

(1879) 05 CAL CK 0001

Calcutta High Court

Case No: None

Juggernath Sahoo and
Others

APPELLANT

Vs

Judoo Roy Singh and
Others

RESPONDENT

Date of Decision: May 2, 1879

Citation: (1880) ILR (Cal) 329

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

The final order in the suit, out of which the present case arises, was made by Her Majesty in Council. u/s 610 of the CPC the decree-holders were bound to produce a certified copy of the final order when they applied for execution. It is no doubt true, as pointed out by the respondents' pleader, that the formal order of Her Majesty in Council is drawn up in the terms of the recommendation of the Judicial Committee in their judgment, but such recommendation cannot be taken to be the decree or order referred to in Section 610.

2. Before the decree-holders can proceed with the execution of their decree in this case, it will be necessary for them to take steps to obtain a copy of the order of Her Majesty in Council. As to the costs of this appeal, the appellants are not entitled to them. On a former occasion, proceedings taken by the respondents for the purpose of enforcing their claim were stopped on the objection of the appellants, that it was necessary for them to produce a copy of the faisalla in the appeal to Her Majesty in Council. The word faisalla in this country is used as representing the judgment, not the order or decree: and in suits here, there are two distinct papers. The Subordinate Judge appears to have understood the word "faisalla" to mean the judgment, and not the formal order. If it was the intention of the judgment-debtors on the former occasion to claim the production of the formal order of Her Majesty in

Council, they should have said so distinctly, and should not have used a word which, to say the least of it, is ambiguous. Apparently the respondents complied with the demand made upon them on that occasion; and they are now met by a further objection that the document, which they produced, is a note of the grounds of decision, and not such an order as is capable of execution.

3. We consider ourselves bound to give effect to the objection, because under the words of the Code the respondents were bound to produce the formal order, but at the same time, looking to the mode in which this case has been dealt with by the parties, we think the objection of the judgment-debtors now put forward ought to have been distinctly taken on the former occasion. The order made by the lower Court for allowing execution to proceed must be set aside.

Broughton, J.

4. I entirely concur. The question has been fully discussed in the case of Joy Narain Giree v. Goluck Chunder Mytee (20 W.R., 444). Section 610 of the CPC seems to have been drafted on that case. I also agree that the appellants are not entitled to the costs of this appeal.