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whether, on equitable considerations, interest may be allowed to the respondent or not. Section 23 of the Trusts Act lays down that "A trustee committing a breach of trust is not liable to pay interest except in the following cases: . . . (*b*) where the breach consists in unreasonable delay in paying trust money to the beneficiary."

We think that taking section 23(*b*) as our guide, we are entitled to hold that interest was properly allowed against the appellant by the court below. We are not forgetful of the fact that the case does not fall within the Trusts Act. We have tried to find out, with the aid of that Act, whether we are entitled to award interest on what has been termed by their Lordships of the Privy Council as "equitable grounds".

The result is that the appeal fails and is hereby dismissed with costs.

REVISIONAL CIVIL

Before Mr. Justice Kendall

DILSUKH RAI BAIJNATH AND ANOTHER (DEFENDANTS) *v.* DWARKA DAS (PLAINTIFF)*

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Civil Procedure Code, order VI, rule 17—Amendment of plaint—Order granting amendment—Revision—"Case decided"—Civil Procedure Code, sections 115, 151—Abuse of process of the court.

The plaintiff sued to recover a specified sum alleged to be due from the defendant as the result of three transactions in which the defendant was his commission agent. After the whole of the evidence in the suit had been recorded the plaintiff applied to amend the plaint so as to convert the suit into one for rendition of accounts. Against the order granting the application the defendant filed a revision. *Held* that the order allowing the plaint to be amended could not be deemed to be a "case decided" within the meaning of section 115 of the Civil Procedure Code and no revision lay.

* *Civil Revision No. 638 of 1931.

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Held also, that there was no abuse of the process of the court calling for interference under section 151 of the Code.

Mr. *Panna Lal*, for the applicants.

Mr. *S. N. Gupta*, for the opposite party.

KENDALL, J. :—This application has been made for the revision of an order of the Munsif of Hathras permitting the plaintiff opposite party to amend his plaint. As originally filed, the plaint was one for a specified sum of money on the ground that as the result of three transactions between the plaintiff and the defendant, who was his commission agent, that sum was due to the plaintiff. After all the evidence had been recorded, and on account of some admissions made by the defendant in the course of his examination, the plaintiff made an application to amend the plaint so as to make the suit one for rendition of accounts. The present application is made on the grounds that the court acted irregularly in allowing the plaint to be amended after the case had been closed by the parties and was ripe for decision, and also because the proposed amendment has the effect of changing the nature of the suit.

A preliminary objection has been made on the ground that as the case has not been decided, no application under section 115 of the Civil Procedure Code can be entertained. This objection is based on the Full Bench decision in the case of *Buddhu Lal* v. *Mewa Ram* (1). It is admitted that there has been a difference of opinion among the different High Courts in India, but it is claimed that so far as this Court is concerned the decision of the Full Bench clearly shows that no revision will lie in circumstances such as these. There is no doubt that even in this Court there has not been complete harmony in defining the limitations of section 115, or to be more precise, that there have been some conflicting decisions as to the definition of the words "case decided" which are used in section 115.

(1) (1921) I.L.R., 43 All., 564.

For instance, in the Full Bench decision to which I have alluded, three of the learned Judges held that the decision of an issue relating to the jurisdiction of the court "could not properly be described as a case decided", whereas the other two were of a contrary opinion. I have also been referred on behalf of the applicant to the cases of *Radha Mohan Datt* v. *Abbas Ali Biswas* (1) and *Puran Lal* v. *Rup Chand* (2). In the former of these cases the Bench decided that where an order setting aside a decree has been passed by a court in defiance of the provisions of order IX, rule 13, of the Civil Procedure Code the matter is a "case decided" and the High Court is entitled to interfere in revision. In the latter case the High Court intervened when the lower court had appointed an arbitrator whom it had no power to appoint, holding that the appointment amounted to a "case decided". I think that the case of *Radha Mohan Datt* v. *Abbas Ali Biswas* is clearly distinguishable from the present one. An application for an order setting aside a decree initiates a proceeding which involves the recording of evidence and the decision of an issue which is, however, quite distinct from the issues in the suit proper. It is in fact of the nature of a complete case ancillary to the main suit, but quite distinct from it in giving rise to considerations which have nothing whatever to do with those which govern the parent suit. The case of *Puran Lal* v. *Rup Chand* (2) is more helpful to the applicant, but here the court was largely influenced by the consideration that unless the proceedings relating to the appointment of an arbitrater were held to amount to a "case decided" there might have been some unnecessary proceedings in which a large number of witnesses might be examined. On the other hand the case of *Risal Singh* v. *Faqira Singh* (3) shows that an order setting aside an arbitration award does not

(1) (1931) I.L.R., 53 All., 612. (2) (1931) I.L.R., 53 All., 778.
(3) (1931) I.L.R., 53 All., 1006.

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amount to a "case decided", and no revision will lie from such an order. I have only quoted some recent decisions of this Court, as it would be tedious to refer to all the instances which have been adduced as "cases decided" for the purposes of revision. The court has sometimes taken a narrower and sometimes a broader view of the meaning of the expression "case decided", but it has never, I believe, interpreted section 115 so widely as to permit the decision of one issue out of several, or the propriety of an interlocutory order of a routine nature, to form the basis of an order in revision. In the present case the order allowing the plaint to be amended cannot, in my opinion, be interpreted by any stretch of language as a "case decided".

Mr. *Panna Lal* has suggested that even if section 115 be held not to be strictly applicable, an order ought to be passed under section 151 to prevent abuse of the process of the court. If I were satisfied that in the present case there had been an abuse of the process of the court I should agree with him. The learned Munsif, however, has not passed his order without applying his mind to the case, and he has come to the conclusion that the proposed amendment will not change the nature of the suit. No doubt the ultimate decision of the Munsif will be the subject of an appeal, and I do not wish to express a definite opinion as to whether it does or does not change the nature of the suit. The question is at any rate one which is open to argument, and I am not satisfied that any order is necessary in the ends of justice or to prevent abuse of the process of the court. The result is that the application fails and is dismissed with costs.