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that because that possession had originally commenced under a tenancy, it must have continued under that title on the day when the plaintiff purchased the land.

On this ground, therefore, we are of opinion that the decree of the lower Appellate Court should be reversed and the plaintiff's claim rejected with costs throughout on him.

Decree reversed.

ORIGINAL CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1903.
March 20.

THE BOMBAY BURMAH TRADING CORPORATION, LIMITED, PETITIONERS, *v.* DORABJI CURSETJI SHROFF, OPPONENT.

Privy Council—Application for leave to appeal—Companies Memorandum of Association Act (XII of 1895), sections 9 and 10—Appeal against order passed under the Act—Test of pecuniary sufficiency or substantial question of law—Civil Procedure Code (Act XIV of 1882), sections 594, 595 and 647—Case otherwise fit for appeal—Practice—Procedure.

A petition by a Company for the confirmation of a special resolution altering the Memorandum of Association was dismissed by the High Court.

The Company desired to appeal to His Majesty in Council. Leave to appeal was opposed on three grounds: (1) that no appeal lay under the Memorandum of Association Act or Companies Act; (2) that the pecuniary test was not satisfied; (3) that there was no substantial question of law.

Held, that the order dismissing the petition was a "decree" within the definition of that term contained in section 594 of the Code.

Held, as to objections (2) and (3), that the only question was whether the case was a fit one for appeal to the King in Council within the meaning of clause (*b*) of section 595.

Held, further, that having regard to the fact that the commercial and financial position of the Company might be seriously affected by the questions at issue, and to the importance to Indian Companies generally of having such rights precisely defined, the case ought to be certified as a fit one for appeal to His Majesty in Council.

Held, further, that the proceedings fell within Chapter XLV of the Civil Procedure Code.

APPLICATION by the above Company for leave to appeal to the Privy Council.

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A petition by the Company for the confirmation of a special Resolution altering the Memorandum of Association was dismissed by the High Court (see *supra*, page 113). From that decision the Company desired to appeal to the Privy Council.

The petition for leave set forth the facts, the decision of the High Court and the grounds of appeal therefrom, and stated that a substantial question of law was involved. The prayer was as follows:

7. Your petitioners, therefore, pray that Your Lordship will be pleased—

(*a*) to declare that this case is a fit one for appeal to His Majesty in Council (and that there is a substantial question of law to be decided); and

(*b*) to admit their petition and to transmit to His Majesty in Council under the seal of this Honourable Court a correct copy of the record so far as is material to the questions in dispute herein.

Lowndes for the Company applied for leave to appeal in accordance with the prayer of the petition.

Branson for the opponent:—No appeal lies to the Privy Council from a decision of this Court in cases decided under the Companies Act. The English rule of law is that there is no appeal unless the right to appeal is expressly given, and where no right of appeal is given, leave to appeal cannot be granted. The only sections of the Companies Act dealing with the point are sections 58 and 169. No other appeal is given. See also Act XII of 1895. Sections 9 and 10 of this latter Act seem to show that no appeal to the Privy Council was contemplated. He also cited *Attorney General* v. *Sillem* (1); *Minakshi* v. *Subramanya* (2); *Narayan* v. *Secretary of State* (3); *Jamiyatram* v. *Gujarat Trading Company* (4); Safford and Wheeler's Privy Council Practice, Part III, Chapter 2. Next, is this a fit case for appeal? See *Moti Chand* v. *Ganga Prasad* (5); *Karuppanan* v. *Srinivasan* (6); *Mirza* v. *Abdul Latiff*.(7)

Lowndes in reply:—A right of appeal is given by the High Court Charter. The only question is whether the decision from

(1) (1864) 10 H. L. C. 704.
(2) (1887) 11 Mad. 26.
(3) (1895) 20 Bom. 803.
(4) (1869) 6 Bom. H. C. R. 185 (A. C.)
(5) (1901) 24 All. 174, 177.
(6) (1901) 29 Ind. Ap. 40; 25 Mad. 215.
(7) (1875) 12 Bom. H. C. R. 8.

which an appeal is sought is a final judgment under clauses 15 and 39 of the Charter. It does not matter whether the Acts give an appeal or not. *Jamiyatram* v. *The Gujarat Trading Company*[1] was prior to the Charter. He also referred to *In re West Hopetown Tea Company*[2]; *Mirza* v. *Abdul Latiff*[3]; *Lutf Ali* v. *Asgur Reza*.[4]

JENKINS, C.J. :—In October, 1902, this Bench dismissed a petition, presented under the Indian Companies (Memorandum of Association) Act (XII of 1895), on the ground that no such resolution as the law requires has been passed. From this order the Company desires to appeal to His Majesty in Council.

In opposition to the application it was urged before us by Mr. Branson, first, that no appeal lay under the Memorandum of Association Act or under the Companies Act; secondly, that the pecuniary test had not been satisfied; and thirdly, that there was no substantial question of law.

To the first of these objections the answer appears to me to be that if there has been a decree, then there is a right of appeal under the Code of Civil Procedure, subject to the conditions thereby prescribed. Section 594 of the Code, which is in the chapter regulating appeals to the King in Council, provides that in that "chapter, unless there be something repugnant in the subject or context, the expression 'decree' includes also judgment and order." It seems to me clear that our order of October last falls within this definition of a "decree."

The other objections are, no doubt, of weight where they are applicable, but here we have to consider whether the case is not a fit one for appeal to the King in Council within the meaning of clause (*b*) of section 595. The only question, therefore, is whether we ought to give in this case a certificate of fitness.

It is perfectly true that it cannot with precision be said that the amount or value of the subject-matter of the suit is Rs. 10,000 or upwards, or that the amount or value of the dispute on appeal is of that sum or upwards; but the reason why that cannot be said is, because the value of the question at issue between the

(1) (1869) 6 Bom. H. C. R. 185 (A. C.)
(2) (1883) 9 All. 180.
(3) (1875) 12 Bom. H. C. R. 8.
(4) (1890) 17 Cal. 455.

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parties is one to which it is impossible to give a numerical expression. It is, however, obvious that the financial and commercial position of the Company may be seriously affected by the questions at issue, and having regard to that and to the importance to Indian Companies generally that these rights should be precisely defined in relation to the point that has arisen in this case, I think that we ought to certify that the case is a fit one for appeal to His Majesty in Council, and we accordingly do so certify.

I have dealt with the case under the Code, because I think that by virtue of section 647 of the Code the present proceedings come within the provisions of Chapter XLV.

The costs to be costs in the appeal.

Attorneys for the Company—*Messrs. Craigie, Lynch and Owen.*

Attorneys for the opponent—*Messrs. Ardesar, Hormasji and Dinsha.*

APPELLATE CIVIL.

Before Mr. Justice Crowe and Mr. Justice Chandavarkar.

1903.
April 1.

BHIKABHAI RATANCHAND (ORIGINAL DEFENDANT 2), APPELLANT, *v.* BAI BHURI (ORIGINAL PLAINTIFF), RESPONDENT.*

Res judicata—Civil Procedure Code (Act XIV of 1882), section 13—Suit for arrears of maintenance—Former suit for arrears for a different period—Surety—Continuing guarantee—Pleadings by surety denying liability in a suit do not operate as notice of revocation of suretyship—Contract Act (IX of 1872), section 130.

By a settlement executed in 1896 the first defendant agreed (*inter alia*) to pay maintenance to the plaintiff (his wife) at the rate of Rs. 91 per annum. The second defendant signed the deed as surety. In 1898 the plaintiff sued both defendants to enforce her rights under the settlement and (*inter alia*) for arrears of maintenance for ten months and sixteen days from the 10th November 1897. The defendants pleaded that the deed was void for want of consideration. The first Court found that the settlement was not void, and passed a decree against both the defendants, but as to the payment of arrears of maintenance the

* Second Appeal No. 690 of 1902.