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 IN RE
 DATTATRAYA
 GOVIND
 HALDANKAR

Kania J.

to enter into the transaction. The fact that an application was made to the Court and the Court made an order, would of course be considered by the purchaser or mortgagee as materials on which he could rely to a certain extent but they are not by themselves sufficient or complete so as to absolve the purchaser or mortgagee from making enquiries in the matter.

In my opinion the present case does not come within the principles on which the Court gave its sanction in *In re Manilal Hurgovan*⁽¹⁾ and I am not inclined to extend the practice of giving the Court's sanction to any case which would not be clearly covered by those principles. The Advocate General informs me that if I am unwilling to give the Court's sanction to the proposed transaction the petitioner does not want an order for his appointment as guardian. I, therefore, make no order on the petition, which would stand dismissed.

Attorneys for petitioner: Messrs. *Thakordas & Madgavkar*.

Application dismissed.

B. K. D.

⁽¹⁾ (1900) 25 Bom. 353.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Broomfield.

KRISHNABAI (ORIGINAL PLAINTIFF), APPLICANT *v.* FRAMROZ EDULJI
 DINSHAW AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Civil Procedure Code (Act V of 1908), sections 109 and 110—Appeal to Privy Council—
 Value of subject-matter of appeal to Privy Council—Final order.*

The applicant, a Hindu widow, on January 26, 1931, obtained a decree against the executors of her husband's will, by which, *inter alia*, she became entitled to reside in a portion of a bungalow belonging to her husband's estate. The decree further declared that in case it became necessary for the executors to sell the said bungalow or in case the same was not available for the plaintiff's residence, the executors should

* Application for leave to appeal to P. C. from O. C. J. Appeal No. 55 of 1931, suit No. 392 of 1929.

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pay to the plaintiff a sum of Rs. 400 per month in lieu of such residence. Shortly after the decree, the executors received an offer for the sale of the said bungalow, for a price which they considered very advantageous. They accepted that offer and called upon the plaintiff to vacate the bungalow and offered to pay her Rs. 400 a month. On her failure to do so, they applied to the Court for an order directing the plaintiff to vacate it. The first Court refused to make the order. On appeal, that order was reversed and the plaintiff was directed to vacate the bungalow. The applicant, having applied for leave to appeal to the Privy Council, the respondents contended that the leave asked for should not be granted on the ground that the subject-matter of the appeal was not of the value of Rs. 10,000, and that the order sought to be appealed from was not a final order.

Held, (1) that the value of the subject-matter of the appeal was really the value of the premises which the applicant was required to vacate. As the value of the premises was over Rs. 10,000, the case fell within the last clause of the first paragraph of section 110 of the Civil Procedure Code ;

(2) that the case also fell within the second paragraph of section 110 as the order involved directly a claim or question to or respecting property of the value of over Rs. 10,000 ;

(3) that the order which was sought to be appealed from was a final order, within the meaning of section 109 of the Civil Procedure Code, because it finally disposed of the question as to the applicant's right to occupy the premises.

APPLICATION for leave to appeal to the Privy Council.

The material facts and contentions are set forth in sufficient detail in the judgment of his Lordship the Chief Justice :

F. J. Coltman, for the applicant.

Sir Jamshed Kanga, Advocate General, for the respondents.

BEAUMONT C. J. This is an application for a certificate for leave to appeal to the Privy Council and it raises a question not free from difficulty under section 110 of the Civil Procedure Code. That section provides :—

“ In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value.”

Those words are not very easy to construe, and the decisions of this Court upon them, which appear to me

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to be somewhat conflicting, do not render the question any easier. It is obvious that difficult questions may arise under the second paragraph of the section in dealing with questions of easement where the test of value may be (a) the value of the easement as was held by this Court in *Lallubhai Pragji v. Bhimbhai Dajibhai*,⁽¹⁾ (and by the value of easement is meant, I take it, the difference in value between either the dominant or servient tenement as the case may be with or subject to the easement, and its value without the easement,) or (b) the value of the dominant tenement, or (c) the value of the servient tenement. We are not concerned, however, in this case with a question of easements.

In this case the question arises in this way. The suit was commenced by the plaintiff, who was the widow of one Singhane, and she claimed maintenance and a right of residence from her late husband's estate. The Court decreed her maintenance and it also declared that she should be entitled to occupy certain premises in Narayan Dabholkar Road, and then it was provided by the order of the Court that in case it became necessary for the executors to sell the said premises, they were to pay further maintenance of Rs. 400 per month to the plaintiff in lieu of such residence. Subsequent to that order the executors received an offer for the sale of the premises which they considered very advantageous, and they, therefore, called upon the plaintiff to vacate the premises and accept Rs. 400 a month in lieu of her right of residence. The plaintiff refused to vacate and said that no necessity had arisen within the terms of the Court's order. The defendants, thereupon, gave the plaintiff a notice of motion asking that she might be ordered to vacate and deliver over to the defendants peaceful and quiet possession of the premises in Narayan Dabholkar Road in her occupation. On that motion Mr. Justice Kania held that the executors had not made out any necessity

⁽¹⁾ (1929) 53 Bom. 552.

for sale. The executors appealed and the Court of Appeal held that a necessity for sale had arisen, and, therefore, made an order on the plaintiff to vacate the premises, and it is from that order that the plaintiff seeks leave to appeal to the Privy Council.

The question is, what is the subject-matter of the appeal for the purpose of value under section 110? The claim on the notice of motion was that the present applicant should vacate these premises. It is not disputed that the whole of the premises in Narayan Dabholkar Road are worth Rs. 1,95,000, that being the price at which the executors are proposing to sell them, and it is also not disputed that the value of part of the premises which the widow was given for her residence also exceeds Rs. 10,000.

Mr. Coltman on behalf of the applicant says that this in substance is a suit for ejectment and that the subject-matter of the property is the portion of the premises which are in the applicant's occupation, and as they are worth more than Rs. 10,000 she is entitled to appeal to the Privy Council. The Advocate General on the other hand on behalf of the executors says that the subject-matter of the appeal is really only the difference between the premises in the occupation of the widow and Rs. 400 a month which she will get when she vacates these premises. As Mr. Coltman points out, if that really be the test it is difficult to see how in a specific performance action an appeal can ever be brought before the Privy Council. I take it that if a suit is brought for specific performance of a contract to sell or purchase property of the value of over Rs. 10,000, the subject-matter of the suit is property of the value of over Rs. 10,000 notwithstanding the fact that the purchase money which the plaintiff is to get in return may be of the same value. It seems to me that the value of the subject-matter of this appeal is really the premises which the applicant is required to vacate. If that is so, then the case falls within the last words of the first paragraph of section 110

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since the amount or value of the subject-matter in dispute is Rs. 10,000 or upwards. I think probably the case also falls within the second paragraph of section 110 since the order involves directly a claim or question respecting property of the value of over Rs. 10,000.

The Advocate General has also contended that the order of this Court from which it is sought to appeal is not a final order within section 109. But, in my opinion, it is a final order within that section because it finally disposes of the applicant's right to occupy these premises.

That being so, I think, we have no option but to give leave to appeal to the Privy Council. Costs costs in the appeal.

BROOMFIELD J. I agree.

Attorneys for applicant: Messrs. *Khanderao, Laud & Co.*

Attorneys for executors: Messrs. *Payne & Co.*

Leave granted.

B. K. D.

ORIGINAL CIVIL.

INSOLVENCY JURISDICTION.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Mirza.

UDERAJ BODURAM (OPPOSING CREDITOR), APPELLANT v. CLEMENT
GRIFFITH HALL (INSOLVENT), RESPONDENT.*

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March 29.

Presidency-towns Insolvency Act (III of 1909), sections 11, 15—Insolvent—“Personally works for gain”—Engine-driver—Place of residence—Place of payment of salary.

A person who was working as an engine-driver on the G. I. P. Railway, and who was residing at Bhusawal, was adjudicated an insolvent on his own petition by the High Court. In the course of his duty as engine-driver he had occasionally to go to Bombay. The head office of the Railway in whose employment he was, was in Bombay and the pay-sheets in respect of his pay were prepared in Bombay, but he ordinarily received his pay at Bhusawal. A creditor of the insolvent applied to the Court for an annulment of the adjudication order on the ground that the insolvent

*O. C. J. Appeal No. 52 of 1931: Insolvency No. 603 of 1931.