

proceedings before an inferior criminal court in order to satisfy themselves of the correctness and the legality or the propriety of any finding, sentence or order, and may then proceed in the manner prescribed by section 435 and the following sections of the Code. It may be argued therefore that there is nothing that prevents a Judge of the High Court from sending for the record of an inferior criminal court and revising an order passed by it. The revisional sections, however, do not in themselves give the High Court power to revise an order of its own, and although it may be open to it to call for the record of a case which has already been dealt with in revision, there is no power to pass any order which would have the effect of setting aside or modifying an order passed in revision by itself.

We are therefore of opinion that the Court has no jurisdiction to entertain the present applications and we direct that they be dismissed.

FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice,

Mr. Justice Niannat-ullah and Mr. Justice Bennet

**BENARES BANK, LIMITED (PLAINTIFF) v. RAJNATH
KUNZRU AND OTHERS (DEFENDANTS)***

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January, 24

Civil Procedure Code, section 110—Suit for money decreed in part—Cross-appeals—One appeal allowed and the other dismissed—Separate decrees—Appeal to Privy Council—Affirmance of “decision”.

A suit for money claimed in respect of two distinct items was decreed in part, namely fully as regards the first item and partially as regards the second. The parties thereupon filed cross-appeals in the High Court. They were heard together and disposed of by one judgment, but two separate decrees were prepared in the two appeals; the defendant's appeal was allowed and the plaintiff's appeal was dismissed: *Held* that, in the absence of a substantial question of law, the plaintiff was not entitled to appeal to His Majesty in Council as of right,

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inasmuch as the decree against which he sought to appeal had affirmed the decision of the court below.

The case of two cross-appeals is not exactly identical with the case of an appeal and a cross-objection. In the latter case there is only one decree prepared by the court which embodies the adjudication in both the appeal and the cross-objection, but if there are two cross-appeals then two separate decrees, dealing with the respective subject-matters, are prepared. When two cross-appeals are separately disposed of, the matters in controversy in the two appeals are distinct and separate and therefore the adjudications of such matters are also distinct and separate. The dismissal of the plaintiff's appeal was therefore an affirmance of the adjudication or "decision" made by the first court so far as the matter in controversy in the plaintiff's appeal was concerned. The word "decision" in the third paragraph of section 110 of the Civil Procedure Code means the decision of the first court in so far as it is the subject-matter of the proposed appeal to the Privy Council.

The decision in *Chiranji Lal v. Behari Lal* (1) has not in any way been overruled by the Privy Council in *Annapurnabai v. Ruprao* (2).

Messrs. *P. L. Banerji, B. Malik and Govind Das*, for the applicant.

Messrs. *S. K. Dar and A. M. Khwaja*, for the opposite parties.

SULAIMAN, C.J. :—This is an application by the plaintiff for leave to appeal to His Majesty in Council. The suit was for recovery of a large sum of money alleged to be due on hundis and as money advanced against certain goods which were shipped. The court of first instance decreed the claim so far as the amount due on the hundis was concerned, and as regards the other claim confined the decree to a sum of £ 579 and dismissed the rest of the claim amounting to about Rs.20,000. Two separate cross-appeals were filed in the High Court, one on behalf of the plaintiff against the dismissal of his claim and the other by the defendants in respect of that part of the claim which was decreed. These two appeals were separately numbered, but were connected and heard together and disposed of by one judgment. Two

(1) (1918) 16 A.L.J., 861.

(2) (1924) I.L.R., 51 Cal., 969.

separate decrees were prepared in the two cases. The value of the subject-matter in dispute in the defendants' appeal has been found to be in excess of Rs.10,000 and leave has accordingly been granted. The value of the subject-matter in dispute in the plaintiff's appeal was also more than Rs.10,000, but the appeal was dismissed.

It is conceded by counsel for the Bank that no substantial question of law arises in this case and that no appeal would lie unless it can be considered that the decree of the High Court is not one of affirmance or that the appeal is otherwise a fit one to go up to His Majesty in Council. The learned advocate for the plaintiff Bank contends before us that inasmuch as the decree of the court below has not been affirmed but has been varied in consequence of the appeal having been allowed, the plaintiff has a right of appeal to His Majesty in Council even as regards the decree dismissing the plaintiff's appeal.

In the case of *Chiranji Lal v. Behari Lal* (1) RICHARDS, C.J., and TUDBALL, J., laid down that where there are cross-appeals filed in the High Court on behalf of the plaintiff and the defendant and the defendant's appeal is decreed and the decree of the court below varied, but the plaintiff's appeal is dismissed, the plaintiff cannot be allowed to appeal against the judgment of the High Court affirming the first court's decree.

This case has been followed by the Lahore High Court in *Asa Ram v. Kishen Chand* (2). In one case the Madras High Court went a step further and held that even where there is an appeal and a cross-objection and the cross-objection is allowed, the appellant is not entitled to appeal to His Majesty in Council from the decree dismissing his appeal: *Ramanathan Chetti v. Subramanian Chetti* (3). But this view has not been, strictly speaking, followed in a later case of that court in *Sundara Mudaliar v. Ratnavelu Mudaliar* (4), where when an appeal and a cross-objection were disposed of

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(1) (1918) 16 A.L.J., 864.

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

(2) (1922) I.L.R., 11 Lah., 465.

(4) (1923) I.L.R., 52 Mad., 521.

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together, it was considered that there was only one decree which had varied the decree of the first court.

So far as the question of an appeal and a cross-objection is concerned, a Full Bench of this Court, in the case of *Nathu Lal v. Raghbir Singh* (1), has recently laid down that where the cross-objection is allowed the appellant has a right of appeal to His Majesty in Council, because the decree of the court below is varied and the decision is not one of affirmance. Two members of the Bench were inclined to think that cross-objections stand on a different footing from cross-appeals, and the other learned Judge pointed out that there would be a clear anomaly if such a distinction were recognized.

On the other hand, the Patna High Court in the case of *Thakur Jamuna Prasad v. Jagarnath Prasad Singh* (2) has laid down that where there are two cross-appeals one of which is allowed, there is a right of appeal to His Majesty in Council even in the other cross-appeal. The learned Judges have based their decision principally on the pronouncement of their Lordships of the Privy Council in the case of *Annapurnabai v. Ruprao* (3).

The question for our consideration is whether the last mentioned Privy Council case has by implication overruled the previous decision of this Court. In *Annapurnabai's* case (3) the plaintiff, claiming to be the adopted son of the deceased owner, brought a suit for possession against the surviving widow and also another claimant who professed to have been adopted earlier. The defendants denied the plaintiff's adoption and set up the adoption of the defendant No. 2, and the defendant No. 1 further claimed a maintenance allowance with a charge on the estate. The trial court, holding that the plaintiff's adoption was proved and the alleged adoption of the defendant No. 2 not proved, decreed the claim; but allowed maintenance to the defendant No. 1, less than what she had claimed. Both the defendants appealed to the court of the Judicial

(1) (1931) I.L.R., 54 All., 146.

(2) (1929) I.L.R., 9 Pat 558.

(3) (1872) I.L.R., 51 Cal., 769.

Commissioner and the decree of the trial court was substantially affirmed, but was modified to the extent of increasing the maintenance allowance to the widow. Both the defendants appealed to their Lordships of the Privy Council and raised the whole question in controversy in the suit. It was held by their Lordships that inasmuch as the decree of the Judicial Commissioner was not one of affirmance of the trial court, they could appeal as of right. There was only one decree passed by the Judicial Commissioner and that decree had certainly varied the decree of the trial court, though in favour of the appellants themselves.

The case of two cross-appeals is not exactly identical with an appeal and a cross-objection. In the case of an appeal and a cross-objection there is only one judgment delivered and only one decree is prepared by the court which embodies the adjudication in both the appeal and the cross-objection. On the other hand, under order XLI, rule 35 the decree of the appellate court has to contain the number of the appeal, the names and descriptions of the appellant and the respondent and a clear specification of the relief granted or other adjudication made. If there are two cross-appeals pending in the High Court two decrees have to be prepared giving all these particulars.

In the leading case of *Tassaduq Rasul Khan v. Kashi Ram* (1) their Lordships have made it clear that the word "decision" in section 596 of the old Code of Civil Procedure, corresponding to section 110 of the new Code, has not the same meaning as the word "judgment" as defined, but that it means the decision of the suit by the court. Obviously, therefore, the word "decision" does not mean the reasoning or the basis of the judgment, but the operative portion of the judgment which is ultimately incorporated in the decree that is prepared. Under section 2(2) of the Code a decree is the formal expression of an adjudication which, so far as regards

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

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the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. It follows that when two cross-appeals are separately disposed of, the matters in controversy in the two appeals are distinct and separate and therefore the adjudications of such matters are also distinct and separate. The dismissal of the plaintiff's appeal was therefore an affirmance of the adjudication made by the first court so far as the matter in controversy in the plaintiff's appeal was concerned. Whereas the allowing of the defendants' appeal was a variation of the adjudication of the first court so far as the matter in controversy in that appeal was concerned. It is also possible that sometimes the array of parties in two cross-appeals may not be absolutely identical and the two appeals have therefore to be treated as two separate cases. It therefore seems to me that from the mere fact that a cross-appeal has been allowed and the adjudication varied so far as the matter in controversy in that appeal is concerned, it does not follow that the decision in the other appeal which is dismissed is not one of affirmance. I am of the opinion that the ruling of their Lordships of the Privy Council in *Annapurnabai v. Ruprao* (1) does not even by implication overrule the decision in *Chiranji Lal's case* (2).

It is unnecessary to point out that in some later cases the Calcutta and Bombay High Courts have even expressed the view that in spite of the ruling in *Annapurnabai's case* (1), if the variation is not substantial there is no right of appeal. That view is doubtful, and it is not necessary to express any opinion on it. I would accordingly hold that the applicant is not entitled to appeal to His Majesty in Council as of right. The case is not otherwise a fit one for appeal.

BENNET, J.:—I concur with the opinion expressed by the learned CHIEF JUSTICE.

NIAMAT-ULLAH, J.:—I am of the same opinion. The question is whether the decree passed by this Court

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

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

dismissing the plaintiff's appeal affirmed the "decision" of the trial court. The third paragraph of section 110, Civil Procedure Code, in which the word "decision" occurs, also contains the word "decree" in the first line. It is difficult to hold that the legislature used two different words to convey precisely the same idea. In my opinion the word "decision" on the one hand means something which differs from "judgment" and on the other hand it does not mean "decree". In *Tassaduq Rasul Khan v. Kashi Ram* (1) their Lordships did not hold that the word "decision" should be taken to be equivalent to "decree". They merely held that "decision" is not "judgment". It seems to have been the view of their Lordships that the word "decision" occurring in the corresponding section of the Code of 1882 means "decision of the suit". There is nothing in *Annapurnabai v. Ruprao* (2) to indicate that in that case their Lordships held otherwise. It is true the contention put forward on behalf of the appellant was that the decree, as distinguished from the judgment of the trial court, was interfered with on appeal by the High Court. The judgment of their Lordships is brief, and in upholding the appellant's contention their Lordships have not made any observation which might show that the word "decision" should be taken in the same sense in which the word "decree" is defined in the Civil Procedure Code. The view taken by this Court in *Chiranji Lal v. Behari Lal* (3) does not appear to me to have been in any way affected by the two Privy Council cases referred to above. They did not hold that the word "decision" in section 110 is equivalent to "judgment". Apparently they took the word in the same sense in which their Lordships used it in the case of *Tassaduq Rasul Khan v. Kashi Ram* (1). In my opinion the decision of the suit, so far as it is the subject-matter of the proposed appeal to the Privy Council, is meant

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

(2) (1924) I.L.R., 51 Cal., 969.

(3) (1918) 16 A.L.J., 304.

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by the word "decision" in section 110, and not the decision of the whole suit.

It seems to me that even if the word "decision" be taken to mean "decree" as defined in the Civil Procedure Code, the position is not materially different. A "decree" does not mean the document described as such.

It means the "formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit". If there are several distinct controversies in the suit and the decision of the court is embodied in one document, described as a decree, the adjudication with regard to each matter in controversy is a decree in itself. In that sense one document, described as a decree, may contain several adjudications on several distinct matters and may amount to several "decrees". In this view, if the decree of this Court in the plaintiff's appeal affirmed the trial court's adjudication in respect of the controversy relating to certain advances of money against goods shipped to England by the firm of Patni it should be taken to be a decree, which is distinct from the decree passed by the trial court as regards the controversy relating to another distinct matter. For these reasons, I am of opinion that the decree against which the applicant proposes to appeal to the Privy Council affirms the decision of the court below and the applicant is therefore not entitled to leave as of right.

BY THE COURT:—In our opinion the applicant is not entitled to appeal to His Majesty in Council as of right.