1890
MARCH 17.
ORIGINAL CIVIL.
14 B. 408.

in the books of the firm of Ahmedbhoy Hubibbhoy at Bombay and Rahmubhoy Hubibhhoy in China; but, as appears from Mr. Turner's evidence, it was not until he had inspection of those books that he knew what was the real nature of those entries. The defendant, therefore, is liable for the assets so transferred.

[His Lordships then discussed the evidence as to the third, fifth and sixth items of claim, and agreed with the decision of the Court below in respect to them. As to the fourth item, *viz.*, the claim for half profits, the Court of appeal (differing from Scott, J.) held that the plaintiff's claim was barred. As to that item His Lordship said:—]

[428] With respect to the one-half profits of the cotton trade carried on in partnership between the insolvent and the firm of Ahmedbhoy Hubibbhoy, the Official Assignee was entitled to the insolvent's credit balance at the date of filing of petition on the 17th September, 1866. Claims would be barred in three years from that date unless protected by s. 18 of the Statute. The trade, as appears from the books, had been going on in 1865, if not before, and there is no sufficient reason to suppose that the account had been originally kept in the books of Ahmedbhoy and Rahmubhoy as a part of any fraudulent scheme to defeat creditors, and there is no evidence to show that defendant Ahmedbhoy Hubibbhoy did anything to conceal this account from the Official Assignee after the insolvency of Alladinbhoy, or to put Mr. Turner off his guard, at any rate until the claim was barred, for it was not until 1881 that Mr. Turner made any enquiries into the affairs of the insolvent, or examined Ahmedbhoy Hubibbhoy on the matter, or asked Rahmubhoy Hubibbhoy to produce the books of their firm. We think, therefore, that s. 18 of the Limitation Act XV of 1877 is not applicable; this claim was barred when this suit was brought.

We must, therefore, confirm the decree (with a slight variation in cl. (1), except as to the claim for one-half profits. Parties to pay their own costs of this appeal.

Attorneys for the appellant:—Messrs. *Roughton and Byrne.*

Attorneys for the respondent:—Messrs. *Payne, Gilbert and Sayani.*

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14 B. 428.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

RAHMUBHOY HUBIBBHOY (*Original Defendant*), *Appellant* v. C A. TURNER (*Original Plaintiff*), *Respondent.** [20th June, 1890.]

Practice—Privy Council—Appeal to Privy Council—Leave to appeal—Civil Procedure Code (Act XIV of 1882), s. 595.

Where a decree has been made directing accounts to be taken, but there is nothing so special in the case as to bring it under cl. *(c)* of s. 595 of the Civil Procedure Code, leave to appeal to the Privy Council will not be given.

[R., 10 C.L.J. 336=4 Ind. Cas. 459.]

[429] THE plaintiff (respondent), as Official Assignee and Assignee of one Alladinbhoy Hubibbhoy, filed this suit against the defendant,

* Suit No. 89 of 1887; Appeal No. 640.

1890
JUNE 20.
ORIGINAL CIVIL.
14 B. 428.

praying that he might be ordered to make discovery of and account to plaintiff for all properties and moneys of the insolvent which were in the possession of himself, or of his firm, at the date of the insolvency of the said Alladinbhoy Hubibbhoy and subsequent thereto, &c., &c.

On the 10th December, 1888, Scott, J., passed a decree for the plaintiff; and accounts, &c., were ordered to be taken. (See *supra*, p. 421.)

The defendant (appellant) appealed, and on the 17th March, 1890, the appeal Court confirmed the decree of first instance, with some variations in the direction as to the accounts. (See *supra* p. 428.)

On the 2nd May, 1890, the appellant, in accordance with s. 598 of the Civil Procedure Code (Act XIV of 1882), presented a petition for leave to appeal to the Privy Council. The petition set forth the grounds upon which he desired to appeal. Amongt others were the following, *viz.*, that the plaintiff's claim in respect to certain matters as to which accounts were ordered to be taken, was barred; that as to certain other matters as to which an account was also ordered, the plaintiff had no claim; that the appeal Court ought to have directed that in taking the accounts the appellant should get credit for large sums in respect of certain matters, &c.

The petition for leave to appeal prayed for "(*a*) a certificate that the amount or value of the subject-matter of the suit in the Court of first instance and the amount or value of the matter in dispute on appeal to Her Majesty in Council is Rs. 10,000 and upwards, and that the appeal involves a substantial point of law, and that this case is a fit one for appeal to Her Majesty in Council."

Notice to show cause against the granting of the said certificate was served upon the respondent.

Inverarity (with *Lang*) for the respondent showed cause:—The certificate cannot be granted now, as the appellant is not at present entitled to appeal to the Privy Council. By s. [430] 595 of the Civil Procedure Code (Act XIV of 1882), such an appeal lies only (*a*) from a final decree; (*b*) from any decree where some special case for appeal is shown. The decree of this appeal Court made in March is not a final decree, (*Aben Sha Sabit Ali* v. *Cassirao Baba Saheb Holkar* (1), *Mahant Ishvargar Budhgar* v. *Caudasama Amarsang* (2), and there is nothing in the case, or alleged in the petition, of a special or exceptional character so as to make the interlocutory decree appealable under cl. (c) of s. 595.

Further, we say that in this case under s. 596 no appeal lies from the decree of this Court. For that decree, while slightly varying it, in effect confirmed the decree of the lower Court (*Manly* v. *Patterson* (3), and there is no substantial point of law involved. The fact, therefore, that the value of the subject-matter in dispute is upwards of Rs. 10,000 is of no importance.

Macpherson, (Acting Advocate General), and *Starling* for the appellant, *contra*:—The certificate ought to be granted. We contend that the decree, although not final in every sense, is final in so far as it decides the question of the defendant's liability to account and as to whether accounts are to be taken at all. These questions were both contested at the hearing and both have been decided against us.

But, if this be not a final decree, then we say that this is a fit case for a certificate, and that the case should be sent at once to the Privy Council,

(1) 6 B. 260. (2) 8 B. 548. (3) 7 C. 339.

1890
JUNE 20.
ORIGINAL CIVIL.
14 B. 428.

instead of compelling the appellant to wait until the accounts are taken, and the final decree is passed. Taking the accounts, as ordered by this Court, will involve much delay and expense. The Privy Council may possibly reverse or modify the decree, and render the taking of these long and heavy accounts wholly unnecessary. That fact and the fact that there are very important points of law in the case, justify the granting of the certificate we ask for.

JUDGMENT.

SARGENT, C. J.—We think we ought not to grant the certificate. The decree is clearly not a final decree, and there is nothing so special in the case as to bring it under cl. (c) of [431] s. 595 of the Civil Procedure Code (Act XIV of 1882). It is true that accounts have to be taken, but they ought not to involve very much delay or expense. They are not very heavy or complicated, or of such a nature as to make the case an exceptional one.

Certificate refused.

Attorneys for appellant :—Messrs. *Jefferson, Bhaishankar Dinsha and Kanga.*

Attorneys for respondent :—Messrs. *Payne, Gilbert and Sayani.*

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14 B. 431.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

JAIKISSONDAS GANGADAS (*Plaintiff*) *v.* ZENABAI AND KAZI MAHOMED MIYA DADA MIYA (*Defendants*).*

[9th April and 18th July, 1890.]

Receiver—Mortgage—Receiver of mortgaged property appointed at instance of mortgagee—Receiver appointed by appeal Court—Practice.

In a suit by a mortgagee for foreclosure or sale in default of payment of his mortgage-debt the Court of first instance when passing a decree for the plaintiff refused, on the plaintiff's application, to appoint a receiver of the rents and profits of the mortgaged property. The plaintiff appealed against the latter part of the decree, and after filing a memorandum of appeal obtained a rule for the appointment of a receiver until the hearing of the appeal.

The Court of appeal, after argument, made the rule absolute, and appointed a receiver until the hearing of the appeal, and subsequently, when the appeal came on for hearing, varied the decree of the Court below by appointing a receiver of the mortgaged property.

The High Court possesses the same powers with regard to the appointment of a receiver as are possessed and exercised by the Courts in England under the Judicature Act.

[R., (1914) M.W.N. 771.]

THE first defendant was the sister-in-law of the second defendant, and they were the owners, in certain shares, of property situate in Bombay. By several indentures of mortgage and further charge they mortgaged the said property to the plaintiff Jaikissondas Gangadas.

* Suit No. 717 of 1889 ; Appeal No. 682.