

*Judgment of the Lords of the Judicial Committee of the Privy Council on three Petitions for leave to Appeal in the suits of*

*Maharajah Sutteeschunder Roy*

v.

*Guneschunder and others;*

*Ranee Surnomoyee*

v.

*Maharajah Sutteeschunder Roy;*

*and Goroopersad Khoond*

v.

*Juggutchunder and another;*

*from Judgments of the Sudder Dewanny Adawlut of Calcutta, delivered June 15, 1860.*

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Present :

LORD JUSTICE KNIGHT BRUCE.

SIR EDWARD RYAN.

LORD JUSTICE TURNER.

SIR JOHN TAYLOR COLERIDGE.

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SIR LAWRENCE PEEL.

SIR JAMES W. COLVILLE.

THE question in each of these three cases is whether leave should be given to appeal to Her Majesty in Council. In one of the cases, application, as their Lordships understand, has been made to the Sudder Court for leave so to appeal, and the application has been refused; but in the two other cases no such application has been made.

*Mr. Leith.*—Will your Lordships excuse me? I should not wish to mislead your Lordships: it was not an application for leave to appeal to Her Majesty in Council, but an application to the Sudder, praying for the admission of a special appeal.

*Lord Justice Turner.*—Then in none of the cases has there been any application to the Sudder Court for leave to appeal to Her Majesty. The reason of there having been no such application to the Sudder Court in two, at least, of the cases is stated to have been that the Sudder Court has proceeded upon a certain rule as to cases in which leave should be given to appeal, and that, according to the rules on which they have proceeded, leave would not have been given in those two particular cases.

It is not very clear to their Lordships on what particular grounds the Sudder Court has proceeded with reference to giving or refusing leave to appeal. But their Lordships feel no doubt upon what grounds the Sudder Court ought to proceed in such cases. It is quite clear, in their Lordships' judgment, that the matter must be regulated by the Order in Council of the 10th of April, 1838, and by that Order the Sudder Courts are not to give leave to appeal unless the petition be presented within the time limited in the Order, and unless the value of the matter in dispute in such appeal shall amount to the sum of 10,000 rupees at least, importing, therefore, that the leave to appeal is to be given in cases where the petition is presented within the prescribed period, and the value of the matter in dispute in the appeal amounts to the specified sum of 10,000 rupees.

Now, where the appeal is from the whole Decree, and the Decree has given an amount, then actually including interest up to the Decree, exceeding 10,000 rupees, it is clear that the matter which is in dispute in the appeal must exceed the sum of 10,000 rupees; for the question to be tried upon the appeal must be whether the Decree is or is not right, that is to say, whether the Decree has or has not properly ordered payment of a sum exceeding 10,000 rupees. Where, therefore, at the date of the judgment the sum which is recoverable under the Decree of the Sudder Court is an amount exceeding 10,000 rupees, there, in their Lordships' judgment, the case must clearly fall within the terms of the Order in Council.

That, in their Lordships' understanding, disposes of the first and third of these cases.

The second case is somewhat different in its circumstances. It appears to be a case in which

the party applying for leave to appeal claims to be entitled to an estate, subject only to the payment of a fixed annual rent of 64 rupees ; but the Plaintiff in the suit, who is in possession of the judgment of the Court below, and would be the Respondent upon the appeal, claims the right to set upon the estate any rent which he may think fit. In this case it appears to their Lordships either that the value in dispute in the appeal must be considered to be 10,000 rupees within the meaning of the order, or if not, that it must be within the discretion of their Lordships whether leave to appeal should or should not be given. Taking the case to be within the meaning of the Order, it is clear that the value of the matter in dispute will exceed the sum of 10,000 rupees ; for, of course, an estate held at a rent of 64 rupees must be diminished in value to an amount far exceeding 10,000 rupees, if it be chargeable with a rent of 822 rupees, the amount of rent given by the Decree. Their Lordships, however, do not think it necessary to decide whether the case falls within the meaning of the Order or not. They think that, whether it falls within the Order or within their discretion, the leave to appeal ought to be given.

Their Lordships have thus stated the reasons on which they have proceeded in these three cases, because they consider it of importance that the Sudder Court should understand the rules which ought to be proceeded on in giving leave to appeal, as a contrary practice on their part drives parties into this Court to obtain the leave. They desire, therefore, that the rules which have been mentioned should be observed, and are of opinion that in all these three cases leave should be given to appeal, and that in each case security should be given to the amount of 300/. Their Lordships must not, of course, be understood to intimate that the Sudder Court ought to give the leave to appeal in cases in which the specified amount of 10,000 rupees can only be reached by the addition of interest subsequent to the Decree. Such cases must, in their Lordships' opinion, rest in their discretion.

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