

Patterson Vs. Manly

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Court : Kolkata

Decided On : May-27-1881

Reported in : (1881)ILR7Cal339

Judge : Richard Garth, C.J. and ;McDonell, JJ.

Appellant : Patterson

Respondent : Manly

Judgement :

Richard Garth, C.J.

1. This is an appeal from a decision of Mr. Justice Pontifex in the Privy Council Department, refusing leave to appeal to the Privy Council upon the ground that there was no point of law, and that, on the facts, the High Court had agreed with the judgment of the Court below.

2. A preliminary objection has been taken by the Standing Counsel that no appeal lies under such circumstances; and there is no doubt that this is an attempt to reopen a question which was decided by this Court in the year 1876. See *Mussamut Amirunnesa v. Baboo Behary Lall* (25 W. R., 529).

3. The sections in the Civil Pro (sic) lue Code, under which Mr. Bell says he has a right to appeal, are contain .(sic)a in chap, xlv; but these sections present no new phase of the law upon this subject since the above case was decided, because at

that time the Privy Council Act, VI of 1874, was in force, and the sections in that Act upon the subject are identically the same as those in chap, xlv of the Civil Procedure Code of 1877.

4. At the time when the above case was decided by Mr. Justice Ainslie and myself, we thought it right to consult most of our brother Judges before we delivered our judgment, because it was most important, (having regard to what had been the practice of this Court), that some definite rule should be laid down.

5. For several years past, the Judge in the Privy Council Department (selected from amongst the most experienced Judges of the Court), has always sat alone to determine points relating to Privy Council Appeals, and especially as to whether leave to appeal should be granted or refused. For a long time no attempt was made to appeal against his orders; but for the first time in the year 1873 some appeals were preferred against orders refusing an appeal, which were heard by Division Benches without the question of jurisdiction being raised, though in four out of those cases the Judges expressed a doubt as to whether they had any power to hear the appeal.

6. After consulting other Judges, Mr. Justice Ainslie and myself decided in the above case that the appeal would not lie; and one of our principal reasons for so deciding was this, that the Judge in the Privy Council Department when dealing with such questions had always been considered as acting under the Privy Council orders, rather than as a Judge of the High Court.

7. I observe we said in that case, ' we have been unable to find a single instance, previously to the 23rd of August 1873, of any attempt to appeal against an order or certificate made by a Judge of this Department; and, indeed, it is very difficult to understand (sic) w an order or certificate under rule 2 of the Privy Council orders could possibly (sic) be considered as a judgment of the High Court. It was in aid of the Privy Council (sic) that the rule was established; it has its origin in an Act of Parliament passed expressly for the better administration of justice in Her Majesty's Privy Council, and the certificate given under it would seem rather to form a part of the Privy Council proceedings, than to come within the legitimate province of this Court.

8. Now the appeal which is now before us is precisely similar to that which in the above case we held would not lie; and therefore we are bound by that authority. If we had any doubt about the correctness of it, all we could do would be to refer the present appeal to a Full Bench. But we do not entertain any such doubt.

9. Mr. Bell has argued, that the late case of *Rally Soondery Dabia v. Hurrish Chunder Chowdhry* (I. L. R., 6 Calc, 594) in which I had the misfortune to differ from two of my learned brothers, is opposed to the case of *Mussamat Amirunnesa v. Behary hall* (25 W. R., 529), but we think it is not so. If Mr. Justice Mitter and myself, before whom that appeal was heard, had been of opinion that the question in that case was the same as had been decided in the former one, we should have felt ourselves bound by the decision. But we considered, rightly or wrongly, that the question was a different one; that it arose under a different section of the Code, and depended on different considerations. It is a great satisfaction to me that *Kally Soondery's* case (I. L. R., 6 Calc., 594), is now under appeal to the Privy Council; because I trust that their Lordships may see their way to laying down some definite rule as to what orders made by a single Judge of the High Court in the Privy Council Department are, or are not, appealable to a Division Bench.

10. If those orders are appealable to a Division Bench, it would of course be useless that a single Judge should continue any longer to sit alone in the Privy Council Department, because all, or nearly all, his orders would be appealed, and thus a double expense would be entailed upon suitors, as well as a double labour upon the Court. For our present purpose it is sufficient to say, that we consider ourselves bound by the former decision in 1876. Mr. Bell's client in the present case is of course not without remedy, because he may always appeal to the Privy Council; and we know that their Lordships have frequently thought right to admit appeals, when leave to appeal has been refused in this Court. The appeal must be dismissed with costs.