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the result of the investigation. They made further reports to assist the police and their officers came into court and gave evidence. We are satisfied that the prosecution was really at the instance of the Electric Company, although they may not have made the immediate complaint on which the Magistrate took cognizance of the offence. We consider that there is no ground for interference in revision. We reject the application.

APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

MAKUNDI LAL AND OTHERS (PLAINTIFFS) *v.* HASHMAT-UN-NISSA AND OTHERS (DEFENDANTS)*

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Civil Procedure Code, section 109(*c*)—*Appeal to Privy Council —Two connected appeals by different defendants in same suit —Appeals allowed and suit dismissed on a ground common to all defendants—Valuation test for appeal to Privy Council satisfied by one case, but not by the second—"Otherwise fit" case for appeal—Civil Procedure Code, order XLV, rule* 4—*Consolidation of appeals to Privy Council—Appeals arising out of same suit—Consolidation for purposes of security for costs—Jurisdiction—Inherent power.*

Two sets of defendants appealed separately to the High Court against the decree in one suit, and the appeals were connected and heard together and disposed of practically by one judgment. The appeals were decreed, and the suit dismissed, on one ground common to all the defendants. The plaintiff applied for leave to appeal to the Privy Council in both appeals. The valuation of one appeal was above Rs.10,000, so that the appeal lay to the Privy Council as of right, but the valuation of the other was less than Rs.10,000:

Held that in the circumstances it was a fit case for granting a certificate of fitness for appeal to the Privy Council under section 109(*c*) of the Civil Procedure Code.

Held, also, that the High Court had no power to consolidate the two appeals to the Privy Council, either for the purpose of pecuniary valuation or for the purposes of security for costs

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and saving expenses. Order XLV, rule 4 could not apply, because both the appeals had arisen out of one and the same suit and not out of two separate suits. There was no authority for holding that the High Court had any inherent power, beyond the powers given by specific provisions in the relevant rule, to make orders relating to appeals pending before the Privy Council; ordinarily, inherent powers exist as regards matters relating exclusively to the proceedings in the court which exercises such powers. Security for the costs of the respondents must, therefore, be furnished by the appellant for each of the two cases separately.

Mr. *Vishwa Mitra*, for the appellants.

Mr. *P. L. Banerji* and Dr. *K. N. Malaviya*, for the respondents.

SULAIMAN, C.J., and BENNET, J.:—These are two applications for leave to appeal to His Majesty in Council from the decrees of this Court in two appeals which were connected and heard together and disposed of practically by one judgment. A suit was brought by the present appellant for recovery of possession of the property on the ground that he was the next reversioner of the last male owner. The defendants were transferees from a person who was claiming to have been the adopted son of the deceased. The trial court held that the adoption was not proved and accordingly decreed the claim. On appeal this Court held that the adoption had been proved and accordingly dismissed the whole suit. But in this Court two sets of defendants had appealed separately although the decree of the court below was a joint one. No question of legal necessity for the transfer at all arose and therefore the decree of the High Court proceeds on one ground common to all the defendants and the suit was instituted on the basis of one single cause of action. The valuation of one appeal was above Rs.10,000, while that of the other was less than Rs.10,000.

The learned advocate for the respondents takes a preliminary objection that no leave can be granted in the latter case. Strictly speaking order XLV, rule 4 cannot in terms apply to this case because both the appeals

have arisen out of one and the same suit and not out of two separate suits. On behalf of the respondents reliance is placed on the case of *Vaithilinga Mudaliar* v. *Somasundaram Chettiar* (1). But in that case the defendants who had preferred separate appeals in the same suit were transferees under different deeds, and accordingly the claims against the several alienees were based really on different causes of action on account of their separate deeds of transfer. The case therefore is not strictly in point.

There would, however, be jurisdiction in a fit case to grant the necessary certificate under section 109(*c*). The case of *Makund Sarup* v. *Richard Ross Skinner* (2) was somewhat similar to the present case inasmuch as two appeals were filed in this Court arising out of the same suit and were disposed of by one judgment, and the ground on which the Bench had proceeded was a common one. The value of the subject-matter in dispute in one case was in excess of Rs.10,000 but that in the other case was less. The court considered that when the point was a common one it was a fit case for granting the certificate of fitness under section 109(*c*) although the requirements of section 110 of the Civil Procedure Code were not fulfilled. When the matter went up before their Lordships of the Privy Council their Lordships in their judgment in P. C. Appeals Nos. 95 and 97 to 106 of 1911, dated the 4th of March, 1931, did not disapprove of the granting of the certificate in that case. As already pointed out, in the present case the plaintiff has failed on the ground that a certain adoption was established. This is a ground common to all the defendants. It was a mere accident that the two sets of defendants filed two separate appeals. Had they joined in one appeal there would have been no question as to the plaintiff's right to appeal in the whole case. Again if he had instituted separate suits against these sets of defendants and they had been disposed of by one common judgment, there

(1) (1918) I.L.R., 42 Mad., 228. (2) (1910) 5 Indian Cases, 583.

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might have been a consolidation under order XLV, rule 4 of the Civil Procedure Code. We accordingly certify under section 109(*c*) that this case is a fit one for appeal to His Majesty in Council.

As regards the request for the consolidation of these two appeals we have already pointed out that order XLV, rule 4, does not apply to this case. It appears that the Patna High Court in *Har Prasad Rai* v. *Brij Kishen Das* (1) came to the conclusion that they had an inherent power for consolidating appeals to the Privy Council for the purpose of security for costs and to save expenses. Ordinarily inherent powers exist as regards matters relating exclusively to the proceedings in the court which exercises such powers. We find no authority for holding that we have inherent power to make orders relating to appeals pending before their Lordships of the Privy Council when there is no specific provision in the rule and when the relevant rule is confined to particular cases. In any case, as the defendants respondents are different and they may engage different counsel, we see no reason why the appellant should not be called upon to furnish security for the costs of the respondents in each of these cases separately. We accordingly refuse the prayer for consolidating the two appeals.

We see no reason to allow the appellants to furnish security otherwise than in cash.

MISCELLANEOUS CIVIL.

Before Mr. Justice Collister and Mr. Justice Bajpai

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COMMISSIONER OF INCOME-TAX *v.* MUHAMMAD ASLAM*

Income-tax Act (*XI of* 1922), *section* 3—"*Association of individuals*"—*Co-owners of income-producing property who have appointed a common collecting agent—Whether taxable as an* "*association*".

*Miscellaneous Case No. 335 of 1934.

(1) (1918) 45 Indian Cases, 551.