

1869 judgment of the first Court had been only an order to enforce
 RAMS HANJAN BHAKAT v. SAKRISHNA BHAKAT. the award, it might have been final, but it is more than this. The suit should not, I think, have been brought under the 327th section, but having been so brought and allowed, perhaps the Judge is right to let it stand. Still he must decide the appeal on the question which the award left undecided.

Before Mr. Justice Loch.

FAKIRUDDIN MOHAMMED ASAN CHOWDHRY (APPELLANT)
 v. NAJUMUNNISSA CHOWDHRAIN AND OTHERS (RESPONDENTS).*

Privy Council Appeal—Review.

Where an application for review was rejected, and no appeal to the Privy Council was filed against the order of rejection, papers filed with the application for review, will not be forwarded with the record to the Privy Council on the appeal of the case.

Mr. R. T. Allan for appellant, petitioner.

Baboo Kali Mohan Doss for respondents.

LOCH, J.—THIS is an application that certain papers filed with an application for review, should be transmitted with the record to the Privy Council; and in support of the application, Mr. Allan has produced an order of the Privy Council of the 9th December 1868, in the case of *Khujoorunnissa* petitioner and appellant to the Privy Council, by which order the Privy Council directed that the papers presented with the petition of review, should be transmitted with the record to England. But, in that case, their Lordships do not lay down a general rule that, where an application for review has been made and rejected, such application, with any papers accompanying the petition of review, is to be sent with the record to the Privy Council.

There is a ruling of the Full Bench of this Court, *Raja Syud Enaet Hoossein v. Rani Roushun Jehan* (1) which rules that, where an application for review has been rejected, the papers relating to the review are not to be sent to Eng-

* Privy Council Appeal, No. 718 of 1864.

(1) 1 B. L. R. (F. B.), 1.

land, as they do not form a part of the record; and on referring to Macpherson's Privy Council Practice, page 123, I find that "the Sudder Adawlut having decided a cause, an application for review of judgment was made to it, and fresh evidence was tendered. The Sudder Adawlut refused to grant a review. The original decree was appealed from, but not the order refusing a review. The Judicial Committee declined to consider the additional evidence, although it was included in the transcript."

The case alluded to in Macpherson is that of *Sheikh Imdad Ali v. Mussamat Kootby Begum* (1); and in page 7, their Lordships say: "that, as the appeal was from the decree of the 31st May 1831 only, the objection was valid, and the subsequent order not being appealed from, the documents produced to the Court ought not to have formed part of the transcript."

As no appeal has been filed from the order passed on the application for review, I think this application ought to be rejected, and it is hereby rejected with costs.

1869
FAKIRUDDIN
MOHAMMED
ASAN CHOW-
DHRY
v.
NAJUMUNNESA
CHOWDHRAIN

Before Mr. Justice Loch and Mr. Justice Hobhouse

1869
Feb'y. 24.

KASIMUDDI KHANDKAR (PLAINTIFF) v. NADIR ALI
TARAFDAR AND OTHERS (DEFENDANTS.)*

Kabuliat—Enhanced Rate—Potta—New Ground.

In a suit for a kabuliat, at an enhanced rate, under a potta, the term of which were that the lessee should hold the lands for four years rent-free; that after measurement the lands were to be assessed; that then that he was to pay four annas a biga in year 1265, six annas in 1266, and eight annas and three gundas in 1267 and for five years after, held, this did not constitute amokurari holding at a fixed rate. Case was remanded to ascertain what were the rates of similar lands in the neighbourhood in 1274, and decree to be made accordingly. Sec also, 15 B L R. 126.

Held also, that a fresh ground could not be taken in appeal which had not been taken below, though based upon a Full Bench Ruling.

* Special Appeal, No. 1792 of 1868, from a decree of the Judge of Jessore, dated the 27th April 1868, reversing a decree of the Deputy Collector of that district dated the 31st December 1866.

(1) 3 Moore, I. A., 1.