

FULL BENCH.

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

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July, 8.

NATHU LAL (DEFENDANT) v. RAGHUBIR SINGH AND
OTHERS (PLAINTIFFS).*

Civil Procedure Code, section 110—Appeal to High Court dismissed and cross-objection allowed—Resulting in one decree of High Court varying the decree of the lower court—Appeal lies to Privy Council as of right.

Where an appeal filed in the High Court is dismissed and the cross-objection filed under order XLI, rule 22, in that appeal is allowed, with the result that there is only one decree of the High Court by which the decree of the first court has been varied, the appellant in the High Court, whose appeal has been dismissed, has a right of appeal to His Majesty in Council under section 110 of the Code of Civil Procedure, because the decree of the first court has not been affirmed.

The case may stand on a different footing where, instead of an appeal and a cross-objection in the appeal, there are two separate or independent appeals filed by the opposite parties and consequently there are two separate decrees passed by the High Court.

Dr. K. N. Katju and Messrs. P. M. L. Verma and Nanak Chand, for the appellant.

Messrs. P. L. Banerji and Harnandan Prasad, for the respondents.

SULAIMAN, A. C. J. :—This is an application for leave to appeal to their Lordships of the Privy Council by one of the defendants in a suit for setting aside a sale and the decree on the ground of fraud. The ostensible sale consideration was about Rs. 8,000 but it was alleged that the property transferred was of considerable value and the valuation of the suit was fixed at Rs. 50,000. The allegations of fraud were denied by the defendants who pleaded the payment of sale consideration. The court of first instance found that fraud had been established but that the passing of one part of

*Application No. 15 of 1931, for leave to appeal to His Majesty in Council.

the consideration, amounting to Rs. 1,760, was proved. It accordingly passed a decree on condition of the payment of this amount by the plaintiffs.

Nathu Lal, one of the defendants, appealed to this Court from this decree without impleading the other defendants. The others did not join him as appellants but the ground taken was common to them all. The plaintiffs did not file any separate appeal of their own but filed a cross-objection under order XLI, rule 22, challenging the finding that the payment of Rs. 1,760 had been established. The High Court came to the conclusion that the finding of the first court as regards fraud was correct but that the payment of Rs. 1,760 was not proved. It accordingly dismissed the appeal of the defendant with costs and allowed the cross-objection of the plaintiffs with costs. As there was no separate appeal filed by the plaintiffs there was only one decree prepared by this Court.

The defendant Nathu Lal desires to appeal to their Lordships of the Privy Council and claims that he is entitled to appeal as of right because the decree of the court below has not been affirmed by the High Court.

The question before us is whether the case falls under the last paragraph of section 110 of the Code of Civil Procedure, that is, whether the decree appealed from does not affirm the decision of the court below. It has to be conceded that if it is a decree of affirmance then no substantial question of law is involved which would give him a right of appeal. Their Lordships of the Privy Council in the case of *Tassaduq Rasul Khan v. Kashi Ram* (1) laid down that the word "decision" in the corresponding section of the old Code meant a decision of the suit by the court below and not the judgment, and that in order to affirm the decision of the court below within the meaning of that section it was sufficient for the appellate court to affirm the decree, though it need not be also affirmed on the

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grounds on which the judgment was passed. It may also be pointed out that in the case of *Annapurnabai v. Ruprao* (1) a defendant widow who was claiming an allowance as maintenance was allowed to appeal as of right where the appellate court had increased the amount of her maintenance allowance in her favour but had not granted to her what she had claimed. In that case, however, the capitalised value of the extra amount claimed by her in appeal to their Lordships of the Privy Council was more than Rs. 10,000. This case by implication overrules the cases of *Kamal Nath v. Bithal Das* (2), and *Chandrasekhar v. Ameer Begum* (3).

A number of cases have been cited before us by the learned counsel for the parties which show that there has been some conflict of opinion as to whether in case of separate appeals by opposite parties the variation of the decree of the first court in one appeal would entitle a party to appeal in the whole suit, impugning even the decision of the first court in the appeal which has been dismissed. It is not necessary for us to express any definite opinion on that question, for separate appeals may stand on a different footing. Separate appeals which are filed in this High Court are separately numbered and ordinarily separate decrees are passed and prepared in them. In such cases it may not be possible to show that although the appeal has been dismissed the decision of the court below has not been affirmed by the decree passed in that appeal.

The case before us is not one of a separate appeal, but of a cross-objection filed in a pending appeal. Under the Civil Procedure Code a respondent is allowed a concession as regards limitation if he prefers to file a cross-objection instead of filing a regular cross-appeal. He can file it within one month from the date of the service of the notice of appeal to him and he is also entitled to support the decree of the court below on

(1) (1924) I.L.R., 51 Cal., 969.

(2) (1921) I.L.R., 44 All., 200.

(3) A.I.R., 1922 All., 243.

any grounds other than those which have been decided in his favour. A respondent may not think of challenging the decree of the first court at all and may file cross-objections only after coming to know that the opposite party is challenging it. But the decree passed is one decree which disposes of the appeal and the cross-objection, and the appeal to their Lordships of the Privy Council would be an appeal from one decree or final order which, in case the cross-objection is allowed, would not be a decree of affirmance but would necessarily vary or modify the decree of the court of first instance.

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The language used in section 110 of the Code of Civil Procedure is simple and makes it clear that if the decree appealed from affirms the decision of the court below there would be no right of appeal unless a substantial question of law is involved. There is no reason why we should introduce new words in the section and say that the expression "affirms the decision of the court below" necessarily means 'affirms the decision substantially' or means 'affirms the decision on grounds other than costs'. If the decree of the court below has been varied, no matter to what extent, the decree cannot be one of affirmance.

The learned advocate for the respondent has relied strongly on the case of the Madras High Court, *Ramanathan Chetti v. Subramanian Chetti* (1), where a cross-objection was treated as if it were on the same footing as a cross-appeal. On the other hand in the case of *Bhagwan Singh v. Allahabad Bank* (2), the defendant appealed to the High Court, valuing his appeal above Rs. 10,000, and the plaintiff filed a cross-objection, valuing it at less than Rs. 10,000. The appeal and the cross-objection were disposed of together and the decree of the court below was varied and modified to the extent of Rs. 8,000 to the prejudice of the defendant appellant. This High Court held that

(1) A.I.R., 1926 Mad., 1024.

(2) (1920) I.L.R., 48 All., 220.

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the defendant was entitled to appeal as of right and no objection was taken to the grant of the certificate before their Lordships of the Privy Council. The learned Judges of the Madras High Court thought that the case of cross-objections was analogous to that of cross-appeals and following the ruling of this Court in the case of *Chiranji Lal v. Behari Lal* (1), held that where a cross-objection only is allowed and the appeal is dismissed the decree really affirms the decision of the court below and the aggrieved party is not entitled to appeal to the Privy Council unless the subject matter which has been varied in the cross-objection exceeds Rs. 10,000. This view is contrary to the express language of section 110, because the decree is one, and when there is a modification of the first court's decree it cannot be said that that decree has been affirmed on appeal.

We would therefore hold that where the cross-objection filed in an appeal has been allowed and the decree of the first court has been varied, even though it may be in favour of the applicant himself, he has a right of appeal under section 110 of the Code of Civil Procedure because the decree of the first court has not been affirmed.

MUKERJI, J. :—The facts of the case are given in the judgment of my learned brother, and I do not think it necessary to repeat them. The question is whether an appeal to their Lordships of the Privy Council would lie as a matter of right where an appeal has been dismissed and a cross-objection of small value has been allowed, the applicant before this Court for leave to appeal being the person whose appeal has been dismissed.

In my opinion the decision of the question must be given on an interpretation of the third paragraph of section 110, and on no other consideration. There, the law says: "Where the decree . . . appealed from affirms the decision of the court immediately below the

court passing such decree . . . the appeal must involve some substantial question of law", to give a right to appeal. Here we have got a decree which is being appealed from, and the decree does not affirm the decree of the court below. It should follow, in such a case, without further argument, that an appeal would be maintainable.

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The word "decision" as used in the third paragraph of section 110 has been interpreted by their Lordships of the Privy Council, in *Tassaduq Rasool Khan v. Kashi Ram* (1), as being equivalent to the word "decree".

The argument against this interpretation is this. If, instead of there being a cross-objection by the plaintiffs, there had been an appeal by the plaintiffs, another appeal having been filed by one of the defendants, the defendant could not have been allowed to file an appeal on the ground that the decree of the court below had not been affirmed in its entirety.

It is not necessary for me to express any opinion on the case where there are two independent appeals and, consequently, there are two decrees in appeal. It may be possible, in that case, to hold that where the applicant wants to appeal against a decree which has dismissed his appeal, the decree sought to be appealed against affirms the decree of the court below (so far as the appeal is concerned). We are not called upon in this case to pronounce any opinion on the correctness or otherwise of the decision of this Court in *Chiranji Lal v. Behari Lal* (2). That case has held its ground and has been followed in other High Courts also.

The question, however, is whether a cross-objection stands entirely on the same footing as an independent appeal. I am of opinion that a cross-objection need not necessarily, in all its aspects, be the same as an independent appeal. A party may not at all be inclined to file an appeal, but when he finds that his

(1) (1902) I.L.R., 25 All., 109.

(2) (1918) 16 A.L.J., 864.

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opponent has filed an appeal he may not only support the decree on grounds decided against him but also take exception to the decree by filing a cross-objection. The rules for filing an appeal and the rules for filing a cross-objection are not one and the same, and what is important is that there is but one decree where there is an appeal and also a cross-objection. For the purpose of preparing a decree, the cross-objection is never treated as an independent and separate appeal.

For the reasons given above I entirely agree with the Hon'ble the CHIEF JUSTICE, and would grant a certificate to the applicant for filing an appeal before His Majesty the King.

Boys, J. :—I am in entire agreement with what has been said by the ACTING CHIEF JUSTICE and Mr. Justice MUKERJI. I am of opinion that on the wording of the last paragraph of section 110 there can only possibly be one answer to the question referred to us.

Where the case is of an appeal and cross-objections filed in that appeal, there is only one decree, and if the appeal has been dismissed and the cross-objections have been allowed, it is only necessary to look at the decree of the High Court to see instantly that the decree of the trial court has been varied; and this will apply equally where the variation is only as to the costs of the court below. This aspect of the case, then, does not, in my view, call for any further consideration on my part after what has been said by my learned brothers.

If this had been the only point argued before us the case might not have taken more than a few minutes, but we were addressed by both sides on what was suggested to be an analogous case,—that where two so-called cross-appeals are filed. We were strongly urged by counsel for the plaintiff to hold that the same rule must apply to the case of an appeal with a cross-objection and to the case of two separate appeals, so-called cross-appeals, and we were asked to apply decisions as to

the latter to the former so as to result in a refusal of the present defendant's right of appeal. On the other hand we were urged on behalf of the defendant, the would-be appellant, to hold that the decisions as to the case of cross-appeals were wrong. While I have agreed in holding that it would be to refuse its natural meaning to language to hold that the decision of the court below has been affirmed in the present case of an appeal and a cross-objection, it is manifest on the face of it that where there are two so-called cross-appeals there are two decrees and that difficulty would arise in applying the last paragraph of section 110 to such two decrees in the same way as we hold to be applicable in the case of an appeal and a cross-objection where there is only one decree. I do not, therefore, think that it would be safe by the declaration of any general proposition in the present case to assimilate the rule applicable to the case of two cross-appeals to the case of an appeal and a cross-objection or *vice versa*. A consideration of the rule applicable to cross-appeals must be left till it specifically arises in a case where there are two such appeals. My reason for adding these observations is that I desire to point out that there is, in my view, a glaring anomaly in the law as it at present stands. There having been an appeal with a cross-objection, we have decided the law in one way. If in this very case, instead of an appeal with a cross-objection there had been two so-called cross-appeals, it would, as the decisions at present stand, have had to be decided in exactly the opposite way. I cannot, therefore, refrain from expressing the hope that the question may very shortly be raised in reference to two so-called cross-appeals and be further considered by a Full Bench. I agree to the order proposed.

By THE COURT:—We think that this case fulfils the requirements of section 110 of the Code of Civil Procedure, and we accordingly direct that a certificate be granted.

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