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of a certain estate. The matter in dispute between the parties was as to who should be recorded as tenants of these particular lands, the plaintiffs contending that they held a half share with the defendants; the defendants, on the other hand, stating that they were the sole tenants. Before any record of rights could be prepared, it was absolutely necessary for the Revenue Officer to ascertain, in the first place, who were actual tenants of these particular lands. He proceeded under s. 107 to try the matter in dispute as therein directed, and his order in favour of the defendants was taken in appeal to the Special Judge under section 108. The Special Judge, however, has refused to try the appeal holding that the proceedings were entirely without jurisdiction because the record of rights had not been published in the manner directed by s. 105, and therefore, in his opinion, the Revenue Officer was not competent to receive and consider any objections that might be made, and not only was the Revenue Officer not competent to make any order, but there was nothing to give him the (Special Judge) jurisdiction to try the appeal on the merits.

The matter in dispute, however, was dealt with under section 106, and there is nothing under section 108 which limits the jurisdiction of the Special Judge to deal only with matters of objection taken after publication of the record of rights. We, therefore, think that the order of the Special Judge was erroneous, and we accordingly set it aside. The appeal will be tried on the merits. The costs will abide the result.

Appeal allowed.

T. A. P.

ORIGINAL CIVIL.

Before Mr. Justice Sale.

THOMPSON *v.* CALCUTTA TRAMWAYS COMPANY.*

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Feb. 26.

Appeal to Privy Council—Civil Procedure Code, 1882, *ss.* 596, 600—*Finding of facts not concurrent but in effect the same—Case in which no question of law is involved.*

Where there is no point of law involved in a case, the mere fact that the finding of the Appellate Court does not in terms coincide with the finding of the Original Court, is not sufficient, where the findings of fact of the

* Application in Original Civil Suit No. 517 of 1892.

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two Courts are in effect the same, to give a right of appeal to the Privy Council, notwithstanding that the value of the suit is more than Rs. 10,000. *In the matter of the petition of Ashghar Reza* (1) distinguished.

THIS was an application, under Chapter XLV of the Code of Civil Procedure, for leave to appeal *in formâ pauperis* to Her Majesty in Council.

The original suit was one brought by the plaintiff, petitioner, against the Calcutta Tramways Company to recover Rs. 20,000 as damages for personal injuries sustained by him whilst entering the defendant Company's cars. The defence put forward by the defendant Company was that the accident was not caused by negligence on the part of their servants, but by negligence on the part of the plaintiff himself.

The Original Court dismissed the suit holding that the plaintiff had been guilty of contributory negligence, but without finding that negligence had been established on the part of the servants of the defendant Company.

On appeal, the Court, after taking further evidence, found that the plaintiff had failed to show how the accident had been caused, and had therefore failed to show that it had been caused by negligence on the part of the servants of the defendant Company, and affirmed the decree of the lower Court.

The petitioner then made an *ex-parte* application *in formâ pauperis*, for leave to appeal to Her Majesty in Council on the ground (1) that the value of the suit was over Rs. 10,000; (2) that the findings of fact on the Original and Appellate Court were not concurrent findings; and (3) that there were also points of law involved in the case. The petitioner, however, although setting out fully his grounds of appeal, did not state in accordance with s. 600 that his case fulfilled the requirements of s. 596.

Mr. *Solaiman* for the applicant contended that he was entitled to a certificate, and cited *In the matter of Ashghar Reza* (1).

SALE, J., (after stating the facts and stating that the conclusion to which he had come rendered it unnecessary to direct the issue of notice to the defendant Company to show cause against the application), continued:—

It is suggested that as the finding of the Appellate Court did not in terms coincide with the finding of the Original Court as to

(1) I. L. R., 16, Calc., 287.

contributory negligence on the part of the plaintiff, and as the value of the suit is alleged to be over Rs. 10,000, the plaintiff is entitled to obtain a certificate on the authority of the case of *In the matter of the petition of Ashghar Reza* (1).

In that case the Appellate Court differed from the lower Court as to the effect of an *ikrarnama*, and decided the case upon an issue not raised in the lower Court. There were also points of law involved in that case.

In the present case the issue of fact was the same in both Courts. The findings of fact in both Courts are also in effect the same, namely, that the plaintiff had failed to establish the case alleged by him, which, if established, would have rendered the defendant Company civilly liable. The Appellate Court concurred in the result, and the decree of the Original Court was affirmed.

Under these circumstances, and having regard to the fact that there is, as between the parties, no question of law involved in the case, it appears to me that I am justified in disposing of this application without putting the parties to unnecessary costs by directing the issue of a notice to the defendant Company.

The applicant has also asked for leave to appeal as a pauper. That raises an important question as to whether this Court has power to grant leave to appeal to Her Majesty in Council *in formâ pauperis*, and to dispense with the usual security for the costs of the respondent required by s. 602, but it is unnecessary to consider that question in the view I have taken as regards the substantive part of this application. It is also to be observed that the petition itself is defective in form, inasmuch as it does not, as required by s. 600 of the Code, conclude with the usual prayer for a certificate that the case fulfils the requirements of s. 596. That, too, is a mattter which it is not necessary to deal with now.

The application is refused.

Attorney for the petitioner: Mr. *C. A. Smith.*

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(1) I. L. R. 16 Calc., 287.