

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Petition for Special
Leave to Appeal of Rahimbhoy Habibbhoy v.
Turner, from the High Court of Judicature at
Bombay; delivered 15th November 1890.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Hobhouse.*]

IN this case the Defendant desires leave to appeal from the Decree of the High Court, and the Court have refused him the necessary certificate on the ground that the Decree is not a final one within the meaning of section 595 of the Civil Procedure Code. This petition is not by way of appeal from the decision of the Court, but it is presented for an exercise of the prerogative right of the Crown to admit an appeal. Although it is not an appeal it is perhaps a more convenient proceeding than an appeal, because their Lordships can then grant leave on any other ground, if other ground appears for the indulgence that is sought, and if their Lordships find that, in a case in which the appeal is claimed as of right, the Court below has refused the certificate for a reason which appears to them to be an unsound reason, then they would advise Her Majesty to admit the appeal.

Now in point of fact no other ground has been assigned for presenting this petition, and no other ground has been argued here excepting the one ground that the Court below did not take the right view of the word "final" in the Civil Procedure Code. Therefore, to test that point, their Lordships have to look at what was the

real question before the Court when this Decree was made. The Plaintiff in the suit alleges that the Defendant is accountable to him upon several claims. The Defendant alleges that he has got legal defences to every one of those claims, and that he is not accountable at all. The Court held that the legal defences put forward were valid as to some of the claims, and as to others of the claims that they were invalid, and therefore that the Defendant must account. It is true that the Decree that was made does not declare in terms the liability of the Defendant, but it directs accounts to be taken which he was contending ought not to be taken at all; and it must be held that the Decree contains within itself an assertion that, if a balance is found against the Defendant on those accounts, the Defendant is bound to pay it. Therefore the form of the Decree is exactly as if it affirmed the liability of the Defendant to pay something on each one of these claims, if only the arithmetical result of the account should be worked out against him. Now that question of liability was the sole question in dispute at the hearing of the cause, and it is the cardinal point of the suit. The arithmetical result is only a consequence of the liability. The real question in issue was the liability, and that has been determined by this Decree against the Defendant, in such a way that in this suit it is final. The Court can never go back again upon this Decree so as to say that, though the result of the account may be against the Defendant, still the Defendant is not liable to pay anything. That is finally determined against him, and therefore in their Lordships' view the Decree is a final one within the meaning of section 595 of the Code. They therefore think the case is one in which they should advise Her Majesty that the leave to appeal should be allowed on the usual terms as to security.