

MISCELLANEOUS CIVIL.

Before Sir Grimwood Mears, Knight, Chief Justice, and
Mr. Justice Lindsay.

1927
June, 7.

MATHURA KURMI (DEFENDANT) v. JAGDEO SINGH AND
OTHERS (PLAINTIFFS).*

*Civil Procedure Code, section 110—Appeal to His Majesty in
Council—“Substantial question of law”—Construction
of document.*

Held, on an application for leave to appeal to His Majesty in Council, that, the only question for decision in either court being whether the legal relation of the parties arising out of the execution of three documents of even date was that of mortgagor and mortgagee by conditional sale or that of vendor and purchaser subject to an option of re-purchase, the decision of which depended on the application of well-defined legal principles to a particular set of facts, this did not involve a “substantial” question of law within the meaning of section 110 of the Code of Civil Procedure. *Balkishen Das v. Legge* (1), *Jhanda Singh v. Wahid-ud-din* (2) and *Narasingerji v. Parthasaradi Rayanam Garu* (3), referred to.

THIS was an application for leave to appeal to His Majesty in Council. The facts of the case sufficiently appear from the judgement of the Court.

Munshi Kamala Kanta Verma, for the applicant.

Pandit Rama Kant Malaviya, for the opposite parties.

MEARS, C.J., and LINDSAY, J. :—This is an application for leave to appeal to His Majesty in Council against the decree of a Bench of this Court in First Appeal No. 459 of 1923, decided on the 21st of December, 1926. The appeal was dismissed and the decree

*Application No. 18 of 1927 for leave to appeal to His Majesty in Council.

(1) (1899) I.L.R., 22 All., 149. (2) (1916) I.L.R., 38 All., 570.

(3) (1924) I.L.R., 47 Mad., 729.

of the trial court was affirmed. The value of the subject-matter in the first court was over Rs. 10,000 and the value of the subject-matter of the proposed appeal to His Majesty is also above that sum. But we are asked to certify that the case fulfils the conditions of section 110 of the Code of Civil Procedure on the ground that the appeal involves a substantial question of law, or, in the alternative, to certify that it is otherwise a fit case for appeal.

1927
 MATHURA
 KURMI
 v.
 JAGDEO
 SINGH.

The question which arose for decision in the court below and in this Court was with regard to the legal relation of the parties arising out of the execution of three documents executed on the 22nd of May, 1915. The case for the plaintiffs was that they were mortgagors and that the defendant, Mathura Kurmi, was their mortgagee. The defendant's case was that he was the purchaser of the property in dispute subject to an option of re-purchase, of which the plaintiffs had failed to take advantage.

The decision of the trial court, affirmed in this Court, was that the three documents were evidence of a single transaction, namely, a mortgage by conditional sale, and that the plaintiffs were entitled to recover the property by redemption. As is pointed out in the judgments delivered in this Court, cases of this nature are frequently brought before the courts in India, and many of them have been taken in appeal to His Majesty in Council. We may refer in particular to the following three cases—*Balkishen Das v. Legge* (1), *Jhanda Singh v. Wahid-ud-din* (2), and *Narasingerji v. Parthasaradi Rayanam Garu* (3). It has been settled definitely that the test to be applied in such cases is the intention of the parties at the date of the transaction which has to be construed and the decisions lay down the various matters

(1) (1899) I.L.R., 22 All., 149.

(2) (1916) I.L.R., 38 All., 570.

(3) (1924) I.L.R., 47 Mad., 729.

1927

MATHURA
KURMI
v.
JAGDEO
SINGH.

which may legitimately be considered by the courts in order to determine what the intention of the parties was. Intention is a matter of fact and not of law, and where, as in the case now before us, both courts find that the parties stand in the relation of mortgagor and mortgagee, the finding is one of fact, namely, that on the date on which the parties entered into the transaction their intention was to constitute that relation between themselves.

If it be admitted, however, that the question is not one of pure fact because the decision involves the construction of legal documents, the point remains whether any question of law is raised which can be deemed to be a substantial question. Obviously any question of law arising upon the interpretation of the documents considered in this case is not substantial in the sense of being a question of general interest: it is of importance only to the present parties. But, in view of a recent decision of their Lordships, it is contended that a question of law, in order to be substantial, need not be a question of general interest: it may still be substantial although it concerns only the parties to the litigation. And so it is sought to be argued that we have here a question of substance because, it is suggested, that the tests and principles of interpretation prescribed by the Privy Council have not been correctly applied to the facts.

We are not prepared to hold that for this reason the question of law between the parties here, assuming it to arise at all, is a substantial question. It is not made to appear that the appeal, if allowed to proceed, could furnish an occasion for the discussion or enunciation of any fresh legal principle. The matter has been agitated time and again before their Lordships who have repeatedly laid down the law in the sense indicated above. In these circumstances we do not think that the application of well-defined legal principles to a particular set of facts

raises any question of law which can fairly be described as substantial.

The case does not, in our opinion, fulfil the requirements of section 110 of the Code of Civil Procedure. Nor is it a case which we could certify as being otherwise fit for appeal to His Majesty.

We dismiss the application with costs.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Banerji.

SALIG RAM MISIR (PLAINTIFF) *v.* LACHHMAN DAS (DEPENDANT).*

1927
June, 7.

Act No. IX of 1872 (Indian Contract Act) section 134—Principal and surety—Remedy of creditor against principal debtor allowed to become time-barred—Discharge of surety—Appeal—Operation of decree not suspended by the filing of an appeal.

If a creditor allows his remedy against the principal debtor to become barred by time, the legal consequence of this is that the principal debtor is discharged within the meaning of section 134 of the Indian Contract Act, 1872, and the creditor can no longer proceed against the surety. *Hazari v. Chummi Lal* (1), *Radha v. Kinlock* (2) and *Ranjit Singh v. Naubat* (3), referred to.

Held also that under the Indian law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted when the decree is one of dismissal, and the cause of action arises on the passing of the first court's decree and is not suspended till that decree is finally affirmed on appeal. *Juscurn Boid v. Pirthichand Lal Choudhury* (4), followed.

*First Appeal No. 463 of 1924, from a decree of Man Mohan Sanyal, Subordinate Judge of Benares, dated the 19th of May, 1924.

(1) (1886) I.L.R., 8 All., 259.

(2) (1869) I.L.R., 11 All., 310.

(3) (1902) I.L.R., 24 All., 504.

(4) (1918) I.L.R., 46 Cal., 670.