FULL BENCH.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice, Mr. Justice Mukerji and Mr. Justice Boys.

1931 July, 14.

DURGA THATHERA (PLAINTIFF) *v.* NARAIN THATHERA AND ANOTHER (DEFENDANTS)*

Civil Procedure Code, order XLI, rules 11 *and* 31—*Summary dismissal of appeal—Judgment—What it must contain—Compliance with requirements of rule* 31—*Interpretation of statutes—Headings.*

In a judgment delivered on hearing an appeal under order XLI, rule 11, of the Civil Procedure Code by a court subordinate to the High Court, compliance with the provisions of rule 31 of order XLI is necessary.

The question whether in a particular case there has been a substantial compliance with the provisions of rule 31 is one depending on the nature of the judgment delivered in each case. A non-compliance with the strict provisions of this rule may not vitiate the judgment and make it wholly void, and the irregularity may be ignored, if there has been a substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court.

Headings in the body of an Act are of some help in clearing up obscurities when there is an ambiguity, but they cannot control the provisions of the sections when they are unequivocal and clear. The headings are like preambles which supply a key to the mind of the legislature, but do not control the substantive sections of the enactment.

Mr. *Shiva Prasad Sinha*, for the appellant.

Mr. *Sankar Saran*, for the respondents.

SULAIMAN, A.C.J., MUKERJI and BOYS, JJ. :—The question referred to the Full Bench is "Whether, in a judgment delivered on hearing an appeal under order XLI, rule 11 of the Civil Procedure Code by a court subordinate to the High Court, compliance with the provisions of rule 31 of order XLI is necessary."

*Second Appeal No. 1314 of 1929, from a decree of Muhammad Zia-ul Hasan, Second Additional District Judge of Gorakhpur, dated the 11th of July, 1929, confirming a decree of Thakur Prasad Dube, Additional Munsif of Deoria, dated the 15th of March, 1929.

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The question which we have to answer is whether order XLI, rule 31, requiring that the judgment of the appellate court shall be in writing and shall state the points for determination, the decision thereon, the reasons for the decision and, where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated, applies to a dismissal of an appeal under order XLI, rule 11.

The answer will depend on the question whether, when an appeal is dismissed summarily under order XLI, rule 11, there is a judgment delivered and rule 31 applies to such a judgment.

There can be no question that in dismissing an appeal under order XLI, rule 11 the appellate court delivers a judgment, in accordance with which the decree is prepared. Such a judgment is treated as a judgment from which a Letters Patent appeal could be entertained, and a certified copy of it is required under the law when a second appeal is to be filed. It is unthinkable that there could be a decree passed dismissing the appeal, without there having previously been a judgment. If a judgment has to be delivered by the appellate court, there seems to be no reason why rule 31, which applies to judgments of appellate courts, should not be applicable. Our attention has been drawn to the case of *Samin Hasan* v. *Piran* (1) and some cases of other High Courts where the view has been taken that section 574 of the old Code, corresponding to this rule, was not applicable in its entirety. On the other hand, there are a large number of cases which have held the other view.

The learned Judges who have taken a view in conformity with the view taken in *Samin Hasan's* case have relied mainly on the effect of the headings which precede the groupings of the rules in this order.

(1) (1908) I.L.R., 30 All., 319.

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No doubt headings in the body of an Act are of some help in clearing up obscurities when there is an ambiguity, but they cannot control the provisions of the sections when they are unequivocal and clear. The headings are like preambles which supply a key to the mind of the legislature, but do not control the substantive sections of the enactment. As has been pointed out by the learned Judges referring this case, the groupings of the sections under various headings in this order are not at all happy and cannot be relied upon in order to control the effect of the provisions.

If rule 31 were not to apply to judgments delivered under order XLI, rule 11, the necessary result would be that there would be no provision of law which would require such judgments to be in writing or to be signed and dated by the Judge. A judgment under order XLI, rule 11, could then be pronounced orally. This could not possibly have been intended by the legislature.

Furthermore, a second appeal is allowed from such decrees under order XLII of the Code of Civil Procedure, and before the appellate court in second appeal can make up its mind as to whether there are grounds for interference under section 100 of the Code of Civil Procedure it must know the points which were for determination and the decision of the lower appellate court on each of those points, in order to decide whether the decree can be affirmed or not. If the appellate court were simply to dismiss the appeal summarily without pointing out what its decisions are, the result would be that it would be impossible to know what findings of fact are binding upon the second appellate court and what questions of law have been decided and how.

The question whether in a particular case there has been a substantial compliance with the provisions of rule 31 is a different one, depending on the nature

of the judgment delivered in each case. A non-compliance with the strict provisions of this rule may not vitiate the judgment and make it wholly void, and the irregularity may be ignored, if there has been a substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. Our attention has not been drawn to any reported case of this Court after the passing of the new Code, in which the case of *Samin Hasan* has been followed. Our answer to the question referred to us is in the affirmative.

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MISCELLANEOUS CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Sen.

IN THE MATTER OF THE BISHOP OF LUCKNOW.* 1931 *July*, 16.

Income-tax Act (*XI of* 1922), *sections* 4(1) *and* 7(1)—*Allowance received in London by Lord Bishop of Lucknow* ex officio —"*Salary*"—*Income accruing or arising in British India.*

The Lord Bishop of Lucknow received *ex officio* a gratuitous annual allowance from a certain fund known as the Colonial Bishopric Fund, London. The allowance was payable in London and was paid in London. *Held* that the allowance came within the term "Salary" in section 7(1) of the Income-tax Act and that the income, being payable on account of the payee being in British India and there filling the character of the Lord Bishop of Lucknow, accrued or arose in British India, within the meaning of section 4(1), although it was received in London.

Mr. *H. Cecil Desanges*, for the assessee.

Mr. *Sankar Saran*, for the Crown.

MUKERJI and SEN, JJ. :—This is a reference by the learned Commissioner of Income-tax under section 66(2) of the Indian Income-tax Act, in the matter of the Right Revd. C. J. G. Saunders, Lord Bishop of Lucknow.

The facts of the case are very short and simple. The Lord Bishop of Lucknow draws a salary from the Government of India. He also receives an amount of

*Miscellaneous Case No. 346 of 1931.