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effect that the land in dispute would now fetch a rent of Rs. 700 to Rs. 1,000 per annum which stands unrebutted. Although this may be an exaggerated estimate of the rent, the amount fixed by the learned District Judge at Rs. 100 per annum does not appear to be excessive for a building site situated in a Mandi.

I would accordingly dismiss the appeal with costs. The defendants are given a further period of three months from this date to remove the materials of the building.

TEK CHAND J.—I concur. TEK CHAND J.

N. F. E.

Appeal dismissed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Addison and Mr. Justice Bhide.

FEROZE DIN KHAN AND OTHERS (DEFENDANTS) Petitioners

versus

NAWAB KHAN AND OTHERS (PLAINTIFFS) Respondents.

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Feb. 21.

Civil Miscellaneous No. 504 of 1927.

Civil Procedure Code, Act V of 1908, section 110—Substantial question of law—meaning of—test applicable to—question of law definitely settled by Privy Council—whether substantial question of law—or the case a fit one for leave to appeal to Privy Council within section 109 (c) Civil Procedure Code, Act V of 1908.

Held, that a question of law in order to be a substantial question of law within the meaning of section 110, Civil Procedure Code, must be a question of law in respect of which there may be a difference of opinion.

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Gokal Chand v. *Sanwal Das* (1), and *Purshottam Saran* v. *Hargu Lal* (2), followed.

Where in a petition for leave to appeal to His Majesty in Council the subject matter of the suit was more than Rs. 10,000 and the High Court affirmed the decision of the trial Court, and therefore the only question to be determined was whether there was a substantial question of law involved in the case:—

Held, that the certificate for leave to appeal could not be granted as the question involved, whether, if the marriage of the mother has been positively disproved, the acknowledgment by the father is sufficient for the legitimation of a son, having been definitely settled by their Lordships of the Privy Council, was not a substantial question of law within the meaning of section 110, Civil Procedure Code.

Muhammad Allahdad Khan v. *Muhammad Ismail Khan* (3), *Ghazanfar Ali Khan* v. *Kaniz Fatima* (4), and *Habibur Rahman* v. *Altaf Ali* (5), referred to.

Nor was the case a fit one for granting a certificate for leave to appeal to Privy Council within the meaning of section 109 (*c*) of the Civil Procedure Code, as the question had already been settled by the Privy Council.

Application for leave to appeal to His Majesty in Council from the judgment of Mr. Justice Addison and Mr. Justice Johnstone, dated the 27th June 1927.

MOTI SAGAR, for Petitioners

BADRI DAS AND KAKIR CHAND, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—This is a petition for leave to appeal to His Majesty in Council under sections 109 (*c*) and 110, Civil Procedure Code. The subject

(1) (1924) I. L. R. 5 Lah. 260. (3) (1888) I.L.R. 10 All. 289 (F. B.).
(2) (1921) I. L. R. 43 All. 513. (4) (1910) I.L.R. 32 All. 345 (P. C.).
(5) (1921) I. L. R. 48 Cal. 856 (P. C.).

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matter of the suit is over Rs. 10,000, and the decision of this court affirmed the decision of the trial Court. Therefore, so far as section 110 is concerned it has only to be decided whether there is a substantial question of law involved.

It has been held that the petitioners were acnowledged by their father to be his sons but, that it has been proved that at the time of their birth their mother was not married to their father but was then a prostitute.

It was conceded before us by the petitioners' counsel that the only question of law which can be called substantial is the question whether, if the marriage of the mother has been positively disproved, the acknowledgment by the father is sufficient. It was contended on behalf of the respondents that this was not a substantial question of law as the law has been clearly stated already by their Lordships of the Privy Council and no authority against the view taken by the Privy Council has been quoted.

The question came before a Full Bench of the Allahabad High Court in *Muhammad Allahdad Khan* v. *Muhammad Ismail Khan* (1), where Mahmud J. observed that a child. whose illegitimacy is proved beyond doubt, by reason of the marriage of its parents being either disproved or found to be unlawful, cannot be legitimatised by acknowledgment. This view has prevailed ever since and it has not been shown to us that any jurist has ever taken the other view. Acknowledgment by the father gives rise to a presumption of fact that there was a marriage between the parents and thus it may be rebutted by positive proof that there was no marriage between the

(1) (1888) I. L. R. 10 All. 289 (F.B.).

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parents. This question was before their Lordships of the Privy Council in the case of *Ghazanfar Ali Khan* v. *Kaniz Fatima* (1). In it the appellant's success depended upon his proving his status as the legitimate son of his parents. There was no evidence of marriage between the parents and it was held that the presumption of marriage which might have arisen from their prolonged cohabitation did not apply, because the mother before she was brought to the father's house was admittedly a prostitute. It was further held that in these circumstances instances of the alleged acknowledgment by the father of the mother as his wife and the fact that the appellant's two sisters were married to respectable men with due formalities were insufficient to affect the question favourably for the appellant. The matter came directly before their Lordships of the Privy Council again in *Habibur Rahman* v. *Altaf Ali* (2), where it was laid down that under Muhammadan Law no statement made by a man that another, proved to be illegitimate, is his son can make that other legitimate. That authority applies fully to the present case and must be held to be the law. An acknowledgment gives rise only to a rebuttable presumption that there was a marriage between the parents.

It was held by this court in *Gokal Chand* v. *Sanwal Das* (3), that a question in order to be a substantial question of law must be a question of law in respect of which there may be a difference of opinion. These same words were used by a Division Bench of the Allahabad High Court in the case of *Purshottam Saran* v. *Hargu Lal* (4). The

(1) (1910) I.L.R. 32 All. 345 (P.C.). (3) (1924) I. L. R. 5 Lah. 260.
(2) (1321) I.L.R. 48 Cal. 856 (P.C.). (4) (1921) I. L. R. 43 All. 513.

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only question of law in the present case being one which has been definitely settled by their Lordships of the Privy Council while there is no authority of any kind indicating that the other view was ever taken or held, in our opinion the question of law raised before us is not a substantial question of law as there can be no difference of opinion about it.

Obviously a certificate cannot be given in order to contest the facts, for this court affirmed the order of the trial court and took substantially the same view of the facts. From those facts no substantial question of law arises and therefore no leave to appeal to His Majesty in Council can be given. This was also the view taken by the Punjab Chief Court in Mussammat *Surasuti* v. *Eshri Pershad* (1).

Some attempt was made to argue that it was otherwise a fit case for appeal to His Majesty in Council under section 109 (*c*), Civil Procedure Code. This is obviously not the case, as the question has been already before their Lordships of the Privy Council. It cannot, therefore, be said that it is otherwise a fit case for appeal to them.

We dismiss the petitioner with costs to the plaintiffs respondents only.

A. N C.

Petition dismissed.

(1) 61 P. R. 1900.