ABDUL QADIR, J.—I concur. This appeal will be accepted, the appellants will be released and the fine, if paid, will be refunded.

Appeal accepted.

PRIVY COUNCIL.

FULL BENCH.*

CHHAJJU RAM (DEFENDANT)—*Appellant,*

versus

NEKI AND OTHERS (PLAINTIFFS)—*Respondents.*

Privy Council Appeal No. 77 of 1921.

(Chief Court Appeal No. 2789 of 1914 and Review No. 45 of 1918.)

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Code of Civil Procedure, Act V of 1908, *Order XLVII, rules* 1, 5—*Review—Limits of Jurisdiction—"Any other sufficient reason"—Constitution of Court.*

Order XLVII, rule 1 of the Code of Civil Procedure, 1908, must be read as in itself definitive of the limits within which review of a decree or order is now permitted, and the words "any other sufficient reason" mean a reason sufficient on grounds at least analogous to those specified immediately previously. A Court hearing an application for a review of a decree made on appeal has therefore no power to order a review upon the ground that the decision was wrong on the merits.

Further, under rule 5 of the Order it is fatal to the validity of proceedings in review if a judge other than the judge or judges who made the decree, or order is a member of the Court which hears the application for review.

Nusseerooddeen Khan v. *Indurnarain Chowdhry* (1) and *Roy Megiraj* v. *Beejoy Gobind Burral* (2) referred to.

Judgments of the Chief Court passed on review reversed.

Appeal from two judgments of the Chief Court of the Punjab, dated July 22, 1918, and December 11, 1918, and a decree of that Court of the latter date, which affirmed a decree of the Subordinate Judge of Hissar.

*Present: Viscount Haldane, Viscount Cave, Lord Dunedin, Lord Shaw, Lord Phillimore, Sir John Edge and Mr. Ameer Ali.

(1) (1866) 5 W. R. 98 (F. B.) (2) (1875) I. L. R. 1 Cal. 197.

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Upon the appeal coming on for hearing it appeared from the argument on behalf of the appellant, the respondents not being represented, that an important question of procedure arose, namely as to the limits. The hearing was accordingly ordered to be adjourned and to take place before a full Board. The circumstances giving rise to the question, and the terms of Order XLVII, rules 1 and 5, appear from the judgment. The argument upon the adjourned hearing was confined to the question of procedure, and was as follows.

Sir George Lowndes, K. C. and *Dube* for the appellant—The Division Bench had no jurisdiction to order a review on the ground that they did, namely, that the judgment on appeal "proceeded upon an incorrect exposition of the law." The jurisdiction of the Court upon the application arose solely under Order XLVII of the Code of Civil Procedure, 1908. Rule 1 of that order specifies certain grounds upon which a review may be ordered, and the Court held that the only specified grounds alleged did not arise. The words "or for any other sufficient reason" in the rule must, according to well established principles of construction, be read as adding only grounds *ejusdem generis* with those specified: *Sandiman* v. *Breach* (1), *Reg.* v. *Cleworth* (2), *Thames and Mersey Marine Insurance Co.* v. *Hamilton, Fraser & Co.* (3), *Tillmanns & Co.* v. *Knutsford* (4).

The '*genus*' here is something in the nature of an accidental omission or mistake, not an error in law on the part of the Court.

The jurisdiction in applications for review is widely different from that on an appeal; a contrary view would lead to inconvenient results. A consideration of the numerous decisions or of the practice in India on applications for review under the enactments in force before the Code of 1908 shows that although in some cases the Indian Courts have expressed a view contrary to that now contended for, the weight of judicial decision supports the appellant. It is to be

(1) (1827) B. & C. 96, 106.
(2) (1864) 4 B & S. 927.
(3) (1887) 12 App. Cas. 484, 490.
(4) (1908) 2 K. B. 385, 401: (1908) A. C. 406.

observed that the terms of Act VIII of 1859 were wider than those of the succeeding Codes of Civil Procedure.

[Reference was made to: Bengal Regulation XXVI of 1814, section 4, *Moheshur Singh* v. *Bengal Government* (1); Act VIII of 1859, sections 376, 378, *Nusseerooddeen Khan*, v. *Indurnarain Chaudhry* (2), *Nobeen Kishen Mookerjee* v. *Shib Pershad Pattuck* (3), *Koh Poh* v. *Moung Tay* (4), *Montoora* v. *Ablack Roy* (5), *Chinta Monee Paul* v. *Pearee Mohun Mookerjee* (6), *Wise* v. *Huro Lall Giree* (7), *Jadub Ram Deb* v. *Ram Lochun Muddock* (8), *Koleemooddeen Mundul* v. *Heerun Mundul* (9), *Banee Modhub Bose* v. *Kalee Churn Singh* (10), *Ellem* v. *Basheer* (11), *Roy Meghraj* v. *Beejoy Gobind Burral* (12), *Raman* v. *Kurunatta Tharakan* (13), *Mahadeva Rayar* v. *Sappani* (14), *Reasat Hossein* v. *Abdulla* (15); Act X of 1877, section 623, *Sheo Ratan* v. *Lappu Kuar* (16); Act XIV of 1882, section 625, *Vellaya* v. *Jaganatha* (17), *Amir Hasan* v. *Ahmad Ali* (18), *Gopal Chandra* v. *Solomon* (19), *Gangapershad Sahu* v. *Maharani Bibi* (20), *Sharup Chand Mala* v. *Pat Dassee* (21), *Muhammad Yusáf Khan* v. *Abdul Rahman Khan* (22), *Suleman Hussain* v. *New Oriental Bank* (23), and *Kotaghiri Venkata Rao* v. *Vallanki Venkatarama Rao* (24)].

Further the order was also invalid because of the constitution of the Court. One of the judges who heard the application was not one of those who had made the decree. That is contrary to the concluding words of Order XLVII, rule 5. Similar words in section 627 of the

(1) (1859) 7 Moo. I. A. 283, 304.
(2) (1866) 5 W. R. 93 (F. B.)
(3) (1868) 9 W. R. 161.
(4) (1868) 10 W.R. 143.
(5) (1869) 11 W. R. 197.
(6) (1871) 15 W. R 1 (F. B.).
(7) (1871) 16 W. R. 150.
(8) (1873) 19 W. R. 190.
(9) (1875) 24 W. R. 186.
(10) (1875) 24 W. R. 387.
(11) (1875) I. L. R. 1 Cal. 184.
(12) (1875) I. L. R. 1 Cal. 197.
(13) (1876) I. L. R. 2 Mad. 11.
(14) (1878) I. L. R. I Mad. 396.
(15) (1876) I. L. R. 2 Cal. 131 : L. R. 3 I. A. 221.
(16) (1882) I. L. R. 5 All. 14.
(17) (1883) I. L. R. 7 Mad. 307.
(18) (1886) I. L. R. 9 All. 36.
(19) (1886) I. L. R. 13 Cal. 62.
(20) (1884) I. L. R. 11 Cal. 379 : L. R. 12 I. A. 47.
(21) (1887) I. L. R. 14 Cal. 627.
(22) (1889) I. L. R. 16 Cal. 749 : L. R. 16 I. A. 104.
(23) (1890) I. L. R. 15 Bom. 267, 274.
(24) (1900) I. L. R. 24 Mad. 1 : L. R. 27 I. A. 197.

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Code of 1882 were rightly construed by the High Court at Calcutta as being imperative: *Aubhoy Churn* v. *Shamont Lachun* (1).

The respondents did not appear.

Feb. 27th.—The judgment of their Lordships was delivered by—

VISCOUNT HALDANE—This appeal is brought from two judgments of the Chief Court of the Punjab and a decree following on them, which affirmed a decree of the Subordinate Judge of Hissar. In the litigation out of which the appeal arises the respondents were plaintiffs. They claimed to have validly exercised a right of pre-emption over certain lands which the respondent Mrs. Forbes, who was made a defendant only formally, had sold to the appellant. Into the details of the transaction it is not necessary to enter at great length, for their Lordships are of opinion that the case must be disposed of on a principle governing procedure which will appear presently. It is sufficient to state that Mrs. Forbes sold to the appellant her proprietary rights in the subject matter of the suit, two villages called Mauza Kagsar and Mauza Jamni Kera, by a deed of sale on 2nd October, 1912. The price, Rs. 42,000, was paid, and the appellant took possession. Shortly afterwards the respondents other than Mrs. Forbes sued the appellant to set aside the sale and for a decree for possession of the former of the two mauzas on payment of Rs. 15,000. They claimed that they were Gaur Brahmans by caste, and were occupancy tenants of that village and members of an agricultural tribe of the village within the meaning of the Alienation of Land Act, XIII of 1900 of the Punjab. They further alleged that no formal notice or information had been given to them of the proposed sale of the village, which sale had been completed secretly and collusively, and that they were entitled to a right of pre-emption. Among other defences raised by the appellant was this, that in reality the plaintiff-respondents were suing on behalf of third persons who had no right to purchase the village, and that in consequence no such right of pre-emption could be asserted on the part of the persons suing.

(1) (1889) I. L. R. 16 Cal. 788, 792.

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The learned Subordinate Judge tried a number of issues in the suit, which raised, among others, the question whether the plaintiffs were suing for their own benefit and had a right of pre emption. In the end he found in favour of the plaintiffs on all the material issues, including those raising the questions just referred to. The present appellant then appealed to the Chief Court of the Punjab. A Division Bench of that Court, consisting of Scott-Smith and Leslie-Jones, JJ., reversed the judgment of the Subordinate Judge, holding that the plaintiffs' claim for pre-emption was really one on behalf of third persons who had no such right. They had allowed, as an additional ground of appeal, the contention to be brought before them that the suit had been instituted in the interests of third persons who were non-agriculturists and had on that account no right of pre-emption, and had given leave to the defendant to adduce further evidence on the point, including the records of certain proceedings. In the result they allowed the appeal, holding that because the plaintiffs were not suing for themselves alone, but for themselves in conjunction with other persons, their claim to pre-emption was not maintainable. The plaintiffs then applied, under Order XLVII, rule I, of the Code of Civil Procedure 1908, for a review of the judgment of the Division Bench, on the ground that the Division Bench ought not to have admitted the additional ground of appeal, and that the learned Judges were misled into holding that the facts found by them disentitled the plaintiffs to a decree.

The application for review came before the same Chief Court, not constituted as before but differently. At the second hearing the Division Bench was made up of Wilberforce, J., another Judge of the Chief Court, and Scott-Smith, J., who had sat at the previous hearing. These learned Judges held that the previous Division Bench was right in admitting the additional evidence, especially as no objection had been taken by the plaintiffs to its admission, and that that Bench did right in considering it. But the second Division Bench thus newly constituted then proceeded to deal on the merits with the judgment brought before them under the Code for review, treating the view of the law taken by the previous Division Bench as matter

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that was open to them as if on an appeal. They held that the previous decision of the case had "proceeded upon an incorreet exposition of the law." Accepting on this ground the application for review, they directed the "appeal to go before the Bench for their decision." In accordance with this direction the case was heard by a Division Bench of the Chief Court constituted of Wilberforce, J. and another Judge who had not previously heard it, leRossignol, J. These learned Judges considered certain other grounds of appeal which had not been decided by Scott-Smith and Leslie-Jones, JJ., being immaterial in the view which they had taken. They decided these points adversely to the appellants and then followed the decision of Wilberforce and Scott-Smith, JJ., at the second hearing by the Chief Court, and dismissed the appeal.

It will be observed that the question with which their Lordships have to deal is one concerned not with appeal to a Court of Appeal, but with review by the Court which had already disposed of the case. In England it is only under strictly limited circumstances that an application for such a review can be entertained. In India, however, provision has for long past been made by legislation for review in addition to appeal. But as the right is the creation of Indian statute law, it is necessary to see what such statutory law really allows.

The law applicable to the present case is laid down by Order XLVII, Rule I of the Code of Civil Procedure, 1908. This rule is enacted in the following terms:—

"Any person considering himself aggrieved, (*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (*b*) by a decree or order from which no appeal is hereby allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

By rule 5 of the same order it is provided that—

"Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied

for, continues or continue attached to the Court at the time when an application for the review is presented, and is not or are precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same."

Their Lordships observe that Wilberforce, J. was not one of the Judges who passed the decree or made the order reviewed. They understand that Leslie-Jones, J., was precluded by absence from sitting. But this circumstance makes no difference to what is prescribed by Rule 5. It is clear that Wilberforce, J., was precluded by the language from hearing the application, and this in itself would be a fatal objection to the judgment in review. The Court of Review had to be composed of Scott-Smith, J. alone, a circumstance not without importance for the large considerations which follow.

But larger considerations present themselves. The Order re-enacts with important variations legislation on the subject of review which has been in operation for a long time past.

If their Lordships felt themselves at liberty to construe the language of Order XLVII of the Code of Civil Procedure, 1908, without reference to its history and to the decisions upon it, their task would not appear to be a difficult one. For it is obvious that the Code contemplates procedure by way of review by the Court which has already given judgment as being different from that by way of appeal to a Court of Appeal. The three cases in which alone mere review is permitted are those of new material overlooked by excusable misfortune, mistake or error apparent on the face of the record, or "any other sufficient reason." The first two alternatives do not apply in the present case, and the expression "sufficient," if this were all, would naturally be read as meaning sufficiency of a kind analogous to the two already specified, that is to say, to excusable failure to bring to the notice of the Court new and important matters, or error on the face of the record. But before adopting this restricted construction of the expression "sufficient," it is necessary to have in mind, in the first place, that the provision as to review was not introduced into the Code for the first time in 1908, but appears

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there as a modification of previous provision made in earlier legislation; and, in the second place, that the extent of the power of a Court in India to review its own decree under successive forms of legislative provision has been the subject of a good deal of judicial interpretation, not, however, in all cases harmonious. That the power given by the Indian Code is different from the very restricted power which exists in England appears plain from the decision in *Charles Bright and Co.* v. *Sellar* (1) where the Court of Appeal discussed the history of the procedure in England and explained its limits.

Turning first to the earlier forms assumed in Indian legislation on the matter in question, their Lordships observe that the Bengal Regulation XXVI of 1814, by section 2, confers on the Courts there mentioned a power of review analogous to that under consideration, excepting that the expression "otherwise requisite for the ends of justice" is added, an expression which may have been regarded as enlarging the scope of the word "sufficient," used as it was in much the same way as in the present Code. The expression "requisite for the ends of justice" is again introduced in section 8 of the Code of the Civil Procedure of 1859. But in the Code of 1877 the language is varied, and the law is enacted in substantially the more restricted words in which it is enacted in the Code of 1908. Upon the construction of the language used from time to time by the legislature, there has been much divergence of judicial opinion. For example; even on the wider words in the Code of 1859, the High Court at Calcutta in the case of *Roy Meghraj* v. *Beejoy Gobind Burral* (2) adopted the restricted construction, and laid down emphatically that there could be no rehearing for the purpose of seeing whether a different conclusion on the merits should be adopted. On the other hand in *Nusseerooddeen Khan* v. *Indurnarain Chowdhry* (3) the majority of the Court appear to have considered that the wider meaning should be attributed to the language.

Their Lordships have examined numerous authorities, and they have found much conflict of judicial opinion on the point referred to. There is plainly no

(1) (1904) 1 K.B. 6. (2) (1875) I.L.R. 1 Cal. 197.
(3) (1866) 5 W.R. 93.

such preponderance of view in either direction as to render it clear that there is any settled course of decision which they are under obligation to follow. Some of the decisions in the earlier cases may have been influenced by the wider form of expression then in force, and these decisions may have had weight with the learned Judges who, in cases turning on the subsequent Code, had regarded the intention of the legislature as remaining unaltered. But their Lordships are unable to assume that the language used in the Codes of 1877 and 1908 is intended to leave open the questions which were raised on the language used in the earlier legislation. They think that Rule 1 of Order XLVII must be read as in itself definitive of the limits within which review is to-day permitted, and the reference to practice under former and different statutes is misleading. So construing it they interpret the words "any other sufficient reason" as meaning a reason sufficient on grounds at least analogous to those specified immediately previously. Such an interpretation excludes from the power of review conferred the course taken by the second and third Division Benches, composed of Wilberforce, J. and Scott-Smith, J., and by Wiberforce, J. and leRossignol, J., respectively. The result is that the judgments given by these two Division Benches ought to be set aside, and that of the Bench of the Chief Court composed of Scott-Smith, J., and Leslie-Jones, J. restored, so that the suit will stand dismissed. The respondent-plaintiffs must pay the costs here and in the Courts below.

Their Lordships will humbly advise His Majesty accordingly.

Appeal accepted.

Solicitors for appellant :—*T. L. Wilton & Co.*