

1912.

ZULEKABAI

v.

EBRAHIM

HAJI

VYEDINA.

I will deal with costs of the trial of these issues when I dispose of the rest of the suit.

Suit to be on Board this day week as a part-heard case for hearing on the other issues.

[The suit was subsequently placed on Board and with the plaintiff's consent dismissed with costs.]

Attorneys for the plaintiff: *Messrs. Ardeshir, Hormusji, Dinshaw & Co.*

Attorneys for the defendant: *Messrs. Jehangir & Seervai.*

H. S. C.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

1912.

October 4.

THE SPECIAL OFFICER, SALSETTE BUILDING SITES, APPLICANT, v.
DOSSABHAI BEZONJI MOTIVALLA, OPPONENT.*

Land Acquisition Act (I of 1894), section 54—High Court—Decision by High Court on appeal—Appeal to Privy Council—Leave to appeal—Letters Patent, clause 39.

An appeal does not lie to His Majesty's Privy Council from the decision of the High Court on appeal under section 54 of the Land Acquisition Act (I of 1894).

Rangoon Botatoung Company, Ltd. v. The Collector, Rangoon(1), followed.

THIS was an application for leave to appeal to His Majesty's Privy Council.

The facts are stated in the report of the judgment of the High Court, at I. L. R. 36 Bom. 599.

On a reference made under section 19 of the Land Acquisition Act, by the Special Collector of Thana, the Assistant Collector held that Rs. 21,254-4-0 should be

* Civil Application No. 442 of 1912.¹

(1) (1912) 40 Cal. 21.

awarded to the opponent as compensation. Both sides appealed to the High Court against this award. The High Court on appeal awarded Rs. 65,900 to the opponent (*vide* I. L. R. 36 Bom. 599).

The Special Officer, Salsette Building Sites, applied to the High Court for leave to appeal to His Majesty in Council.

Jardine, acting Advocate General, with *R. W. Desai*, for the applicant.—The case fulfills the requirements of section 109 of the Civil Procedure Code, inasmuch as the subject-matter of the appeal is valued at more than Rs. 10,000 in value and the case involves a substantial question of law.

The case of the *Rangoon Botatoung Company, Ltd. v. The Collector, Rangoon*⁽¹⁾ can be distinguished. The decision appealed against in that case was pronounced by the Chief Court of Lower Burma. That Court is established by Act VI of 1900; and against the decisions of that Court no appeal lies to the Privy Council as of right. The case of the chartered High Court is however different. Under clause 39 of the Letters Patent, appeals are allowed to the Privy Council from any final judgment, decrees or order of the High Court. As a matter of fact, appeals have all along been entertained by the Privy Council from decisions of the High Court in Land Acquisition cases: see *Maharaja Luchmeswar Singh v. Chairman of the Darbhanga Municipality*⁽²⁾; *Secretary of State for India in Council v. Shanmugaraya Mudaliar*⁽³⁾; *Manmatha Nath Mitter v. Secretary of State for India*⁽⁴⁾; *Secretary of State for Foreign Affairs v. Charlesworth Pilling & Co.*⁽⁵⁾; *Ezra v. Secretary of State for India in Council*⁽⁶⁾; *Secretary of State for*

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(4) (1897) L. R. 24 I. A. 177.

(2) (1890) L. R. 17 I. A. 90.

(5) (1901) L. R. 28 I. A. 121.

(3) (1893) L. R. 20 I. A. 80.

(6) (1905) L. R. 32 I. A. 93.

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India v. India General Steam Navigation and Railway Company⁽¹⁾.

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Weldon, with *Smetham & Co.*, for the opponent:—
The case of *Rangoon Botatoung Company, Ltd. v. The Collector, Rangoon*⁽²⁾ is conclusive on the point. What is enacted by clause 39 of the Letters Patent for the Bombay High Court is enacted by section 109 of the Civil Procedure Code for all Courts of final jurisdiction in British India whether established by the charter or not. An appeal to the Privy Council would virtually be a second appeal, which is not authorised by the Land Acquisition Act, 1894. Section 54 of the Act permits only one appeal and that to the High Court.

Jardine, in reply.

BATCHELOR, J.:—This is an application for leave to appeal to the Privy Council in the matter of an award made by this Court on appeal from the Court of the District Judge. The proceedings were taken under the Land Acquisition Act (I of 1894), and the question raised was as to the value of certain land acquired under that Statute by the Government. It is admitted that the value of the property involved in this application exceeds Rs. 10,000, and it is also admitted that a substantial point of law is involved in this Court's judgment with reference to the position occupied by the Special Collector under the Land Acquisition Act. The difficulty, however, in the way of the applicant is furnished by the judgment of their Lordships of the Privy Council in *Rangoon Botatoung Company, Ltd. v. The Collector, Rangoon*⁽²⁾. *Prima facie*, as the learned Advocate General admitted, this decision seems to bar the applicant's right to appeal to the Privy Council. It was sought, however, to escape from the effect of the

⁽¹⁾ (1909) L.R. 36 I. A. 200.

⁽²⁾ (1912) 40 Cal. 21.

decision by the argument that in that case the Privy Council were dealing with the Chief Court of Lower Burma, a Court which is constituted under an Act of the Indian Legislature and not under the Letters Patent ; whereas, the argument runs, this Court is constituted under the Letters Patent, and although the applicant may have no right of appeal under the Civil Procedure Code, he should be considered to have that right under clause 39 of the Letters Patent. It appears that in the argument before the Privy Council in *Rangoon Company's case* there was no reference to this clause of the Letters Patent ; and indeed any such reference would have been irrelevant.

The question we have to decide is whether the existence of this clause gives the applicant a right of appeal, which otherwise he would not have. The words of the clause upon which reliance is placed are these :— “And we do further ordain that any person or persons may appeal to Us, Our heirs or successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the said High Court.” It is urged that this Court's award, in the appeal from the District Judge, is, if not a decree or order, at least a final judgment within the meaning of the clause. It appears to me, however, that this view cannot be held consistently with the judgment of the Privy Council.

As I read that judgment, it proceeds upon the footing that the Land Acquisition Act is a special Statute enacted to deal with a certain special class of cases, that orders made thereunder are outside the ordinary course of the Civil Court's jurisdiction, and that, since the Act itself gives no right of appeal to the Privy Council, no such right exists. The High Court is referred to by their Lordships as the ultimate umpire in a series of arbitration proceedings ; and the judgment, after

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referring to section 54 of the Land Acquisition Act, as authorizing an appeal to the High Court but not beyond it, goes on: "Their Lordships cannot accept the argument or suggestion, that when once the claimant is admitted to the High Court, he has all the rights of an ordinary suitor, including the right to carry an award made in an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction." This passage shows that it is a mistake to suppose that the award made in such a case by the High Court is a decree within the ordinary jurisdiction to which the Civil Procedure Code refers; and it seems to me it would be equally erroneous to regard such an award as a final judgment or order within the meaning of clause 39 of the Letters Patent. I am of opinion, that it follows from the judgment of the Privy Council that such an award as this is as much outside the purview of clause 39 of the Letters Patent, as it is outside the provisions of the Civil Procedure Code. For the Letters Patent, like the Code, make provision for appeals from such judgments, decrees and orders as are passed by this Court in the exercise of its usual civil jurisdiction; and they cannot, I think, be invoked to sustain an appeal from a determination which must be regarded as a mere award by a final arbitrator under a Special Act, which does not confer any such right of appeal. In any event, and putting the matter on its lowest footing, I think, that after the judgment by the Privy Council in the *Rangoon case* the only safe position for us now is to refrain from presuming to grant the certificate applied for, and to leave it to their Lordships of the Privy Council to admit the appeal, if it is to be admitted, upon the somewhat fine distinction which the learned Advocate General has contended for. So far as we are concerned I think we ought to say that clause 39 of the

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Letters Patent does not avail to take the case out of the general rule laid down by the Judicial Committee.

On these grounds, I am of opinion, that the Rule should be discharged with costs.

At the Advocate General's suggestion we note that he applied for leave to put in an affidavit in reply to an affidavit recently filed by the respondent.

HEATON, J. :—I am of the same opinion.

Rule discharged.

R. R.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Chandavarkar.

NURSEY VIRJI (PLAINTIFF AND APPELLANT) v. ALFRED H. HARRISON AND ANOTHER (DEFENDANTS AND RESPONDENTS) AND YACOOB J. SAYANI (RESPONDENT AND THIRD PARTY).^{*}

1913.

February 6.

Civil Procedure Code (Act V of 1908), Order XLI, Rule 22—Cross-objections, who may file and against whom—Co-respondent, cross-objections not ordinarily allowed as against.

The ordinary rule is that the cross-objections provided for by Order XLI, Rule 22 of the Code of Civil Procedure are cross-objections which are aimed against an appellant from a decree of a lower Court and are not cross-objections against a co-respondent.

In any case such cross-objections will not be allowed as against a co-respondent where the respondent could have preferred them by way of appeal.

THE second defendant moved that the appeal in this case should be dismissed for want of prosecution. The material facts appear from the judgment.

Kaikes, for the second defendant and respondent, in support of the notice of motion.

Mirza, for the appellant and plaintiff.

The third party and respondent appeared in person.

* Appeal No. 69 of 1912; Suit No. 364 of 1911.