

(1879) 11 AHC CK 0004

Allahabad High Court

Case No: None

Lachman Singh

APPELLANT

Vs

Mohan and Another

RESPONDENT

Date of Decision: Nov. 28, 1879

Citation: (1880) ILR (All) 497

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

This is a reference to the Full Bench of the Court by a Division Bench (Spankie, J., and Straight, J.) and since it was heard the Code of Procedure, Act X of 1877, has been amended by Act XII of 1879 passed on the 29th July 1879, and among other changes made by the amending Act a new definition of the term "decree" has been given. But the suit in the present case having been instituted, and the appeal having been presented, before the amending Act came into operation, the present reference must be considered according to the provisions of Act X of 1877. The point referred is the subject of the first reason of appeal, and is to the effect that the Munsif's decree shows nothing on the face of it against which the defendants could appeal to the Judge. The question was very fully argued before us, and we were much pressed with the contention that, having regard to Section 540 of the Procedure Code, Act X of 1877, and the definition of the "decree" in Section 2 of the same Code, we were to look to the decree alone, without reference to the judgment, and that, on a strict reading of the definition given of "decree" in Section 2, the decree in the present case came within the meaning of that definition, and was not appealable u/s 540, inasmuch as it was a decree which so far as it decreed anything, did so in favour of the defendants, seeing that it dismissed the suit against them, and therefore was not a decree by which these same defendants could be said to be aggrieved. It appears to me, however, that such a view of the Code is too narrow, and that we

may look not only into the judgment, but into the pleadings to see what the decree really means. Nor are we to confound the decretal order given at the end of the Munsif's judgment with the decree itself as actually and formally made, although the same principles of interpretation apply to both where the order or decree is in any respect ambiguous or imperfect. In the present case it is plain that the decretal order is not self-explanatory, and if we had nothing else to go upon it would be necessary, in order to its being intelligible, to read it with the judgment; and as to a decree itself in its complete form, I hold the opinion very strongly that, where it is ambiguous or imperfect as to any essential particular, it may be read with the judgment and record. Nor is this view of the legal quality of a decree inconsistent with the definition of a decree given in Section 2 of the Code, where it is defined to mean "the formal order of the Court in which the result of the decision of the suit, or other judicial proceeding, is embodied." This definition in no way prevents us from looking into the judgment and record, in order to a correct understanding of the true meaning and intended application of the decree as formally drawn up. On the contrary, we are told that a decree is to embody the "result," a general term which, however, is to be particularized by reference to the decision or judgment made in the suit. These materials therefore may, if necessary, all be considered where the decree, owing to any defect or ambiguity in its terms, has to be cleared up in order to its proper enforcement. And quite consistently with these considerations Section 206 of the Code of Procedure declares that "the decree must agree with the judgment," and therefore any defect or ambiguity in the decree cannot be seen without reference to the judgment. In the present case it is with the decree and not with the decretal order that we have to deal, and that decree shows plainly that it was one of which the defendants Mohan and Hira had reason to complain as being materially unfavourable to them, and that they were therefore entitled of right to appeal against it to the Judge. The decree sets out the claim made by the plaintiff as one for possession of 3 bighas, 15 1/4 biswas maafai land, the boundaries of the land and the names of the parties, and after decreeing 17 1/2 biswas, being No. 79 in the record, and as to which there is no dispute, it proceeds to order that "the rest of the claim of the plaintiff be dismissed as brought, the costs of the plaintiff to the extent decreed be charged to Nawab Ahmad Husain Khan and Khuman Singh, defendants, with future interest at eight annas per cent per mensem, that Mohan and Hira, defendants, be exempted, and their costs with future interest at eight annas per cent. per mensem be charged against the plaintiff, that the costs of Nawab Ahmed Husain Khan and Khuman Singh, defendants, be borne by themselves, and that under the circumstances of the case the defendants' pleaders' fees be separately calculated in the case." There is here not only a full recognition of the plaintiff's title as against the defendants, but the suit against Mohan and Hira is dismissed as brought, which, when we look into the judgment, we find is tantamount to a decision that their right, if any, was not as proprietors, as they had alleged, but as being in the inferior and subordinate position of lessees, and that any claim which the plaintiff had against these defendants as such lessees could not be entertained.

in the present suit, but must be made in another. Now this is not only a finding pro tanto against the defendants, but it is one which may injuriously affect any future proceedings on their part for the vindication of the proprietary rights they claim, for in any suit they might hereafter bring they might, according to the rulings of this Court and the Privy Council, probably be met by the plea of *res judicata*, although with what effect I cannot anticipate. Strictly speaking, there is in the state of things appearing on the face of the Munsif's judgment and decree no *res judicata*, but for the determination of the question as to the true nature of these defendants' rights the parties are simply, or at least by necessary implication, referred to another suit. My own opinion has always been, and is, that under such circumstances there is no room for the plea of *res judicata*, and in a case before Mr. Justice Oldfield and myself, where, as in the present case, the parties were merely referred for the determination of the matter of the plea to another suit, I expressed the opinion that the plea could not hold good (R.A. No. 100 of 1876, decided on the 1st February 1878, unreported). But it is difficult to anticipate what view may be taken of such a plea in a particular case, and undoubtedly the rulings of the Courts would go to put parties, whether plaintiffs or defendants, and pleading *res judicata* in any subsequent suit, in considerable danger; and that is a consideration which of itself goes to strengthen the defendants' right of appeal in the present case.

2. The case of *Ram Gholam v. Sheo Tahal* I.L.R All. 266 was referred to on behalf of the defendants as favouring their contention as it clearly does. Eeference was also made to a previous Full Bench decision of this Court, *Pan Kooer v. Bhagwunt Kooer* H.C.R N.W.P. 1874 p. 19, where it was held that the Appellate Court should not have entertained the appeal. Particular stress was laid on my own judgment in that ease. I there stated that, "for the purposes of the suit then before us, the words decree, decision, and judgment may all be taken to mean the same thing, viz., the ultimate and final determination of the matter or matters in issue between the parties." I also held that the decree in that case was not of such a nature as to entitle the defendants to appeal against it to the Judge, seeing that it was an appeal "by the defendants themselves against a decree wholly in their own favour, and the legal meaning of which is and can only be that the plaintiff's suit altogether fails," and I ended my judgment by observing that the decree as read by the light of the plaint is not only entirely in their favour, but is possibly beneficial to them, and their appeal therefore to the Judge was incompetent and anomalous." In the present case, however, I have shown that the decree, although apparently, and so far as it goes, favourable to the defendants, was imperfect and not self-explanatory, but that when read by the light of the record it was really unfavourable and might prove injurious to them, and that they were therefore aggrieved by it and had every interest to appeal to the Judge.

3. Holding this opinion and that there is nothing in the Code of Procedure to exclude the appeal from the Munsif's order to the Judge, and that the relative position of the parties in the suit, the effect of the Munsif's decree on their rights and interests,

and the justice and the reasonableness of the defendants' contention, must be admitted, my opinion is that the appeal to the Judge ought to be heard. The first reason of appeal must therefore be disallowed, and the case will go back to the Bench who referred it to the Full Bench for determination of the other reasons of appeal on the merits.

Spankie, J.

4. The plaintiff, appellant, claimed possession of 3 bighas, 151/4 biswas of maafi land in mauza Sheopat Patti, under a sale-deed executed on the 2nd January 1873, by the Nawab Ahmad Husain Khan, for the sum of Rs. 700: Mohan and Hira had, however, taken possession of the land, asserting that it formed part of the garden known as "Bakhshiwala," but it was not included in their auction-purchase, being a separate plot: the plaintiff, therefore, prays for possession by ejectment of the defendants Hira and Mohan. These two defendants contend that when Nawab Ahmad Husain Khan sold the land to plaintiff, he had no longer any interest in it: the lands in suit are Nos. 74, 75 and 78, and they were included in the previous purchase by defendants at auction and form part of the garden known as "Bakhshiwala." They also urged that as between the Nawab and themselves it had already been found that the land belonged to the garden, and therefore the suit was barred by Section 13, Act X of 1877, as the plaintiff claims under a deed of sale from the Nawab. The first issue laid down by the Munsif was, whether the land Nos. 74, 75 and 78 form part of the garden "Bakhshiwala" purchased by the defendants Mohan and Hira. The second issue was, has the plaintiff a right to sue and are defendants entitled to possession by virtue of a lease. The Munsif held upon the auction-sale certificate, dated 17th May 1870, the schedule of property attached in execution of decree, dated 12th September 1869, the copy of the sale notification, dated 16th November 1869, and the proceeding confirming the sale, dated 4th March 1870, that only the garden "Bakhshiwala" was sold, and that the land in dispute was not sold at auction. It is unnecessary here to give the Munsif's reasons for the conclusion at which he arrived. On the second issue the Munsif found that though the land in dispute had not formed part of the garden known as "Bakhshiwala" and purchased by defendants at auction, they nevertheless were in possession of it under a lease that had not expired at the time of the institution of the suit, and it had not been shown that it had expired up to date. The defendants, therefore, could not be ejected. "They," and this is an important part of the judgment, "having acquired the rights of a lessee by payment of consideration, possess the same title which the lessee did." The Munsif also found that Section 13, Act X of 1877, did not bar the suit. The first Court in its decretal order with reference to the lands Nos. 74, 75 and 78, dismisses "the plaintiff's claim, as it stands at present," and the defendants Mohan and Hira get their costs. Both parties appealed. I need not refer to the plaintiff's appeal. The defendants Mohan and Hira contended that, as it had already in a previous suit been found as between themselves and Nawab Ahmad Husain Khan, whose representative plaintiff is, that the disputed land

was a portion of the "Bakhshiwala" garden, no finding to the contrary could be made in this suit, which was barred by Section 13, Act X of 1877. It was also urged, amongst other grounds, that the evidence of the patwari and exhibits filed showed that the disputed land was a part of the garden. The Judge reversed the Munsif's decree, finding that the defendants had purchased at auction the lands in dispute. On the objection of the plaintiff the lower Appellate Court also held there was an appeal in this case on the part of the defendants, because the Court below had ruled that the latter were not proprietors but lessees only. The Judge cited the case of *Ram Gholam v. Sheo fahal* ILR All. 266.

5. The plaintiff appealed to this Court and his first plea is that, whereas the claim as against respondents was dismissed by the Court of First Instance, the defendants, respondents, could not appeal from that decree to the lower Appellate Court, whose decision was therefore bad in law. This plea led to the reference of the case to the Full Bench, the Judges of the Division Bench before whom the appeal came holding different opinions on the point, Mr. Justice Spankie holding that the Judge had been at liberty to dispose of the appeal on its merits, Mr. Justice STRAIGHT doubting whether the decree contained any matter on which the defendants could be heard in appeal.

6. The plea raised by appellant's pleader goes to the extent that, whereas the suit of the plaintiff was dismissed, the defendants could not appeal, and the decision of the Judge was bad in law for entertaining it. But such a plea is opposed to the very terms of Section 540 of Act X of 1877, which expressly declares that an appeal shall lie from the decrees or from any part of the decrees of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts. There is, therefore, an appeal by right from all decrees. When a decree has been prepared and signed, an appeal may at once be preferred. The form in which it is to be filed is laid down in Section 541. * It can only be rejected for the reasons assigned in Section 543. ♦ Once admitted and registered it must come on for hearing. It may be dismissed u/s 551, ♦ and the judgment of the Court from whose decision the appeal has been admitted may be confirmed, without issuing notice to the Court or upon the respondent. But there is no room for the contention that the Appellate Court cannot entertain the appeal. The appellant's pleader, however, was relying on the judgment of this Court dated 24th November 1873, *Pan Kooer v. Bhagwunt Kooer* HCR NWP 1874 p. 19, in which the suit was to recover possession of certain lands by setting aside a lease of them. The decree dismissed the suit, but the judgment contained a finding against the defendant as to certain items of the consideration for the lease, against which the defendant appealed, and it was held that the Appellate Court should not have entertained the appeal. I was a party to this ruling, so far that I concurred in the observations of Mr. Justice Jardine on the point. It was urged in that appeal that an appeal ought not to have been entertained merely on the ground of error in the judgment when the decree was admittedly correct. In construing the language of the sections in Act VIII of 1859 regarding

decrees and judgments and decisions, the learned Judge observed, "It appears to me that the proper interpretation of this language is that the appeal must be strictly from the decree, that is to say, the appellant must object to the decree before he can be allowed to enter upon his detailed objections to the judgment. In effect, the appeal is equivalent to an allegation that the decree is wrong and that the reasons which led to the decree are, as stated in the lower Court's judgment, insufficient." Summed up, the ruling in that case amounts to this, that the appellants must be aggrieved by the decree. It was held in the particular case then before the Court that he was not so aggrieved, and the learned Chief Justice went so far as to say that, read by the light of the plaint, the decree was not only entirely in appellant's favour, but was positively beneficial to him. I am now quite ready to accept the principle that an appellant must be aggrieved by the decree. But since the ruling of this Court in 1873, Act VIII of 1859 has been repealed, and we have a new Code of Procedure. The language of the sections as to appeals, judgments, reviews of judgment, is much the same as that cited in Mr. Justice Jardine's judgment. But there are two important points of difference between the old and the new Codes, first that "judgment" and "decree" are defined by the latter, and secondly, that Section 540 not only allows appeals from decrees but from any part of decrees. When this section is read with Section 2, we are in a position to put a more liberal construction on the words of the first section without going beyond the principle that an appellant must be aggrieved by the decree. "Judgment" means the statement given by the Judge as the grounds of the order or decree by which a suit or other judicial proceeding is determined. "Decree" means the formal order of the Court in which the result of the decision of the suit or other judicial proceeding is embodied. The decree, therefore, is not to be vague or shadowy: it is to have substance and body.

7. By Section 203, Act X of 1877, the judgment of the Court shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for that decision. By Section 204, when issues have been framed, the Court shall state its finding and decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit. By Section 206 the decree must agree with the judgment, and amongst other particulars it shall specify clearly the relief granted or other determination of the suit, and in fulfilling these conditions I would say that the decree must show the finding and decision on the points for determination: otherwise it will not agree with the judgment. It is true that if the decree be found to be at variance with the judgment, or if any clerical or arithmetical error be found in it, the Court by this section can amend it, so as to bring it into conformity with the judgment, or to correct such error. The section, however, gives no power to alter or vary the decree, a review of judgment or an appeal can alone do this. But a review of judgment can only be allowed under the limitations imposed by Section 623. It could not be allowed merely to enable the Court to reconsider its judgment upon the same evidence. If, therefore, a party feels himself aggrieved by a decree and desires

to vary, or alter or get rid of it altogether, he claims his right of appeal u/s 540. Now a decree may not contain all that it should contain, may not in fact fulfil the conditions of Sections 2 and 206 of the Act. It may in consequence of omissions operate prejudicially against one of the parties and that party may be the defendant, in a suit which is dismissed. It may be in the highest degree prejudicial to him for since the enactment of Act X of 1877, Section 13 has widely extended the provisions of Section 2, Act VIII of 1859, and it becomes more than ever imperative to appeal from a decree in a suit, which may become final within the meaning of the section, and in which the decree by omissions or otherwise may endanger the future interests of any party. By the terms of the section no Court shall try any suit or issue in which the matter directly or substantially in issue has been heard and finally decided by a Court of competent jurisdiction, in a former suit, between the same parties, or between parties under whom they or any of them claim, litigating under the same title. The "explanations" attached to the section very clearly show how a decree, if it does not fulfil all the conditions of the law as laid down in Section 2 and 206, may prove hereafter injurious to any party to the suit. If, therefore, the omissions in a decree are such as to aggrieve any party, and yet are not such as can be amended by Section 206, it follows that he must appeal in order to protect his own interests, and it is perhaps possibly on this account that decrees may be appealed not only altogether but in part. For it is obvious that a person may be aggrieved by one part of a decree, though he may not be aggrieved by the remaining portion of the decree and the remedy, admittedly, in this case is appeal. It seems to me inconsistent that there should be grounds for an appeal when the matter of the decree is prejudicial to the interests of a party, and none when the decree itself is equally injurious to a party in consequence of its omissions. I am, therefore, led by these considerations to conclude that a decree which is materially defective, and cannot be amended, is appealable on that ground alone, and that any party aggrieved thereby may take that objection, and in support of his objection may refer to the judgment of the Court whose decree is appealed, and this conclusion is borne out by the fact that by Section 541 an appellant not only is bound to file a copy of the decree appealed, but also a copy of the judgment, unless the Appellate Court dispenses with the latter. Now, with respect to the case in which the reference has been made to us, I hold that the decree is defective, not only because it contains omissions, which, if they had been supplied, would have at once given admittedly grounds for an appeal, but because the decree itself does contain matter which laid it open to appeal. It is defective because it does not embody the result of the Court's finding on the points for determination, as both parties claimed the ownership of the lands in dispute, and the judgment declares plaintiff to be the owner and defendants merely lessees, whereas the decree is silent on the issue. The omission in this respect makes the decree injurious to the defendants because they will not be able to plead in any future suit that they were owners, as this issue in the suit was decided against them finally in the present suit, if there was no appeal, and therefore Section 13 of Act X of 1877 would be pleaded in bar of a second trial of the

issue.

8. The decree then is open to appeal on this ground, and also because the words "the rest of the claim as it stands at present be dismissed," read and interpreted by the copy of the judgment filed with the copy of the decree, show that these words are injurious to the interests of defendants, inasmuch as they maintain the right of the plaintiff to the land as owner, though he cannot have, possession at once, because the lease of defendants had not expired. These words can have no other meaning, and having that meaning the decree limits the rights of defendants to those which lessees have, and denies their right as owners, and therefore defendants may be aggrieved by the decree, assuming that they have a case to lay before the Appellate Court, and not only is their appeal in that Court entertainable, but it is one that should be heard on the merits. Holding these views, I maintain that the Full Bench ruling of this Court to which I was a party in 1873 H.C.R. N.W.P. 1874 p. 19 is not a bar to the appeal, whilst the ruling of a Division Bench in which I also was one of the Judges, *Ram Gholam v. Sheo Tahal* ILR All. 266, is strictly applicable, and this latter decision is the one upon which the Judge of the lower Appellate Court relied in deciding the point before him as to the admissibility of the appeal.

Oldfield, J.

9. By Section 540, Act X of 1877, "an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts." It appears to me that the object and effect of this section are to postpone the right of appeal until the decree or formal order embodying the result of the decision of the suit or judicial proceeding has been made, and that on the decree being made, an appeal shall lie from it, as a matter of right, and since in Section 541 it is directed that the appeal shall be accompanied by a copy of the judgment (unless the Appellate Court dispenses therewith), and since the decree is nothing more than the formal order embodying the result of the judgment, it seems to me a necessary consequence, and to have been the intention of the Legislature, to give a right of objecting to the judgment, when preferring an appeal from the decree.

10. In the case before us I see no reason why the appeal should not be maintainable, for whether we regard the judgment or the decree the defendant is aggrieved by both. Although plaintiff's suit was dismissed, the judgment decided in favour of the plaintiff's title as against defendants, and the decree by its order "dismisses the suit as it stands," an order which is no proper embodiment of the judgment, and impliedly allows the plaintiff's title. The decision of this Court in *Ram Gholam v. Sheo Tahal* ILR All. 266 is in point.

Straight, J.

11. This was a suit to obtain possession by ejectment of 3 bighas, 151/4 biswas of land numbered 74, 75, 78, and 79, claimed by the plaintiff under a purchase from

the defendant Ahmad Husain Khan. The sale to plaintiff was admitted by Ahmad Husain Khan, and with regard to No. 79, that may be excluded from consideration, for as to that, judgment was confessed by defendant Khuman Singh. The other three portions were admittedly in the occupation of the defendants Mohan and Hira, who to the plaintiff's claim for possession set up the following pleas:--(i) That they were auction-purchasers of proprietary rights in respect of 74, 75, and 78; (ii) That if not purchasers of proprietary rights they were purchasers of lessee's rights. At the hearing before the Court of First Instance the evidence was very fully gone into, and the following were the issues of fact that had to be decided:--(i) Whether the lands 74, 75 and 78 form part of the garden "Bakshiwala" purchased at auction by the defendants Mohan and Hira; (ii) Has the plaintiff a right to sue and are the defendants entitled to possession by virtue of the lease. The Munsif in his judgment very exhaustively deals with these matters, and disposes of them by finding "that the defendants cannot be ejected from the lands Nos. 74, 75, and 78 owing to the term of the lease not having expired : they having acquired the right of a lessee by payment of consideration, they possess the same title the lessee did: therefore, the plaintiff's suit against them is wrong." The terms of the decree are, so far as they affect the point in this case, these: "That the rest of the plaintiff's claim as it stands at present be dismissed, that the defendants Mohan and Hira be considered as exempted (from costs), that the whole of the costs with future interest at eight annas per cent. per mensem be paid by the plaintiff." Against this decision of the Munsif both the plaintiff and the defendants Mohan and Hira appealed to the lower Appellate Court, the ground taken by the latter being, that the Court of First Instance had wrongly disallowed their proprietary claim. On the part of the plaintiff, respondent, it was objected, that the decree of the Munsif being in favour of the defendants they had no right of appeal, and the case could not be entertained. The Judge rejected the contention and found the defendants Mohan and Hira to be auction-purchasers of "proprietary" right, dismissing the cross appeal of the plaintiff. Against this decision the plaintiff appealed to the High Court, and the case came on to be heard before Mr. Justice Spankie and myself, when there being a difference of opinion between us upon a point of law it was referred to the Full Bench. The matter has now been very fully argued, but the whole question resolves itself into this. Does an appeal lie u/s 540 of Act X of 1877 by a party to a suit, as to whom upon the face of the decree there is no adverse finding or declaration? In other words, can the terms of Section 540 "shall lie from the decree or from any part of the decrees" be so elastically construed as to justify what in the present case is practically an appeal from a judgment. No doubt the point taken for the plaintiff, respondent, is somewhat technical and I had every indisposition to entertain it, but after careful consideration and a close examination of the Act, I can come to no other conclusion than that it should prevail. The expressions used in Section 540 do not appear to me to present any ambiguity, nor do the words "or form any part of the decrees" substantially alter the law as it stood in Section 332 * of Act VIII of 1859, upon which the Full Bench ruling H.C.R. N.W.P. 1874 p. 19 of this Court was given in

November 1873. To my mind language cannot more plainly declare what an appeal is to be from, "From the decrees or any part of the decrees". I turn to the interpretation clause of the Act only to find a perfectly plain and definite description of "decree" in contradistinction to "judgment." "Judgment" means the statement given by the Judge as the grounds of the order or decree. "Decree" means the formal order of the Court in which the result of the decision of the suit is embodied. In short, the judgment has no operative effect of itself at all and until its terms are drawn up in the decree the suit remains open. It is the, decree that has effect and must be enforced, not the judgment, and what it is to contain and how it is to be expressed are provided by Sections 205 and 206 of the Procedure Code. It is altogether idle and useless for the purposes of the present case to examine, as was suggested, any proposed Bill now under consideration of the Legislative authorities for the further amendment of the Civil Procedure of this country, which may or may not hereafter prevent the recurrence of the difficulty that now arises. Language can readily be found to alter Section 540 in such a way as to give the fullest power of appeal, but while it remains as it is and the broad distinction exists between judgment and decree, to which I have already called attention, it must in my opinion be taken that the words "an appeal shall lie from the decrees, or any part of the decrees," mean that it is the terms of the decree itself, and nothing but the terms of the decree, that are to be made the subject of appeal. The words at the end of Section 540 "to the Courts authorized to hear appeals from the decisions of those Courts," so far as the use of the expression decision is concerned, seem to me in no way to extend the meaning of what precede them or to have any bearing upon the construction to be applied. While feeling that the limitation which I hold to exist in Section 540, confining an appeal to the decree, is a somewhat capricious one, and involves the incongruity that the Court of Appeal from appellate decrees might entertain matters of appeal outside the decree which could not be dealt with by the first Appellate Court, I cannot strain the interpretation of what seem to me explicit words, because, as was urged, hardship might arise. Nor does it appear to me that the possible operation of Section 13 of Act X of 1877 upon the defendants, respondents, had they not appealed from the decision of the Court of First Instance, in any after proceedings in respect of the same property, is a matter that has any relevancy to the present argument. I may, however, point out that it was competent for them u/s 206 of the Procedure Code to have had the decree put in order by the Munsif and his finding in reference to their claim duly declared upon the face of it. Had this course been adopted, all difficulty would have been obviated, for then "in accordance with his judgment" (Section 205) * he must have decreed them to be "lessees" and not "proprietors," which of necessity would have at once disclosed matter for appeal. Further than this, Section 13 of Act X of 1877 would under such circumstances have afterwards become applicable, had they not appealed, because a Court of competent jurisdiction would not only have "heard" but have "finally determined" their claim. It was suggested in the course of the argument, that upon the face of the decree itself there was something that affected the defendants,

respondents, in the words "as it stands at present," so as to afford them matter of appeal. At the hearing I was somewhat disposed to adopt the view and I wish I could do so now, as it would avoid the necessity of my differing with the rest of the Court. I cannot, however, upon further consideration see in the terms of the decree anything but a most positive finding against the plaintiff and in favour of the defendants, with their costs, and I see nothing upon the face of it giving them any ground for appeal. No doubt the decree is most carelessly and inadequately framed and is altogether out of compliance with Section 205 of the Procedure Code, but for the reasons I have already given it is the only document to be looked at for the purposes of appeal, and however full the judgment, that is ineffectual and inoperative, except so far as it finds voice and expression in the words of the decree. But to the extent it goes it deals with the plaintiff, as a non-suit would in the English Courts, and relegates him to an assertion of his rights of possession by a fresh proceeding whenever the proper moment arrives. Under all these circumstances I am of opinion that the Judge of the lower Appellate Court was wrong in entertaining the defendants' appeal and that the present appeal should be allowed.

*Form of appeal.

Memorandum to be accompanied by copy of decree and judgment.

[Section 541:--The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.]

Memorandum of appeal

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.]

◆Rejection of memorandum or grounds of objection.

[Section 543:--If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court, or be amended then and there. When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.]

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.]

◆Power to confirm decision of lower Court without sending it notice.

[Section 551:--The Appellate Court may, if it thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time,

confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.]

*Appeal to lie from all decrees except when expressly prohibited.

Appeals to Sudder Court to be heard by three or more Judges.

[Section 332:--Except when otherwise expressly provided in this or any other Regulation or Act for the time being in force, an appeal shall lie from the decrees of the Courts of original jurisdiction to the Courts authorised to hear appeals from the decisions of those Courts. (If the appeal lie to the Sudder Court it shall be heard and determined by a Court consisting of three or more Judges of that Court.) Bracketed part repealed by Act IV of 1860 and by Act XIII, 1861.]

*Date of decree.

[Section 205:--The decree shall bear date the day on which the judgment was pronounced, and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.]