Before Mr. Justice Markby and Mr. Justice Ainslie.

PANCHANAN BOSE AND ANOTHER (DEFENDANTS) *v.* GURUDAS ROY (PLAINTIFF).* 1872 *July* 30.

Review—Act VIII of 1859, *s.* 377—*Just and reasonable Cause for Delay in filing Petition of Review—Ground of Review.*

Upon the appeal of one of the defendants to the Privy Council, the judgment of the High Court was reversed. Another defendant, whose defence was the same as that of the defendant who had appealed, applied to the High Court to review its judgment after a lapse of several years from the date of the judgment of the High Court, but within three months from the date on which he became aware of the decision of the Privy Council. The application was refused.

Satto Saran Ghosal Bahadùr v. *Tarini Charan Ghose* (1) doubted.

THIS was a suit to recover possession of certain properties mortgaged to the plaintiff by Amirtalal Bose. These properties had been sold in execution of a decree against Amirtalal and purchased by several persons. The suit was brought against all the purchasers.

The Principal Sudder Ameen of Jessore held that the mortgage was collusive, and dismissed the suit.

On appeal, the High Court [LOCH and SETON-KARR, JJ.] on the 5th December 1864, held that the mortgage was genuine. They, accordingly, passed a decree in favor of the plaintiff.

Umesh Chandra Roy, one of the defendants, appealed to Her Majesty's Privy Council. On the 24th November 1871, the Judicial Committee of the Privy Council reversed the judgment of the High Court, and affirmed the judgment of the Principal Sudder Ameen.

Panchanan Bose, one of the defendants, applied to the High Court [MARKBY and AINSLIE, JJ., (2)] for a review of judgment upon the following grounds:

1. That the judgment of this Hon'ble Court, dated the 5th December 1864, having been set aside by her Majesty's Privy

* Application for Review of Judgment passed by Loch and Seton-Karr, JJ. in Regular Appeal, No. 271 of 1864, on the 5th December 1864.

(1) 3 B. L. R., A. C., 287.

(2) Loch, J., was on leave, and Seton-Karr, J., had ceased to be a Judge of the High Court,

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Council on the 24th November 1871, on the appeal of Baboo Umesh Chandra Roy, and the deed of mortgage propounded by the plaintiff found to be fraudulent and collusive, your Lordships should reverse the judgment by which the decision of the Principal Sudder Ameen, dated the 25th April 1864, was set aside.

2. That as your petitioner's plea and defence to the suit was the same as that of Baboo Umesh Chandra Roy, the mere fact of your petitioner not having appealed to Her Majesty in Council on account of the valuation of his share of the property being under Rs. 10,000 ought not to prejudice his rights.

3. That your petitioner became aware of the Privy Council ruling some time in May last, hence the delay in the application.

Baboo *Durgamohan Das*, for the petitioner, contended that the application was within time, the decision of the Privy Council having come to the knowledge of the petitioner only in May last—*Satto Saran Ghosal Bahadur* v. *Tarini Charan Ghose* (1). [AINSLIE, J.—The application is after such a lapse of time that the property may have changed hands upon the faith that the decree of the High Court was final.] In point of fact the property has not changed hands. As the defence of the petitioner was the same as that of Umesh Chandra Roy, the petition should be allowed.

The judgment of the Court was delivered by

MARKBY, J.—This is an application under s. 376 of the Civil Procedure Code, for admission of a review of a judgment passed in the year 1864 by two Judges of this Court, of whom one is no longer a member of the Court, and the other is absent in England.

S. 377 provides that "the application shall be made within ninety days from the date of the decree, unless the party preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period."

(1) 3 B. L. R., A. C., 287.

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Now *it* appears that a suit was brought against the present applicant and four other defendants, and in respect of twelve or thirteen different properties; this applicant being concerned only with one. The main point in dispute was whether a certain deed, under which the plaintiff claimed—how is not now material—was fraudulent and collusive; and the first Court dismissed the plaintiff's suit, finding the deed to be so. On the appeal of the plaintiff, in which all the defendants were made respondents, this Court found the deed genuine. Thereupon one of the defendants appealed to the Privy Council the present applicant and the other defendants not joining in the appeal; and the Privy Council has now reversed the judgment of this Court, and has affirmed the decree of the first Court: and the result of the appeal to the Privy Council is the only ground laid before us as the "just and reasonable cause" why the application was not made within ninety days. If we were to grant this application, and were ultimately to admit the review, we should have to re-hear the appeal from the decision of the first Court, and consider whether or no we would affirm it; and obviously the object of this application is that, upon the question of fact on which the decision has hitherto turned, we should alter the decision of the two Judges who decreed the appeal in 1864, by deciding in conformity with the decision of the Privy Council. Of course this present application assumes, and therefore we assume it also, that the decision of the Privy Council, which we have not seen, does not apply to the present applicant; and this Court would then have to consider how far the decree of the Privy Council, upon a matter of fact between other parties, was conclusive when the same question of fact came before this Court in another case. But it seems to me that we ought not to put this Court on any such embarrassing enquiry. I do not consider that any "just and reasonable cause" for the delay has been shown in this case; in fact, I do not think that any cause at all has been shown. It was open to the defendant, had he so chosen, to appear as an appellant before the Privy Council. There was but one suit, and he was a party to that suit, and the whole suit was carried before the Privy Council, and he had a right to appear in it; and

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if in consequence of not doing so, he has lost the benefit of the Privy Council decision, he has only himself to blame.

We are referred to a decision of Kemp and Glover, JJ., in *Satto Saran Ghosal Bahadur* v. *Tarini Charan Ghose* (1). But in that case it appears that there were five seperate suits, not one only, and one only was of the value which gave the party a right of appeal to the Privy Council. That alone is sufficient to distinguish that case from the present. But apart from that, it seems to me that it would give rise to considerable confusion and great inconvenience, if suits, which were considered to have been finally disposed of, could be opened by review after the lapse of several years from the date of decree, upon the ground that in some other suit the Privy Council had come to a different decision. I think there is great force in the observation thrown out by Ainslie, J., in the course of the argument, namely, that in the years which have elapsed since the decree was given, the property may have been dealt with on the faith that the decree of this Court was a final one. If, therefore, I was called upon to say whether I concurred in the decision referred to, in *Satto Saran Ghosal Bahadur* v. *Tarini Charan Ghose* (1), I should, with the greatest respect for the two Judges who passed it, have considerable hesitation in saying that I do so.

Application refused.

Before Sir Richard Couch, Kt. Chief Justice, Mr. Justice Bayley, Mr. Justice Markby, and Mr. Justice Ainslie.

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July 11.

IN THE MATTER OF THE APPEAL OF DULI CHUND.

Bengal Civil Courts Act (VI *of* 1871), *s.* 22—*Appeal—Subject-matter in Dispute—Jurisdiction of the High Court.*

The appeal from the decree or order of a Subordinate Judge or Moonsif, where the amount or value of the subject-matter in dispute in a suit exceeds Rs. 5,000, lies to the High Court, although the amount or value of the subject-matter in dispute in appeal is less than Rs. 5,000.

MATTER referred for the opinion of the First Bench by the Deputy Registrar :—

(1) 3 B. L. R., A. C., 287

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"This appeal is against the portion of the decree of the Subordinate Judge of Gya, dated the 22nd February 1872, which disallowed the claim in suit, to the extent represented by the amount at which this appeal is valued, *viz.*, Rs. 3,675; the entire claim being Rs. 7,935.

"With reference to each of three similar appeals, the Fourth Bench has to-day held that, 'under s. 22, Act VI of 1871 (1), the appeal ought to have been preferred in the Court of the District Judge, inasmuch as the subject-matter in dispute does not exceed Rs. 5,000 in value, and directed 'the case' to 'be sent down to the District Judge.'

"But for this order, the officer would have received this appeal under the impression that the terms, 'the amount or value of the subject-matter in dispute,' used in s. 22, Act VI of 1871, are synonymous with the terms, 'suits exceeding the amount or value,' used in s. 4, Act XXV of 1837 (2), which have been re-enacted first by Act XVI of 1868, s. 18, (3), and next by the more recent Act of 1871 above quoted.

"Under the circumstances, however, I must refer the appeal to the First Bench, to which the district it has come up from

(1) *Act* VI *of* 1871, *s.* 22.—"Appeals from the decrees and orders of Subordinate Judges and Munsiffs shall when such appeals are allowed by law, lie to the District Judge, except where the amount or value of the subject-matter in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court."

(2) *XXV of* 1873, *s.* 4.—"And it is hereby enactedthat in all suits exceeding the amount or value specified in clause 1, section 18, Regulation V, 1831, which shall, under the authority of section 1 of this Act, be referred to a Principal Sudder Ameen the appeal from the decision of such Principal Sudder Ameenshall be direct to the Court of Sudder Adawlut' and it shall be conducted in all respects according to the same rules as if it were an appeal from the decision of a Zillah Judge to the said Court of Sudder Dewanny Adawlut, and any application for a review of judgment on such decision shall be made by the said Principal Sudder Ameen directly to the said Court of Sudder Dewanny Adawlut, and shall be conducted in all respects as if it were an application for a review of a decision of a Zilla Judge."

(3) *Act XVI* of 1868, *s.* 18.—"In suits decided by any Subordinate Judge in the exercise of his original jurisdiction, of which the amount or value of the subject-matter does not exceed rupees five thousand, an appeal shall lie to the District Judge to whose control such Subordinate Judge is subject. In all other suits decided by any subordinate Judge, whether in the exercise of his original or appellate jurisdiction, the appeal from the decision of the Judge shall be direct to the High Court."

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indicates it to belong, for orders as to its admission or otherwise."

In consequence of the decision of L. S. Jackson and Markby, JJ., in *Srimati Dasi* v. *Saudamini Dasi* (1), this case and cases Nos. 244, 199, and 260 were referred to a Bench of four Judges.

The circumstance of case No. 244 were the same as those in the case referred by the Deputy Registrar. Cases Nos. 199 and 260 were cross-appeals; the value of the suit was above Rs. 5,000, and a decree had been passed in favor of the plaintiff for Rs. 2,916.

(1) *Before Mr. Justice L. S. Jackson and Mr. Justice Markby.*

SRIMATI DASI AND ANOTHER (DEFENDANTS) *v.* SAUDAMINI DASI (PLAINTIFF).*

The 28th May 1872.

THIS was a suit brought to recover possession of lands valued at Rs. 7,926, and mesne profits valued at Rs. 12,343. Upon the objection of the defendants as to the over-valuation of the suit, the Subordinate Judge found that the fair valuation of the lands in dispute would be Rs. 2,500, and that the mesne profits for six years would be about Rs. 4,417, making Rs. 6,917 as the amount of the claim. He accordingly fixed Rs. 6,917 as the valuation of the suit.

On the merits he found in favor of the plaintiff, and passed a decree for the plaintiff to recover possession of all the lands described in the plaint, with wasilat from the date of suit to the date of delivery of possession in execution, which was thereby reserved to be ascertained in execution of the decree.

The defendants appealed to the High Court, valuing the appeal at Rs.2,500.

On the appeal being called on for hearing, JACKSON, J., observed:—The matter in dispute now is Rs. 2,500. The appeal does not lie here.—S.22, Act VI of 1871.

Baboo *Nilmadhab Bose* (Baboo *Ramcharan Banerjee* with him), for the appellant, contended that the suit was valued at above Rs. 5,000. This section relates to the "subject matter in dispute" in the suit, not to the subject-matter in appeal. When the suit is for recovery of possession of land and mesne profits valued at a sum above Rs. 5,000, the appeal lies to this Court. [JACKSON, J.—We have to do with the appeal only. The words of the section are "subject-matter in dispute."] The suit was brought on the 27th January 1871 before the Act was passed, and consequently the appeal is governed by the old law and practice. [JACKSON, J.—The Act came into operation on the 10th February 1871, and before the appeal. We have to do with the appeal only. The appeal was by mistake filed here.]

Baboo *Nilmadhab Sen* for the respondent was not called upon.

JACKSON, J.—Under s. 22 of Act VI of 1871, the appeal ought to have been preferred in the Court of the District Judge, inasmuch as the subject-matter in dispute does not exceed Rs. 5,000 in value.

The case must be sent down to the District Judge.

*Regular Appeal, No. 281 of 1871, from a decree of the 2nd Subordinate Judge of the 24-Pergunnas, dated the 27th September 1871.