

(1869) 02 CAL CK 0004

Calcutta High Court**Case No:** Privy Council Appeal No. 718 of 1864Fakiruddin Mohammed Asan
Chowdhry

APPELLANT

Vs

Najumunnissa Chowdhraim and
OthersRESPONDENT

Date of Decision: Feb. 20, 1869

Judgement

Loch, J.

This is an application that certain papers filed with an application for review, should be transmitted with the record to the Privy Council; and in support of the application, Mr. Allan has produced an order of the Privy Council of the 9th December 1868, in the case of Khujoorunnissa, petitioner and appellant to the Privy Council, by which order the Privy Council directed that the papers presented with the petition of review, should be transmitted with the record to England. But, in that case, their Lordships do not lay down a general rule that, where an application for review has been made and rejected, such application, with any papers accompanying the petition of review, is to be sent with the record to the Privy Council. There is a ruling of the Full Bench of this Court, Raja Syud Enaet Hoossein v. Rani Roushun Jehan [1 B.L.R. (F.B.), 1], which rules that, where an application for review has been rejected, the papers relating to the review are not to be sent to England, as they do not form a part of the record; and on referring to Macpherson's Privy Council Practice, page 123, I find that "the Sudder Adawlut having decided a cause, an application for review of judgment was made to it, and fresh evidence was tendered. The Sudder Adawlut refused to grant a review. The original decree was appealed from, but not the order refusing a review. The Judicial Committee declined to consider the additional evidence, although it was included in the transcript."

2. The case alluded to in Macpherson is that of Sheikh Imdad Ali And Others vs. Mussumat Kootby Begum ; and in page 7, their Lordships say: "that, as the appeal was from the decree of the 31st May 1831 only, the objection was valid, and the subsequent order not being appealed from, the documents produced to the Court

ought not to have formed part of the transcript." As no appeal has been filed from the order passed on the application for review, I think this application ought to be rejected, and it is hereby rejected with costs.