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MAYABHAI PREMBHAI v. TRIBHUVANDAS JAGJIVANDAS.

180 of Schedule II of the Limitation Act XV of 1877. He referred to *Ashootosh Dutt* v. *Doorga Churn* (1); *Anandrav Chimaji* v. *Thakarchand* (2); *Ramkishen* v. *Sedhu* (3); *Byraddi Subbareddi* v. *Dasappa Ran* (4).

Lang, for respondent, was not called upon.

WESTROPP, C. J.—We think the order of Bayley, J., must be affirmed with costs. Clauses 178 and 179 of the second schedule of the Limitation Act show that clause 180 of that schedule was intended to be independent of section 230 of the Civil Procedure Code, and not to be in any way controlled by it. We think that section 230 does not apply to decrees made by the High Courts: see *Unnoda Persaud* v. *Kristo Coomar* (5); *Thorpe* v. *Adams* (6); *The Queen* v. *Champneys* (7).

Order affirmed.

Attorney for appellant.—Mr. *Shamrav Pandurang*.

Attorney for respondent—Mr. *J. Macfarlane*.

(1) I. L. R. 6 Calc. 504.
(2) I. L. R. 5 Bom. 245.
(3) I. L. R. 2 All. 275.
(4) I. L. R. 1 Mad. 403.
(5) 15 Beng. L. R. 60 (note); S. C. 19 Calc. W. R. (Civ. Rul.) 5.
(6) L. R. 6 C. P. 125.
(7) L. R. 6 C. P. 384.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Justice, and Mr. Justice Melvill.

1882
March 17.

ABEN SHA SABIT ALI AND ANOTHER, PLAINTIFFS, *v.* CASSIRAO BABA SAHEB HOLKAR AND OTHERS, DEFENDANTS.*

Privy Council, appeal to—Certificate as to value of subject-matter of the suit—Final decree or order, what is a—Interlocutory order—Civil Procedure Code (Act X of 1877), Sections 595, 600.

An order in a partnership suit for account refusing to allow the plaintiffs to have their accounts taken in a particular manner suggested by themselves, unless they would consent to give certain credits in their accounts to the defendants, is not a final decree within the meaning of clause (*b*) of section 595 of the Civil Procedure Code, although the effect of such order may be to make it impossible for the plaintiffs to proceed further in the case, and, consequently, an appeal from such an order of the High Court to the Queen in Council does not lie.

* Late Supreme Court file, *Equity Side*.

APPLICATION, by the plaintiffs, for a certificate under section 600 of the Civil Procedure Code (Act X of 1877) preliminary to filing an appeal to the Privy Council against an order made, on appeal, by Westropp, C. J., and Melvill, J., on the 30th July, 1881.

The suit was for dissolution of partnership and for an account of certain opium transactions in which the plaintiffs and defendants had been engaged. The plaintiffs alleged that there had been large losses in the partnership transactions, which they had paid, and they sought to recover their share of such losses from the defendants. The defendants, on the other hand, alleged that the transactions had resulted in profits which the plaintiffs had appropriated. They alleged, further, that, by the contract of partnership, all transactions were to be effected by one of the defendants named Vittuldass Mungulji; that the plaintiffs had violated this contract by themselves entering into some contracts, and they asked that an account should be taken of all the transactions, and that the plaintiffs should account for the profits. At the hearing the suit was referred to the Master in Equity to take an account of the partnership dealings and transactions between the plaintiffs and defendants. One of the clauses in the decree was as follows:—"And this Court doth declare that the said account so to be taken by the said Master shall be *limited to all such dealings and transactions as were entered into by the defendant Vittuldass Mungulji in the name of the plaintiffs and on behalf of the said partnership,* and doth order and decree the same accordingly."

After a protracted inquiry the Master made a special report in which he certified that the partnership had effected contracts of sale of 1,235 chests of opium; that, of these, Vittuldass Mungulji had entered into contracts of sale of 615 chests in the name of the plaintiffs and on behalf of the partnership, and that the contracts for the remaining 620 chests had been entered into by the other partners on behalf of the said partnership; but that he was unable, on the evidence produced before him, to distinguish the paticular contracts of sale entered into by the said Vittuldass Mungulji from the contracts of sale entered into by the other partners. The plaintiffs alleged that upon all these contracts of sale a loss had been incurred.

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The Master also reported that certain *teji mundi* (1) contracts for the purchase of 450 chests of opium set out in an annexed schedule had been entered into; that the contracts for some of these chests had been made by the defendant Vittuldass Mungulji in the name of the plaintiffs and on behalf of the firm, and that the contracts for the remainder of the chests had been made by the other partners; but that he was unable, on the evidence, to distinguish how many of the 450 chests formed the subject-matter of such contracts as had been entered into by Vittuldass Mungulji in the name of plaintiffs and on behalf of the partnership, and how many of the chests formed the subject-matter of the contracts which had been entered into by the other partners, or to distinguish the two classes of contracts.

To this report some of the defendants filed exceptions, but their exceptions were overruled by the Court, which confirmed the Master's report, and the case went back again to the Master's office.

The plaintiffs were unable to produce further evidence before the Master with reference to the special class of contracts of which an account was ordered by the decree; and in June, 1880, they proposed that out of the 1,235 chests, made up of the 615 chests and the 620 chests mentioned in the Master's special report, there might be selected the 615 chests in respect of which the loss was least, and, therefore, in respect of which the amount claimable from the defendants was least favourable to the plaintiffs; and that such 615 chests might be considered as the chests in respect of which the plaintiffs were entitled to claim in account from the defendants, subject to the plaintiffs proving that they had paid the losses incurred in respect of such 615 chests.

The Master refused to adopt this proposal, and thereupon the plaintiffs moved before West, J., for an order that the Master be directed to proceed in the matter in the way suggested by the plaintiffs. After argument, West, J., made an order on the 7th October, 1880, substantially in the terms proposed by the plaintiffs From that order the defendants appealed.

Before the Appeal Court—which consisted of Westropp, C.J., and

(1) *Teji mundi* contracts are a certain class of wagering contracts.

Melvill, J.—a point was taken which had not been suggested in the Court below, viz., that it appeared, in the evidence taken before the Master, that in respect of the 450 chests, which formed the subject-matter of the *teji mundi* contracts, a profit had resulted to the partnership; that the defendants were entitled, under the decree, to be credited with the profits made upon the chests which were the subject-matter of the *teji mundi* contracts of purchase described in the decree; that, by reason of the mode in which the plaintiffs had kept the books, it was, as stated in the Master's report, impossible for the defendants to show how many of the chests fell within the specified class of contracts and that it was unjust that the plaintiffs were, under the order of West, J., to be relieved from the necessity of giving strict proof that the particular chests, in regard to which losses had been sustained, fell within the class of contracts on which the defendants were to be liable under the decree: while the defendants were to be held bound to give such proof with respect to the particular chests on which a profit had been made. The evidence had, however, failed to identify the particular 450 chests.

The Court of Appeal refused to confirm the order made by West, J., unless the plaintiffs would consent to give the defendants credit in the accounts for the profits made upon the whole of the 450 chests which formed the subject-matter of the *teji mundi* contracts of purchase, it being impossible to distinguish in their books the chests which fell within the contracts described in the decree. The plaintiffs refused to do this, and the Court thereupon reversed the order made by West, J.

The plaintiffs then presented a petition, under section 600 of Civil Procedure Code (Act X of 1877), for leave to appeal to the Privy Council, and on the 27th January, 1882, obtained a *rule nisi* calling on the defendants to show cause why a certificate should not be granted that the amount or value of the subject-matter of the suit exceeds the sum of Rs. 10,000.

Kirkpatrick for the defendants Nos. 1, 2 and 3.

The Hon. *F. L. Latham* (Acting Advocate General) for the fourth defendant.

Starling for the plaintiffs.

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For the defendants it was contended that the plaintiffs' petition fell within clause (*b*) of section 595 of the Civil Procedure Code; that the order, from which the plaintiffs sought to appeal, was not a *final* decree. Counsel referred to the charter of the Supreme Court, 1823, cls. 60 and 63; Stat. 24 & 25 Vic., c. 104; Letters Patent, 1862 and 1865; Act VI of 1874; *Tetley* v. *Jaishankar*(1); *Palah Dhari Rai* v. *Radha Parsad Singh*(2); *Sonbai* v. *Ahmedbhai Hubibbhai*(3); Daniel's Chancery Practice, pp. 850-855, 857; Seton on Decrees (2nd ed., 1879,), Vol. II, 1607; *Cummins* v. *Herron*(4); *White* v. *Witt* (5); *Standard Discount Company* v. *O tard De la Grange*(6).

For the plaintiffs, counsel contended that the order sought for was in the nature of an order for rehearing which had been refused by the Court of Appeal, and he cited *Nazir Alikhan* v. *Rajah Ojoodharam*(7). The order was really a final order, as the plaintiffs could not proceed with the case.

SARGENT, J.—We think that the order made by the Court of Appeal in this case on the 30th July last is not a "final order" such as is contemplated by section 595 of the Civil Procedure Code. By section 594 of the Civil Procedure Code it is provided that in the chapter which deals with the subject of appeals to the Privy Council the term "decree" shall include order. By clause (*b*) of section 595 an appeal is allowed to the Privy Council from any *final* decree, so that under these two sections an appeal is permitted from any final order. We think, however, that the order made by the Court of Appeal in this case on the 30th July, 1881, was not a *final* order such as is contemplated by section 595. In clauses 39 and 40 of the Letters Patent we find final judgments and orders contrasted with interlocutory judgments and orders. In section 595 of the Civil Procedure Code, which is in the same words as section 4 of Act VI of 1874, the distinction is between final decrees and orders and all other decrees and orders. This distinction, however, is virtually the same as that in the Letters Patent; for as Bramwell, L. J., says in the case of *Standard*

(1) I. L. R. 1 All. 726.
(2) I. L. R. 2 All. 65.
(3) 9 Bom. H. C. Rep. 398.
(4) 4 Ch. D. 787.
(5) 5 Ch. D. 589.
(6) 3 C. P. D. 67.
(7) Calc. W. R. Mis. Ap., p. 13.

Discount Company v. *Otard De la Grange* (1), "there cannot be an order which is neither final nor interlocutory". Now the order in question is certainly not the final order in the cause. It does not deal finally with the rights of the parties to the suit, but merely affects the mode in which their rights are to be ascertained and determined, and falls within the definition of an interlocutory order given by Cotton, L.J., in the same case, viz., "an order which directs how an action is to proceed".

It has been urged that the order now before us is, in effect, final, inasmuch as, while it stands, the plaintiff will be unable to establish his case against the defendants. Cotton, L.J., however, in the case just referred to, cites *White* v. *Witt*(2) as an authority for the proposition that "although the effect of a final judgment will result from making an order unless it be set aside, still this circumstance does not prevent the order from being interlocutory". In that case Jessel, M. R., says: "It has been said and truly said that in this particular case the whole cause of action was referred to chambers.....It is impossible for us to look at the nature of the contest; we must look at the form of the proceeding."

We are, therefore, of opinion that the order against which the plaintiffs seek to appeal, is not a final order within the meaning of clause (*b*) of section 595 of the Civil Procedure Code, and we must refuse to grant the certificate which has been applied for.

Attorneys for the plaintiffs.—Messrs. *Tobin and Roughton.*
Attorneys for the defendants.—Messrs. *Payne and Gilbert* and Messrs. *Craigie, Lynch and Owen.*

(1) 3 C. P. Div. 67. (2) 5 Ch. D. 589.