

*Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Radha Krishn Das v. Rai Krishn Chand, a minor through his Guardian, Rani Mathi Kuar, from the High Court of Judicature for the North-Western Provinces, Allahabad, delivered 18th June 1901.*

Present :

LORD HOBHOUSE.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

IN this Case their Lordships think that they cannot but give effect to the preliminary objection which has been made. The objection is that there is no proper Certificate accompanying the leave to appeal, or forming a proper foundation for the leave to appeal.

The circumstances may be stated very shortly. The Petitioner, the present Appellant, states in his petition that the valuation in the Appeal is below Rs. 10,000, but that it involves substantial questions of law and fact. Then he goes on: "The Petitioner being desirous to appeal to Her Majesty in Council, humbly prays that this Honourable Court may be pleased to grant Certificate under section 596 of the Code of Civil Procedure"; and then he sets out certain grounds. Then an Order is said to have been passed in these terms by Mr. Justice Knox and Mr. Justice Banerji: "Let Certificate issue, that the case is a fit one for appeal to Her Majesty in Council." That was on the 20th of January

1898, and apparently on the same day the following Certificate is made:—"The Court having had before it an application for leave to appeal to Her Imperial Majesty the Queen in Her Privy Council presented on behalf of the Appellant aforesaid, it is certified that though the valuation of the case is below Rs. 10,000, yet as regards the value and nature of the case it fulfils the requirements of section 596 of Act No. XIV. of 1882." That is signed by the same two learned Judges—Mr. Justice Knox and Mr. Justice Banerji.

Their Lordships think that the Certificate, and not the Order for the Certificate, is the document which they are bound to consider and act upon; and unless the Certificate upon which the leave to appeal is based is in such a form as to justify that leave they ought to hold that leave has not properly been given.

Now the question arises under section 596 of the Civil Procedure Code. That section says:—"In each of the cases mentioned in clauses (a) and (b) of section 595, the amount or value of the subject-matter of the suit in the court of first instance must be Rs. 10,000 or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum, or upwards. Or the Decree must involve, directly or indirectly, some claim, or question to, or respecting property of like amount or value." There is no difficulty in interpreting that, and it does not admit of any qualification. If any less value than Rs. 10,000 is directly, or indirectly, involved, it will not give the Court jurisdiction to grant leave to appeal. In a certain event, as was recently pointed out in the Case of Banarsi Parshad v. Kashi Krishna Narain (L.R. XXVIII. In. Ap. p. 11), which was recently before this Board, there is an additional requirement, namely,

that where the Decree appealed from affirms the decision of the Court, the Appeal must involve some substantial question of law. It is noticed, in the Judgment of this Board, in the Case to which their Lordships have just referred, that there was a prevailing impression in the High Court that the mere existence of a substantial question of law was sufficient to give the Court jurisdiction to give leave to appeal to Her Majesty in Council. Lord Hobhouse says:—

“ Their Lordships have found on previous occasions that the existence of a point of law has been supposed to give a right of appeal in the ordinary course of procedure under the Code. That is a mistake. Section 596 of the Code requires that in order to give such a right there must be in dispute, either directly or indirectly, an amount of Rs. 10,000. If the Decree affirms the Court below another condition is affixed, namely, that the Appeal must involve some substantial question of law. The presence of such a question does not give a right when the value is below the mark. The requirement of it restricts the right when the higher Decree affirms the lower.” It is only upon the assumption that there was such an impression in the minds of the learned Judges that this Certificate can have any meaning attached to it at all, because it is difficult to understand how, if valuation is an essential part of the requirement under section 596, it can be said that though the valuation of the case is below the amount yet it fulfils the requirement. It would be a contradiction in terms.

There is this further: Mr. Mayne pressed us to disregard the language of the Certificate, and to look at the Order directing the Certificate to be made. Their Lordships do not feel satisfied that they are entitled to take that liberty, but assuming that they may do

so, they would at least require to be satisfied that the Judges had exercised their judicial discretion upon the matter in deciding whether, in order to comply with Section 595c and Section 600, the Case was a fit one for appeal to Her Majesty in Council. Now their Lordships are not by any means satisfied that the learned Judges were either asked, or did direct their minds judicially to that question. The Petition asks, as has already been read, that the Court should grant the Certificate under Section 596, treating it as part of the ordinary ministerial jurisdiction of the Court; and no reasons are given, and no grounds are stated by the learned Judges, for holding that, although it did not comply with Section 596, it was still a fit case to appeal to Her Majesty in Council.

Their Lordships, therefore, are not satisfied that the judicial mind of the Court has ever been applied to that question; still less that the Certificate which was signed by the learned Judges does not carry out what they intended to order and direct.

They will only add that, if Mr. Mayne had been in a position, which he very fairly admitted he was not, to say that he could with any hope of success ask for special leave to appeal, their Lordships would not have shut out the Appellant from stating his Case to the Board; but as it is their Lordships will humbly advise His Majesty that the Appeal be dismissed, and they will direct that the Appellant pays the costs of the Appeal.