Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Petition for special leave to appeal of Syed Muzhar Husein v. *Bodha Bibi and another, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 8th December* 1894.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

In this case the value of the property affected by the decree made in two cognate suits appears to be such as would have allowed the High Court to grant leave to appeal in the ordinary course, if they had thought it in other respects right to grant that leave. They have refused it on the ground that the order objected to is not a final order. To see whether it is so or not, it is necessary to ascertain the nature of the proceedings.

The present petitioner is the principal Defendant in the suit. The Plaintiff's case is that one Ibn Ali by his will gave the property in suit to certain persons, also Defendants, who conveyed it to the Plaintiff. Several defences were raised. One was of a preliminary nature, viz., that there was a mis-joinder, and this was

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overruled. The next went to the foundation of the Plaintiff's claim, being a denial that Ibn Ali made any valid gift to the grantors of the Plaintiff. The others were all of a subordinate character. The Subordinate Judge took the evidence and heard the case. He decided against the Plaintiff on the question of Ibn Ali's will, which defeated the suit, and made it unnecessary to give judgment on the other issues. The Plaintiff appealed from his decree, and the High Court decided that Ibn Ali had made a valid gift; and they remanded the case under Section 562 of the Civil Procedure Code to be disposed of on the other issues according to law.

The petitioner applied for leave to appeal which the High Court refused on the ground above stated. They do not give any reason for their decision that the order is not final, except that there was a remand under Section 562, and that it was the established practice of the Court to treat such orders of remand as not being final orders.

Probably the practice referred to is quite correct. But then the remand contemplated by Section 562 is one made in a case where the first Court has disposed of the suit on a preliminary point so as to exclude evidence of essential facts. That is not the present case. The only preliminary point was the mis-joinder. To establish the will of Ibn Ali was the first step in the Plaintiff's case, and on her failing in that, her whole suit failed. But that does not make the point a preliminary point decided so as to exclude essential evidence. Nor does it appear that any such evidence was excluded. It seems to their Lordships, judging as well as they can on this *ex parte* application, that the High Court has miscarried in purporting to remand under Section 562, and that the case would rather fall

under Section 565 which requires the Appellate Court to decide issues on which the evidence has been taken. However this may be, the question is whether the decree of the High Court is final. It appears to their Lordships that it is final. The case is analogous to that of *Rahimbhoy Habibbhoy* v. *Turner*, decided by this Board in 1890 and reported (15 Ind. L. R. Bom. 155). There the Defendant denied his liability to account to the Plaintiff. The High Court affirmed his liability and directed an account. Of course the account might turn out in the Defendant's favour. But their Lordships held that the order establishing liability was one which could never be questioned again in the suit, and that it was the cardinal point of the suit. Therefore they thought that leave to appeal should be granted. In this case the will of Ibn Ali is the cardinal point of the suit, and as after the decision of the High Court that can never be disputed again, their order is final, notwithstanding that there may be subordinate inquiries to make.

Their Lordships will therefore humbly advise Her Majesty to grant special leave to appeal.