legal wrong; he has been deprived of a right recognized by law, and he has against the person so depriving him a remedy by what has always been called "an action on the case" for nominal damages for the right that he has lost, which may, at the discretion of the court, be punitive or exemplary, if the conduct is the result of some malicious and wicked intention; and also for any pecuniary expenses to which he may have been reasonably put as a result of the wrong done, for example, efforts to replace his name on the roll.

Where such an action is brought against a Municipal Board, the complaint being that the list of candidates had been so tampered with as to deprive the plaintiff of his right to offer himself as a candidate, the question of the corporate liability of the Board and the individual liability of its officers or servants must be determined according to the general law of principal and agent.

In a case where the plaintiff is of necessity dependent for proof of his allegations upon documents in the possession of the defendant, of the precise nature of which he cannot be aware, the plaintiff's proper course is to apply to the court for an order under order XI, rule 12, of the Code of Civil Procedure.

THE facts of this case are fully stated in the judgment of WALSH, J.

* First Appeal No. 47 of 1921, from an order of Joti Sarup, Additional Subordinate Judge of Agra, dated the 17th of December, 1920.