

PRIVY COUNCIL.

[On Appeal from the Chief Court of Oudh at
Lucknow.]

RAGHUNATH PRASAD SINGH AND ANOTHER (PETITIONERS) v. DEPUTY COMMISSIONER of PARTABGARH AND OTHERS (RESPONDENTS).*

P. C.
1927
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17.

Civil Procedure Code (Act V of 1908), section 110—Appeal to Privy Council—“Some substantial question of Law,” meaning of.

Where a decree of the High Court affirms the decree of the lower Court, section 110 of the Code of Civil Procedure, 1908, makes it one of the conditions to the right of appeal to the Privy Council given by section 109 that the appeal shall involve “some substantial question of law”; those words do not mean that the question of law involved must be of general importance, the condition is satisfied if there is a substantial question of law between the parties.

Semble:—*Udairaj Singh v. Bhagwan Baksh Singh* (1), and *Sartaj Kuar v. Mahadeo Baksh* (2), overruled.

PETITION for special leave to appeal from a decree of the Chief Court of Oudh (27th April, 1926) affirming a decree of the Subordinate Judge of Partabgarh (22nd April, 1924).

In 1922 Jagdeo Singh, the father of the petitioners, instituted a suit against the respondents, claiming title to a large estate in Oudh. The plaintiff claimed under the will of Raja Ajit Bahadur Singh, upon the death in 1921 of Raja Partab Bahadur Singh, whom the plaintiff contended took only a life estate under the will. The defendants represented transferees and devisees of Raja Partab Bahadur, whom they contended took an absolute interest under the will.

* *Present*:—Viscount DUNEDIN, Lord DARDING, Sir JOHN WALLIS and Sir LANGLLOT SANDERSON.

(1) (1907) 10 O.C., 308.

(2) (1926) 3 O.W.N., 557.

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The Subordinate Judge held that the will conferred an absolute interest on Raja Partab Bahadur, and dismissed the suit.

On appeal the Chief Court affirmed the decision. The learned Judges in their judgments discussed at length the legal effect of the dispositions made by the will, considering the principles laid down in various decisions.

The plaintiff applied to the Chief Court for a certificate to enable him to appeal to the Privy Council. As the Chief Court had affirmed the lower Court, it was necessary under section 110 of the Code of Civil Procedure that the appeal should involve "some substantial question of law."

During the pendency of the application the plaintiff died, and the present petitioners were substituted for him.

The application was dismissed. The learned Judges, after pointing out that the only question of law arising was as to the true construction of the will, said: "That, to our minds, is not a 'substantial question of law,' though it is a question of law. It is not alleged that any recognised principle applicable to the construction of a document of the nature of the present will has been misunderstood or misused by this Court, nor does our decision lay down any general principle of construction. The construction which we have placed upon the will in question is of no interest to any person outside the parties to this litigation. The old Court of the Judicial Commissioner of Oudh, to which the Court has succeeded, consistently adhered to the view that the words 'substantial question of law' means a question of general importance, and do not include the construction of a document in which the parties alone are

interested." The learned Judges referred to *Udairaj Singh v. Bhagwan Baksh Singh* (1), which they stated was supported by two decisions of the Board, namely, a decision merely noted at 11 Calc., W. N. ccxviii, and *Moti Chand v. Ganga Prosad* (2), which however was in relation to the grant of leave under the prerogative, not to the meaning of the words in the Code (3). The learned Judges added that the view now expressed by them had been adopted by the Full Bench of their Court in *Sartaj Kuar v. Mahadeo Baksh* (4), and by the High Court at Allahabad in *Bishambhar Nath v. Muhammad Ubaidullah Khan* (5).

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The petition was for special leave to appeal, that being, according to the practice of the Judicial Committee, the proper procedure, although it was contended that a statutory right of appeal under the Code had wrongly been denied.

1927. Feb. 17. *Dunne, K.C.*, and *Jopling*, for the petitioners.

DeGruyther, K.C., and *Wallach*, for the respondents.

The judgment of their Lordships was delivered by Viscount Dunedin:—

This petition for special leave to appeal really turns on whether the matter falls within the last clause of section 110 of the Code of Civil Procedure. That section provides that where, as here, the stake is over Rs. 10,000, then "where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial

(1) (1907) 10 O.C., 308.

(2) (1901) I.L.R., 24 All. 174;
I.R., 29 I.A., 40.

(3) The distinction was recognized in *Thillai Chetty v. Shau-muganatham Pillai* (1922), W.N. 7 A.M.T.

(4) (1926) 3 O.W.N., 557.

(5) (1923) I.L.R., 46 All., 227.

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question of law." Admittedly here the decision of the Court affirmed the decision of the Court immediately below, and, therefore, the whole question turns upon whether there is a substantial question of law. There seems to have been some doubt, at any rate in the old Court of Oudh, to which the present Court succeeded, as to whether a substantial question of law meant a question of general importance. Their Lordships think it is quite clear—and indeed it was conceded by Mr. DeGruyther—that that is not the meaning, but that "substantial question of law" is a substantial question of law as between the parties in the case involved.

Mr. DeGruyther has really tried to show the Board that there is no substantial question of law by more or less taking up the merits of the case and showing that the decision is obviously right. Their Lordships do not think that they would be quite safe in taking that view in a case which certainly occupied the Court below for a very long time, and on which there is a very elaborate judgment; they think that upon the face of the matter there is, as between the parties, a substantial question of law.

Their Lordships will therefore humbly advise His Majesty that leave to appeal should be granted in this case.

Solicitors for the petitioners: *Barrow, Rogers and Nevill.*

Solicitor for the respondents: *Solicitor, India Office.*