

MISCELLANEOUS CIVIL.

Before Mr. Justice Wazir Hasan.

USUF ALI BEG AND OTHERS (APPLICANTS) v. NATHU
AND OTHER (OPPOSITE PARTY).*

1926
February, 4

Oudh Courts Act (IV of 1925) section 12(2)—Judge's discretion to declare a case as fit one for further appeal—Certificate for fitness, when to be granted—Interpretation of a deed, whether a good ground to grant certificate.

Held, that under the provisions of sub-section (2) of section 12 of the Oudh Courts Act, 1925, a Judge is invested with discretion in the matter of his powers to declare or not to declare "that the case is a fit one for appeal" but obviously, that discretion must not be exercised arbitrarily but only on judicial grounds. A Judge should declare a case to be a fit one for further appeal if he is satisfied that the decision, for which a further appeal is proposed to be preferred, is (1) opposed to any general principle of law or (2) it involves a question of public interest or (3) is contrary to any recognized precedent.

Where a decision turned upon the interpretation of a particular deed of sale and the rule of interpretation on which the Judge acted was a well understood rule, *held*, that the case was not one which should be declared fit for further appeal.

Saiyid *Ali Mohammad*, for the applicant.

HASAN, J. :—This is an application asking for a declaration that the case to which it relates is a fit one for further appeal under the provisions of sub-section (2) of section 12 of the Oudh Courts Act, 1925.

Under those provisions the Judge is invested with a discretion in the matter of his powers to declare or not to declare "that the case is a fit one for appeal." Obviously this discretion must not be exercised arbi-

* Civil Miscellaneous Application No. 78 of 1926, under section 12 (2) of the Oudh Courts Act (IV of 1925) for a declaration that Second Civil Appeal No. 200 of 1926, decided by Mr. Justice WAZIR HASAN on the 11th of February, 1926, is fit for further appeal.

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trarily, but only on judicial grounds. I should be prepared to make the declaration that the case is a fit one for further appeal if I were satisfied that the decision from which a further appeal is proposed to be preferred is (1) opposed to any general principle of law, or (2) it involves a question of public interest or (3) is contrary to any recognized precedent. The present case does not fall under any of those heads. My decision turns upon the interpretation of a particular deed of sale and the rule of interpretation on which I have acted is a well understood rule.

I wish to guard myself against being understood that I lay down in this decision any exhaustive list of grounds on which a certificate of fitness for further appeal may be granted under the provisions referred to above.

The application is rejected.

Application rejected.

APPELLATE CIVIL.

*Before Mr. Justice Ashworth and Mr. Justice
 Gokaran Nath Misra.*

1926
 March, 2.

MUNICIPAL BOARD, LUCKNOW (DEFENDANT-APPELLANT)
 v. DEBI DAS (PLAINTIFF-RESPONDENT).*

United Provinces Municipalities Act (II of 1916), sections 96, 97, and 326—Contracts requiring sanction of the Municipal Board, whether enforceable without such sanction—Board noting proceeding of a sub-committee, whether amounts to "sanction"—Contract bearing only one of two required signatures, how far binding—Unenforceable contract, whether becomes enforceable by acquiescence or part performance—Contract Act (IX of 1872), sections 65 and 70, scope of—Benefit received under an unenforceable

* First Civil Appeal No. 32 of 1924, against the decree, dated the 6th of March, 1924, of Bishambhar Nath Misra, Subordinate Judge of Lucknow, decreasing plaintiff's suit.