

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Banarsi  
Parshad v. Kashi Krishn Narain and Another  
(legal representatives of Mewa Kunwar,  
deceased), from the High Court of Judicature  
for the North-Western Provinces, Allahabad  
(Ex parte) ; delivered 8th December 1900.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

It will be remembered that the argument on the merits of the case was broken off because the property at stake is not such as to give a right of appeal. The amount in question is little more than Rs. 4,000. When this was called to Mr. Ross's attention, he relied on the allegation that a substantial point of law is involved. Their Lordships have found on previous occasions that the existence of a point of law has been supposed to give a right of Appeal in the ordinary course of procedure under the Code. That is a mistake. Section 596 of the Code requires that in order to give such a right there must be in dispute either directly or indirectly an amount of Rs. 10,000. If the decree affirms the Court below, another condition is affixed, viz., that the Appeal must involve some substantial question of law. The presence of such a question does not give a right when the value is below the mark ; the requirement of it restricts the right when the higher decree affirms the lower.

It is true that by Sections 595 and 600 an Appeal may be granted if the High Court certifies that the case is fit for appeal "otherwise," *i.e.*, when not meeting the conditions of Section 596. That is clearly intended to meet special cases; such, for example, as those in which the point in dispute is not measurable by money, though it may be of great public or private importance. To certify that a case is of that kind, though it is left entirely in the discretion of the Court, is a judicial process which could not be performed without special exercise of that discretion, evinced by the fitting certificate.

No such certificate has been given in this case. The certificate runs, "That as regards the nature of the case, it fulfils the requirements of Section 596 of Act No. XIV. of 1882." But it does not fulfil them on account of its small value.

Mr. Ross says that the Defendant was served with notice, and, not appearing, must be taken to have assented. It is quite possible that owing to the Defendant's non-appearance the defect in value was overlooked; but even if non-appearance could be taken to signify assent, it cannot give to the Plaintiff a right of appeal which the Code does not allow, or sustain a certificate which from some oversight or other is obviously erroneous. Whether, if the learned Judges had been asked to say that notwithstanding its small value the case was a fit one for appeal to the Queen in Council, they would have said so, may well be doubted, seeing that Mr. Ross, whose argument had advanced to some length before the point of value was observed, had not succeeded in impressing their Lordships with the importance of his legal objection to the decree. What is certain is that the learned Judges were not asked by the Plaintiff to do, and have not done, anything of the kind. And as it is of great importance not to allow litigants who have succeeded

in the High Courts to be harassed by further appeals, when there is nothing at stake but amounts of money which the Indian Legislature has decided to be too small to give a right of appeal, their Lordships will humbly advise Her Majesty to dismiss this Appeal.

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