

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Tassaduq Rasul Khan and another v. Manik Chand (since deceased and now represented by Kashi Kam and others) from the Court of the Judicial Commissioner of Oudh ; delivered the 11th June 1902.

Present :

LORD DAVEY.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

A preliminary objection has been taken by Mr. Mayne, on behalf of the Respondents, to the hearing of this Appeal by their Lordships, on the ground that the Order giving leave to appeal was not in accordance with the Code of Civil Procedure.

The Certificate is in these terms:—

“Certified that the above case fulfils the requirements of Section 596, Act XIV. of 1882, as regards value and nature, inasmuch as the value of the subject-matter of the suit in the Court of First Instance was upwards of Rs. 10,000, and the value of the matter in dispute on appeal to Her Majesty’s Privy Council also exceeds that amount, and as the Decree appealed from does not affirm the Court immediately below.”

Mr. Mayne contends that the statement that the Decree appealed from does not affirm the decision of the Court immediately below is erroneous, or can only be made correct by showing that the learned Judges who gave the

Certificatè in that form misinterpreted the words of Section 596 of the Civil Procedure Code. He points out that in this suit, which was a suit for specific performance of an agreement, the Court below decreed specific performance. There was an appeal by the Defendants (the present Appellants), and the only Order of the Appellate Court, the Decree which is in fact appealed from, is one which simply dismisses the Appeal. It says: "It is ordered and decreed that this Appeal be dismissed, and the Respondent's costs of this Appeal, amounting to Rs. 412 only, as noted below, are to be paid by Nawab Kasim Ali Khan and Raja Tassaduq Rasul Khan, Appellants, to Babu Manik Chand, Respondent."

It is, however, argued by Mr. De Gruyther, on behalf of the Appellants, that that is an erroneous reading and interpretation of the 596th Section that the interpretation put upon that Section by the learned Judges is the correct one. The words of the Section are these: "And where the Decree appealed from affirms the decision of the Court immediately below the Court passing such Decree, the appeal must involve some substantial question of law." Mr. De Gruyther says, and it appears from the learned Judges' Judgment that they took the same point, that "decision" does not mean the decision of the Court, or the decree made by the Court, but means the reasons given by the Court for their decree, although the decision in each case may be different. If the reasons are not the same in respect of some matter of fact, say the learned Judges, and, says Mr. De Gruyther, the Decree appealed from does not affirm the decision of the Court immediately below.

The facts of this case as stated by the learned Judges are these. They say the Court of First Instance found that a certain contract of sale was proved, and that a certain draft conveyance

put forward by the Plaintiffs was also proved. Then they say it was found by the Appellate Court that the contract was established, but " that the alleged approved draft conveyance " put forward by the Plaintiff was not proved, " that that approved draft was not an essential " portion of the Plaintiff's case, and that under " the Plaintiff's claim for general relief he could " obtain a decree for specific performance by the " execution of any sufficient conveyance." They therefore dismissed the Appeal and affirmed the Decree and the decision of the suit by the Court below.

Now there is no definition of the word " decision " in the Civil Procedure Code, but there is a definition of the word " decree." It " says ' decree ' means the formal expression of an " adjudication upon any right claimed or defence " set up in a Civil Court when such adjudication, " so far as regards the Court expressing it, decides " the suit or appeal." Then, " Judgment " is defined as meaning " the statement given by the " Judge of the grounds of a decree or order." Therefore their Lordships have two things: they have a decree which decides the suit, and they have the word " judgment," meaning the statement of the grounds upon which the learned Judge or the Court proceeds to make the decree.

Mr. De Gruyther appears to wish to give the word " decision " the same meaning as the word " judgment," and he says that it is necessary that the Appellate Court should not only affirm the decree made by the Court below, but should also affirm the grounds of fact upon which that judgment was passed. Their Lordships cannot come to that conclusion. They think that the natural, obvious, and *primâ facie* meaning of the word " decision " is decision of the suit by the Court, and that that meaning should be given to it in the Section.

It was said that there was some practice in India which puts a different meaning on the Section, but their Lordships are not satisfied that that is so; they feel themselves free to decide in the way that has been mentioned. They will therefore hold that this Certificate, understood and interpreted by the light of the Judgment given by the Judges, does not comply with Section 596, because it appears that the Decree appealed from does affirm the decision of the Court below, and the Certificate does not find that the Appeal involved any substantial question of law.

It was suggested by Mr. De Gruyther that he might amend the Certificate in that respect, and he stated to the Court what were the questions of law which in his opinion arose. Their Lordships think that that course would be irregular, and that the proper course would have been, if the parties intended to appeal on that ground, to have obtained a Certificate from the Court of the Judicial Commissioner that there was some substantial question of law.

Their Lordships therefore think that the preliminary objection succeeds, and that the Appeal ought to be dismissed, and they will humbly advise His Majesty accordingly. The Appellant must pay the costs of the Appeal.

NOTE.—On the conclusion of the Judgment their Lordships intimated that they would withhold their Report to His Majesty for three months, to enable the Appellant to apply to the Court of the Judicial Commissioner for a Certificate that the Appeal involved a substantial question of law. The Appellant having failed to obtain such Certificate, their Lordships, on the 12th November 1902, intimated that their Report would be submitted to His Majesty at the next meeting of the Privy Council.

E. S. HOPE,
Registrar of the
Privy Council.