

(1890) 01 CAL CK 0002**Calcutta High Court****Case No:** None

Lutf Ali Khan

APPELLANT

Vs

Asgur Reza and Another

RESPONDENT

Date of Decision: Jan. 31, 1890**Citation:** (1890) ILR (Cal) 455**Hon'ble Judges:** Wilson, J; Pigot, J**Bench:** Division Bench**Judgement**

Wilson and Pigot, JJ.

This is an appeal against an order made by Mr. Justice Chunder Madhub Ghose, granting a certificate to the respondent to the effect that the case is a proper one for appeal to the Privy Council. Mr. Woodroffe has raised a preliminary objection that such an appeal does not lie to us has been decided in three cases that that is so. It was decided, first, in the case of Mowla Buksh v. Kishen Pertab Sahi ILR Cal. 102 by Mr. Justice Macpherson and Mr. Justice Jackson. The same view was taken by Chief Justice Garth and Mr. Justice Ainslie in the case of Amirrunnessa v. Behary Lall 25 W.R. 529, and again by Sir Richard Garth and Mr. Justice McDonell in the case of Manly v. Patterson ILR Cal. 339; and I may observe that the last decision was given with a full knowledge of the decision in this Court of a case on which reliance had been placed, the case of In re Rally Soondery Dabia ILR Cal 594

2. These decisions are binding upon us and we have not been asked to take upon ourselves the responsibility of dissenting from them; but we have been asked to refer the question to a Full Bench in order that those decisions may be reconsidered. We should have been justified in doing that if we ourselves were of opinion, on principle, that those decisions were wrong. But we are not inclined to dissent from the view taken in those cases.

3. We should also be justified in referring the question to a Full Bench if the view were correct, which has been pressed upon us, of the decision of the Privy Council in the case of Hurrish Chunder Chowdhry v. Kali Sundari Debi ILR Cal 482 which is

subsequent to the decision of this Court in the case I have last mentioned. We were asked to hold that the decision of the Privy Council in that case was based upon principles inconsistent with the decisions arrived at in this Court upon the question before us. Had that been so, we should no doubt have been justified in referring this case to the Full Bench. But it appears to us that that is not so. The case before the Privy Council was this: a decree had been passed by the Privy Council and transmitted to this country for execution; the learned Judge exercising that particular branch of jurisdiction known as the Privy Council Department held, on an application before him, that one of the decree-holders was not entitled to execute the decree, and he gave effect to that decision by refusing to transmit it to the local Court for execution. The Privy Council, affirming the judgment of a majority of this Court, held that that decision, which actually determined the rights of the decree-holder, was a judgment within the meaning of Clause 15 of the Letters Patent. Speaking of the judgment of the majority of this Court, which judgment they approved and upheld, their Lordships say: "These learned Judges held (and their Lordships think rightly) that whether the transmission of an order u/s 610* would or would not be a merely ministerial proceeding, Mr. Justice Pontifex had in fact exercised a judicial discretion and had come to a decision of great importance which if it remained would entirely conclude any rights of Kali Sundari to an execution in this suit. They held therefore that it was a judgment within the meaning of Clause 15."

4. That is a very different case from the present case, where the order against which this appeal is brought is not one deciding finally or otherwise any question at issue in the case, or the rights of any of the parties to the suit. It is merely a step taken to enable the parties to go before the Privy Council and obtain from that tribunal a decision on the merits of the case. The result is that the appeal does not lie and must be dismissed with costs.

* Procedure to enforce orders of Queen in Council.

[Section 610: Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of

exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.]