

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sahebzadah Mahomed Zakur-ud-din v. Sahebzadah Nur-ud-din and others, from the High Court of Judicature at Fort William in Bengal; delivered the 5th November 1903.

Present :

LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.
SIR JOHN BONSER.

[*Delivered by Lord Macnaghten.*]

Their Lordships have heard this case very fully, and have considered it, and, in their opinion, when the case is understood, there is no difficulty in it whatever.

The Appellant comes forward objecting to three Orders. One is an Order of the High Court granting a Review. To that the learned Counsel for the Appellant has shown no valid objection. It was perfectly competent for the High Court to grant a Review in this case. Having granted the Review, and Mr. Bonnerjee's client not being there to oppose it, the Court directed the Appeal to be set down for re-hearing in the list of Appeals on a certain day. When that day came, the Appeal was called on, but the Appellant not being there to support it, the High Court ordered the Appeal to be dismissed. That Order seems to be perfectly right too. If a person sets down an Appeal, and does not come forward to support it, the Appeal is properly dismissed.

The third Order of which Mr. Bonnerjee complains is an Order by the Chief Justice and his colleagues, refusing to re-instate the Appeal on the application of the Appellant. Their Lordships have read the Judgment of the learned Chief Justice, and they entirely agree with it. It is the duty of a person who has a case in the paper to be present prepared to support it by Counsel or in person. At least three months' notice of this Appeal had been given to Mr. Bonnerjee's client. Under the Code of Civil Procedure no Order for Review can be made without previous notice to the person in possession of the Decree which is to be reviewed. The Appellant had ample notice in this case. His excuses for not being present are singularly lame. He says he waited in Court till nearly 4 o'clock, and then he went away because he came to the conclusion that the case before him would last the day. That is no reason whatever. The real reason why he was not there was because he could not find the funds, and he had instructed nobody to act on his behalf.

Section 626
(a).

Their Lordships think that this Appeal ought to be dismissed, and they will humbly advise His Majesty to that effect.

The Respondents not having appeared, there will be no Order as to costs.
