this attitude at that stage. It may be that they wanted to use this delivery of possession as the basis of criminal proceedings against the judgment-debtor, since I find it mentioned in the judgment of the executing Court that a criminal complaint was in fact unsuccessfully instituted. It is obvious that they must ordinarily have expected to obtain possession of the land when the standing crops were removed, which must have been by October, 1952, but instead of even then coming forward and objecting that they had been given only symbolical instead of actual possession, they waited until August, 1953, for bringing the present execution application. In the circumstances, agreeing with the view of the learned Judges of the Calcutta High Court, I consider that the judgment-debtor must be regarded as being in the position of a trespasser from the date of delivery of symbolical possession or, at any rate, from the date when the crops standing on the land were removed, and that the proper remedy of the decree-holders thereafter was to institute a fresh suit for ejectment and they were not entitled to come forward a year later with a second execution application. I accordingly accept the appeal and dismiss the execution application, but since I do not consider the position of the judgment-debtor to be particularly deserving any sympathy, I order that the parties should bear their own costs throughout.

FULL BENCH

Before Bhandari, C.J., Khosla and Kapur, JJ.

UNION of INDIA,—*Petitioner*

versus

KANAHAYA LAL-SHAM LAL,—*Respondent*

Supreme Court Appeal No. 3-D of 1956.

1956

Sept., 5th

Constitution of India, Article 133—Code of Civil Procedure (Act V of 1908)—Section 110—Judgment partly in favour of a party and partly against him—Appeal by the

party against portion of the judgment adverse to him—Appellate Court modifying the decision of the lower Court in favour of the appellant—Judgment of the appellate Court, whether a judgment of affirmance within the meaning of Article 133 and section 110 of the Code of Civil Procedure.

A person brought a suit against the Union of India for recovery of Rs. 2,98,238 and obtained a decree for Rs. 1,58,271-2-10. On appeal the High Court reduced the amount of the decree to Rs. 1,33,275-11-4. The Union of India applied for a certificate for leave to appeal to the Supreme Court but the decree-holder objected to the grant of the certificate on the ground that the High Court must be deemed to have affirmed the decision of the trial Court as the variation made by the High Court was entirely in favour of the Union of India.

Held, as follows : (1) If a judgment is partly in favour of a party and partly adverse to him and he appeals from the portion which is adverse, then the judgment of the appellate Court would be a judgment of affirmance if it allows the order of the lower Court to remain unaltered and unmodified ; a judgment of reversal if it vacates or sets aside the said order ; and a judgment of modification if it alters or amends the said order.

(2) To 'affirm' means to confirm or ratify and to 'modify' means to change, vary or alter. There is no reason to depart from the usual meaning of the expression "affirm" and to construe it in exactly the same way as if it were a synonym of "vary" or "modify". If the words of a statute are clear or unambiguous, they must be given the ordinary, natural and recognised meaning attributed to them, unless they have acquired a technical or special legal meaning, or it is necesary to obviate repugnancy or inconsistency, or to give effect to the manifest intention of the Legislature. The statute must be taken as it stands without any judicial addition or subtraction, for the Court has no more auhority to enlarge, stretch or expand a statute under the guise of interpretation than to restrict, constrict or qualify its provisions. Had the Legislature intended that the right of appeal should depend upon whether the appellant would suffer by the modification or not, it would have made its intention plain by using the appropriate

words and would not have left the matter in a state of doubt or confusion. It is not within the province of a Court of law to give the expression "affirm" a construction, which is not within the manifest intention of the Legislature gathered from the Act itself.

(3) The expression "the decision of the Court immediately below the Court passing such decree" in section 110 of the Code of Civil Procedure and in Article 133 of the Constitution contemplates the decision of the trial Court taken as a whole. It does not contemplate that a person should be at liberty to prefer separate appeals against separate parts of the decision and not against the decision as a whole. If an appeal can lie only against a decision as a whole and not against a part of the decision, it is obvious that the judgment of the High Court would be a judgment of affirmance only if it confirms and ratifies the decision as a whole and not if it confirms and ratifies the decision on certain points and modifies it in others. A court has no power to split up a decision into its component parts or to declare the judgment of the High Court to be a judgment of affirmance when it affirms only one of these several parts and amends or modifies the rest.

Chaudhri Abdur Rehman Khan and others v. *Chaudhri Raghbir Singh and others* (1), overruled, *Rajah Tasadduq Rasul Khan* v. *Manik Chand,* (2), *Raja Brajasunder Deb* v. *Raja Rajendra Narayan Bhanj Deo* (3), followed, *Hakim Rai* v. *Ganga Ram* (4), relied on, *Nath Rai* v. *Secretary of State* (5), *Bhagat Singh* v. *Jia Ram and Jamna Das* (6), *Kamal Nath* v. *Bithal Dass* (7), *Annapurnabai* v. *Ruprao* (8), dissented from, *Raja Kumar Chandra Singh* v. *The Midnapur Zamindari Co.* (9), *Hori Ram Singh* v. *Emperor* (10), *Kuppuswami Rao* v. *The Governor-General of India* (11), *Mohammad Amin Brothers Limited* v. *The Dominion*

(1) 53 P.L.R. 39.
(2) 30 I.A. 35.
(3) I.L.R. 20 Pat. 459.
(4) A.I.R. 1938 Lah. 836.
(5) 8 C.W.N. 294.
(6) 22 P.R. 1915.
(7) I.L.R. 44 All. 200.
(8) I.L.R. 51 Cal. 969.
(9) 54 C.W.N. 874.
(10) A.I.R. 1939. F.C. 43.
(11) A.I.R. 1949. F.C. 1.

of *India* (1), *Dayabhai* v. *Murugappa* (2), *Commonwealth* v.*The Bank of New South Wales* (3), *Radha Kishen* v. *The Collector of Jaunpur* (4), *Sultan Singh* v. *Murli Dhar* (5), *Bozson* v. *Altrincham Urban District Council* (6), *Jowad Hussain* v. *Gendan Singh* (7), *Mst. Shahzadi Bi* v. *Mt. Rahmat Bi* (8), *Brahma Nand* v. *Shri Sanatan Dharam Sabha* (9), *Wahid-ud-Din* v. *Makhan Lal* (10), *Bibhuti Bhushan Dutta* v. *Sreepati Dutta and others* (11), *Narendra Lal* v. *Gopendra Lal* (12), *Probodh Chandra* v. *Hara Hari Roy* (13), *Sri Narain Khanna* v. *Secretary of State* (14), *Waqir Ali Khan v. Narain Dass* (15), *Nathu Lal* v. *Raghbir Singh* (16), *Jagoo Bai* v. *Harihar Prasad Singh* (17), *Rani Fateh Kunwar* v. *Raja Durbijai Singh* (18), *Venkitasami Chettiar v. Sakkutti Pillai* (19), *Lakshmanan Chettiar* v. *Thangam* (20), *Ventapragada Viaraghava Rao* v. *Mothey Narasinha Rao* (21), *Chittam Subba Rao* v. *Vela Mankanni Chelammaya* (22), *Thakur Jumma Prasad Singh* v. *Jagarnath Prasad Singh* (23), considered

Petition under Article 133(a)(c) of the Constitution coupled with Order 45, Rule 2 and sections 109 and 110 Civil Procedure Code, praying that the Hon'ble Court be pleased to grant the necessary certificate for leave to the Supreme Court of India from the judgment

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(1) A.I.R. 1950 F.C. 77.
(2) I.L.R. 13 Rang. 457. (F.B.).
(3) 79 C.L.R. 497.
(4) I.L.R. 23 All. 220, 227.
(5) I.L.R. 5 Lah. 329.
(6) (1903) 1 K.B. 547, 548.
(7) I.L.R. 6 Pat. 24.
(8) A.I.R. 1937 Lah. 761.
(9) I.L.R. 1945 Lah. 156.
(10) I.L.R. 1945 Lah. 242.
(11) I.L.R. 62 Cal. 257.
(12) A.I.R. 1927 Cal. 543.
(13) A.I.R. 1954 Cal. 618.
(14) A.I.R. 1939 All. 723.
(15) A.I.R. 1939 All. 322.
(16) I.L.R. 54 All. 146 (F.B.).
(17) I.L.R. 1941 All. 180.
(18) I.L.R. (1952) 2 All. 605.
(19) A.I.R. 1936 Mad. 881.
(20) I.L.R. 1947 Mad. 744.
(21) I.L.R. 1950 Mad. 381.
(22) I.L.R. 1953 Mad. 1.
(23) I.L.R. 9 Pat. 558.

and decree, dated 15th November, 1955, of Hon'ble Mr. Justice Dulat and Hon'ble Mr. Justice Bishan Narain in R.F.A. 37-D of 1953.

(Original Suit No. 716 of 1950 and 339 of 1951, decided by Shri Des Raj Dhameja, Sub-Judge, 1st Class, Delhi, on the 31st March, 1953.)

K. S. CHAWLA, Assistant Advocate-General, for Petitioner.

A. N. GROVER, for Respondent.

ORDER

BHANDARI, C. J. We have been called upon to answer a question which may for convenience be propounded as follows:— **Bhandari, C. J.**

> "If a judgment is partly in favour of a party and partly adverse to him and he appeals from the portion which is adverse, can the judgment of the appellate Court be regarded as a judgment of affirmance if it modifies the decision under appeal in favour of the appellant ?"

Messrs. Kanhaya Lal-Sham Lal brought a suit against the Union of India for the recovery of a sum of Rs. 2,98,238 and obtained a decree in a sum of Rs. 1,58,271-2-10 with proportionate costs and future interest. On appeal by the Union of India this Court reduced the decree to a sum of Rs. 1,33,275-11-4 thereby decreasing the liability of the Union of India to the extent of Rs. 24,995-7-6. The Union of India are anxious to prefer an appeal to the Supreme Court and have asked us to certify that the amount in controversy is not less than Rs. 20,000, that the judgment of this Court does not confirm the decision of the trial Court and consequently that the Union of India are entitled to appeal as of right. As the amount in dispute admittedly exceeds the stated amount, the only

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question for this Court is whether the judgment from which an appeal is sought to be preferred affirms the decision of the Court immediately below.

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A High Court is at liberty to affirm, reverse or modify the judgment, decree or final order appealed from as the justice of the case may require. To 'affirm' means to confirm or ratify. A judgment of affirmance is a determination by the appellate Court that the controlling questions have been correctly decided by the order under appeal and that the appellate Court has adopted the conclusions of the Court below in their entirety even though the said conclusions have been arrived at by an erroneous process of reasoning. It comes into being when the appellate Court declares that the judgment appealed from be affirmed, or when the appeal is dismissed on merits or for want of timely prosecution or for some other cause, or when the appellate Court declines to add to, alter or amend the judgment of the Court below. The expression 'reverse' means to set aside, nullify or vacate. A judgment of reversal is a decision which nullifies, vacates or sets aside the judgment of a lower Court. The expression 'modify' means to change, vary or alter an existing thing. It implies no power to create or destory but only the power to change, alter or amend a thing which has already been created. It includes the elements of increasing or decreasing. A judgment of modification is a determination by which the appellate Court alters partially the order of the lower Court by adding something to or by subtracting something from the judgment under appeal leaving the remaining portion to stand affirmed and in full force and effect. Each of these three expressions "affirm", 'reverse' and 'modify' has received by long usage in the Courts a settled meaning which

is in consonance with the ordinary, natural and familiar meaning of the word concerned. Quite apart from authority, therefore, and upon a plain interpretation of the meaning of the expressions referred to above, it seems to me that if a judgment is partly in favour of a party and partly adverse to him and he appeals from the portion which is adverse, then the judgment of the appellate Court would be a judgment of affirmance if it allows the order of the lower Court to remain unaltered and unmodified; a judgment of reversal if it vacates or sets asides the said order, and a judgment of modification if it alters or amends the said order. When an appellate Court alters the decision of a lower Court it cannot be said to confirm or ratify but to alter, amend or modify even though the variation is small and insignificant and even though the variation is entirely in favour of the person who wishes to prefer the appeal (*Shri Kashi Bai* v. *Brojendra Nath* (1), *and Annupuranbai's case* (2)).

Certain Courts appear to have taken a contrary view and to have evolved the doctrine that although *prima facie* a certain judgment is clearly one of variance yet in construing the provisions of section 110 of the Code of Civil Prcedure, the Court should look to the substance and not to the form of the decree and that it should examine the decree from which an appeal is sought to be preferred to His Majesty in Council or the Supreme Court as the case may be. If the High Court and the lower Court concur in the point which is to be agitated before the superior Court then the decree should be regarded as a decree which affirms the decision of the Court below.

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(1) A.I.R. 1953 Pat. 380
(2) I.L.R. 51 Cal. 969

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The first exponent of this doctrine was a Full Bench of the Calcutta High Court which was called upon to deal with the well-known case of *Sree Nath Roy* v. *Secretary of State for India in Council* (1). In this case, land belonging to the applicant was acquired. The applicant claimed Rs. 77,000 as value of the land taken, the Collector assessed the value at Rs. 28,287 and the Judge on reference to him upheld the Collector's award. The applicant then preferred an appeal to the High Court valuing the appeal at Rs. 49,000 odd, being the difference between the Collector's award and the amount claimed. The High Court partially decreed the appeal by giving the petitioner an additional sum of Rs. 7,000. The applicant then applied for leave to appeal to the Privy Council. A Full Bench of the Calcutta High Court presided over by Maclean, C. J., observed as follows:—

> "But we must look to the substance of the case. What is the decree from which the present applicant now desires to appeal to the Privy Council. He desires to appeal only against the decision of this Court so far as it affirmed the decision of the Court below and nothing else. This seems to be, in substance, as far as "the subject-matter of appeal goes, a decree of affirmance. If the decree of this Court had been properly drawn, it would have dismissed the appeal, except to the extent that the additional sum was given."

The judgment of the High Court was clearly one of modification, for the appellate Court had altered the decree of the Collector by adding

(1) (1904) 8 C.W.N. 294.

something to the decision under appeal. The judgment of the appellate Court could by no stretch of reasoning be regarded as a judgment of affirmance. It was clearly a judgment of modification and the applicant was entitled to appeal to His Majesty in Council as a matter of right. But the learned Judges held otherwise and propounded the principle that in order to ascertain whether a judgment is a judgment of affirmance the Court should look to the substance of the decree and not to the commonly understood meaning of the terms employed by the Legislature. They did not give the statute the interpretation its language called for and gave it a construction which was repugnant to its terms.

Be that as it may, the fact remains that this new principle was applauded and acclaimed by powerful voices like those of Sir George Rankin, *Narendra Lal Das* v. *Gopendra Lal Das* (1), and was amplified and explained by eminent judges all over the country. Many and various were the reasons given for upholding this doctrine. When the trial Court, it was argued, grants a decree in a certain sum of money and on appeal the High Court increases that sum, the High Court must be deemed to have affirmed the decision of the lower Court as far as the plaintiff is concerned, *Shri Narain Khanna* v. *Secretary of State* (2). If a decision is capable of being split up into two or more portions and if the High Court affirms one portion thereof and modifies another portion in favour of the applicant and if the applicant wishes to prefer an appeal not from the portion which has been modified but from the portion which has been affirmed, the decree in question cannot be regarded as a decree of variance and the applicant cannot

(1) A.I.R. 1927 Cal. 543
(2) A.I.R. 1939 All. 723

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be allowed to appeal without showing a substantial question of law, *Kamal Nath* v. *Bithal Dass* (1), *Bibhuti Bhusan Dutta* v. *Srupati Dutta and others* (2), *Kapurji Magniram* v. *Pannoji Debi Chand* (3), and *Waqir Ali Khan* v. *Narain Dass* (4). It could not be the intention of the Legislature that in cases in which the petitioner would have no right of appeal had the decree of the High Court been wholly against him should nevertheless have such right because in one particular the appellate Court had decided in his favour, *Bhagat Singh* v. *Jia Ram and Jamna Das* (5). It would be anomalous to grant leave to appeal to an applicant on matters in which a High Court has concurred with the trial Court on the mere ground that on other matters the High Court has modified the decree of the trial Court but in favour of the applicant, *Dwarka Das Badri Das* v. *Siri Ram* (6), and it would be improper to grant such leave on account of any modification made by the High Court in the applicant's favour when his sole object in going to the High Court is not to move the point on which the decree had been varied by the High Court but to challenge the finding on which it had been affirmed. These authorities propound the proposition that the decree or order from which an appeal is sought to be preferred should be considered to be one of affirmance and not of variance where it partly maintains the decision of the Court below and partly reverses it, when the appeal to be taken to the superior Court is confined only to that part of the decree or order which has been affirmed.

The view taken in *Sree Nath Roy's case* (7), appears to me to be wholly misconceived, for it

(1) I.L.R. 44 All. 200.
(2) A.I.R. 1935 Cal. 146.
(3) A.I.R. 1929 Bom. 359.
(4) A.I.R. 1939 All. 322.
(5) 22 P.R. 1915.
(6) A.I.R. 1937 Lah. 761.
(7) I.L.R. 54 All. 146.

appears to proceed on the assumption that it is open to a party to prefer separate appeals against different items of the decree and not against the decree as a whole. This is a mistake. An entire cause of action cannot be severed into two or more proceedings to be separately pursued. A decision consists of findings of fact and conclusions of law as embodied in a judgment recorded by a Court of Law. It embraces in its wide sweep such cognate and closely allied expressions as judgments, decrees, orders or sentences. *Prima facie* a decision means a decision of the suit by the Court, *Rajah Tasadduq Rasul Khan* v. *Manak Chand* (1). A person who prefers an appeal against a decree prefers an appeal against the decree as a whole for although he may direct his criticism to the points which were decided adversely to him and although the appellate Court will not disturb those parts of the decision of which no complaint is made, the appeal itself must be against the decision and decision as a whole, *Chet Ram* v. *Mt. Ilaicho and others* (2). It may, therefore, be assumed that when the law-making power made a reference in section 110 of the Code of Civil Procedure and in Article 133 of the Constitution to "the decision of the Court immediately below the Court passing such decree" it contemplated the decision of the trial Court taken as a whole, *Raja Brajasunder Deb and others* v. *Raja Rajender Narayan Bhanj Deo* (3). It did not contemplate, and could not have contemplated, that a person should be at liberty to prefer separate appeals against separate parts of the decision and not against the decision as a whole. If an appeal can lie only against a decision as a whole and not against a part of the decision, it is obvious that

(1) 30 I.A. 35
(2) A.I.R. 1926 P.C. 93
(3) A.I.R. 1941 Pat. 269, 276

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the judgment of the High Court would be a judgment of affirmance only if it confirms and ratifies the decision as a whole and not if it confirms and ratifies the decision on certain points and modifies in others, *Wahid-ud-Din* v. *Makhan Lal* (1). A Court has no power to split up a decision into its component parts or to declare the judgment of the High Court to be a judgment of affirmance when it affirms only one of these several parts and amends or modifies the rest.

But there is another reason also for my reluctance in supporting the view taken in *Sree Nath Roy's Case* (2). Ever since the dawn of civilisation, Courts of Law have been continuously engaged in ascertaining the intention of the law-making power and in complying loyally and faithfully with the wishes of the said power. As the intention of the Legislature is manifested in the statute itself such intention must be determined primarily from the language which the Legislature has chosen to employ. If the words of the statute are clear or unambiguous, they must be given the ordinary, natural and recognised meaning attributed to them, unless they have acquired a technical or special legal meaning, or it is necessary to obviate repugnancy or inconsistency, or it is necessary to give effect to the manifest intention of the Legislature. The statute must be taken as it stands without any judicial addition or subtraction, for the Court has no more authority to enlarge, stretch or expand a statute under the guise of interpretation than to restrict, constrict or qualify its provisions. In *Sree Nath Roy's case* (2), the learned Judges departed from the usual meaning of the expression 'affirm' and construed it in exactly the same way as if it were a synonym

(1) A.I.R. 1948 Lah. 1
(2) I.L.R. 54 All. 146

of 'vary' or 'modify'. They allowed the letter of the law to be unreasonably violated by imposing on it a meaning which the Legislature could not have contemplated. They gave the statutory phraseology an unusual and artificial meaning and inserted words and phrases which were not in the mind of the Legislature when the law was enacted. They declared in effect that a decree of the High Court may be said to affirm the decision of the Court below even though it has in actual fact varied the decision of the said Court. The answer to the question whether a particular judgment of the High Court is a judgment of affirmance depends almost entirely upon the answer to the question whether it confirms or ratifies the decision of the Court below. It does not depend upon whether the appellant is plaintiff or defendant or whether the effect of the modification is in favour of the appellant or adds to his detriment, *Hameshwar Singh* v. *Kameshwar Singh* (1), or whether it affirms the decision of the Court below substantially or on grounds other than costs, *Nathu Lal* v. *Raghubir Singh* (2), or whether the defendant is or is not a counter-claimant, *Ali Zaman* v. *Mohd. Akber Ali* (3). It depends upon whether the judgment of the Court is one affirming the judgment of lower Court. Had the Legislature intended that the right of appeal should depend upon whether the appellant would suffer by the modification or not, it would have made its intention plain by using the appropriate words and would not have left the matter in a state of doubt or confusion, *Hameshwar Singh* v. *Kameshwar Singh* (1). It is not within the province of a Court of Law to give the expression 'affirm' a construction of which it is not susceptible or to read into the statute a meaning which is not within the manifest

(1) A.I.R. 1933 Pat. 262.
(2) A.I.R. 1932 All. 65.
(3) A.I.R. 1928 Pat. 609.

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intention of the Legislature gathered from the Act itself.

Their Lordships of the Privy Council do not appear to have entertained any doubt as to the meaning of the expressions 'affirmance' and 'variance' and they accordingly interpreted these expressions in their ordinary acceptation and significance in the well-known case of *Annapurnabai* v. *Ruprao* (1). In that case the defendant who was a widow claimed a sum of Rs. 3,000 per annum by way of maintenance. The first Court gave her maintenance at the rate of Rs. 800 per annum and the Judicial Commissioner increased this amount to Rs. 1,200 per annum. This modification was entirely in favour of the widow who applied to the Court of the Judicial Commissioner for leave to appeal to His Majesty in Council. The application was dismissed on the ground that the decree of the first Court had been affirmed and that no question of law was involved. In applying for special leave to the Privy Council Sir George Lowndes, K. C., pointed out that the appellate Court did not affirm the decree of the first Court but varied it and consequently that it was not material under section 110 whether any substantial question of law was involved. He, therefore, stated that the petitioners desired to appeal only with regard to the amount of maintenance. In a cryptic but historical order which is a model of brevity and precision Lord Dunedin observed as follows:—

> "In the opinion of their Lordships the contention of the petitioners' counsel as to the effect of section 110 of the Code is correct. They had, therefore, a right of appeal. Special Leave to appeal should be granted but should be limited

(1) I.L.R. 51. Cal. 969.

to the question of maintenance, * * * * * * * * * *"

This pronouncement established the principle that an appellant is entitled to challenge the decision of a High Court even if the High Court has modified in his favour a decision of the trial Court provided the amount involved exceeds the stated figure. Courts were quick to realise that it was impossible to withhold leave to appeal to His Majesty in Council when the High Court had varied the decision of the Court immediately below. They accordingly held that a decree of the High Court which alters the decree of the trial Court is a decree of variance where the High Court allows the claim for interest which has been disallowed by the trial Court, *Jumna Prasad Singh and others* v. *Jagarmala Prasad Bhavat and others* (1), or where it reduced the rate of interest from 6 per cent to 4 per cent, *Jaggo Bai* v. *Harihar Prashad Singh* (2), or where it modifies the decree of the trial Court by holding that the plaintiff was not entitled to a mortgage decree but a money decree, *Hameshwar Singh and others* v. *Kameshwar Singh* (3), or where it reverses the decree of the trial Court in so far as it related to lands in one village and affirmed the Court below in so far as the decree related to two other villages, *Raja Brajasunder Deb and others* v. *Raja Rajender Narayan Bhanj Deo* (4), or where it modifies the decree of the lower appellate court by varying the quantum of damages awarded and the variation is in favour of the person who wishes to appeal to the Supreme Court, *Venktrapragada and another* v. *Mothey Nara Simber and others* (5), or where it varies the decree of the trial Court by allowing cross-objections, *Nathu Lal* v. *Raghubir Singh* (6).

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(1) A.I.R. 1929 Pat. 561.
(2) A.I.R. 1941 All. 66.
(3) A.I.R. 1933 Pat. 262.
(4) A.I.R. 1941 Pat. 269.
(5) A.I.R. 1950 Mad. 124.
(6) A.I.R. 1932 All. 65.

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For these reasons I am of the opinion that the question propounded at the commencement of the judgment must be answered in the negative. I am also of the opinion that the Union of India are entitled to appeal to the Supreme Court as of right. I would leave the parties to bear their own costs.

Khosla, J

KHOSLA, J.—I agree with the order proposed by my Lord the Chief Justice.

Kapur, J.

KAPUR, J. This is an application made by the Union of India for leave to appeal to the Supreme Court under Article 133(1) of the Constitution of India, and the question which falls for decision is whether the Union of India, can of right appeal to the Supreme Court under the Article.

The proposed respondents are Messrs. Kanahaya Lal- Sham Lal of Delhi, who were plaintiffs in the suit out of which this application arises and the proposed appellants, the Union of India, were the defendants in the trial Court. The plaintiffs brought a suit for the recovery of Rs. 2,98,234 on the basis of a breach of contract on the part of the Union of India. The trial Court gave them a decree for Rs. 1,58,271-2-10 with interest at 6 per cent per annum from the date of the suit to the date of realization on Rs. 1,34,747-8-10. The Union took an appeal to this Court, by which the decree of the trial Court was reduced to Rs. 1,33,275-11-4 on which interest was payable from the date of the suit to the date of realization. The Union of India sought a certificate of this Court for appeal to the Supreme Court of India under Article 133(1) and an objection was taken that the appeal did not lie as of right and that there was no substantial question of law, therefore, no leave could be granted. As there was a conflict of opinion between the judgments of the Lahore High Court and of this Court on the one hand and

some other Courts in India notably of Patna on the other the matter was referred to a Full Bench by Khosla and Dulat, JJ. The question for decision that arises is whether the decree appealed from in this case affirms the decision of the trial Court or not. As I was a party to the judgment of this Court in *Chaudhri Abdur Rehaman Khan and others* v. *Chaudhri Raghbir Singh and others* (1), I think it necessary to give my reasons why I am taking a different view now.

It was contended on behalf of the Union of India that the decree appealed from does not affirm the decision of the Court immediately below because the trial Court's decree was in favour of the plaintiffs for a sum of Rs. 1,58,271-2-10 and the decree of the appellate Court had reduced the decretal amount and awarded to the plaintiffs a lesser sum, i.e., a sum of Rs. 1,33,275-11-4 . It is not disputed that if an appeal were to be taken by the plaintiff against the decree of this Court, he would be entitled to do so as a matter of right. The question then reduces itself to this that if the decree of the appellate Court varies the decision of the trial Court in favour of the proposed appellant, it is a decision of affirmance or of non-affirmance. If the former, the appeal will lie as a matter of right and if the latter the proposed appellant will have to show the existence of a substantial question of law.

In order to determine this we have to look at the wording of the Article in the Constitution under which the proposed appeal is being taken. The relevant words of Article 133(1) are:—

"An appeal shall lie to the Supreme Court ..... from any judgment, decree or final

(1) 53 P.L.R. 39.

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order in a civil proceeding of a High Court in the territory of India if the High Court certifies:—

(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court; and where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law".

For an appeal to be competent under the provisions of the Article three conditions are necessary:—

(i) there must be a "judgment, decree or final order";

(ii) the High Court must certify that the amount or value of the subject-matter of the dispute in the first instance and still on appeal was or is not less than Rs. 20,000; and

(iii) where the "judgment, decree or final order" appealed from affirms the decision of the Court immediately below there should be a substantial question of law."

The word 'judgment' in the Article must, in the context, mean something different from the words "decree or final order" which alone were used in section 109 and 110 of the Pre-Constitution Code of Civil Procedure, per Harries, C.J., in *Raja Kumar Chandra Singh* v. *The Midnapur Zamindari Co.* (1). In the Letters Patent the words used were "final judgment, decree and order". The corresponding words in the Article of the Constitution are textually neither of the Code nor of the Letters Patent, but they are textually the same as in section 205 of the Government of India Act and both the words 'judgment,' and 'final order' came up for decision of the Federal Court in three judgments of that Court.

In *Hori Ram Singh* v. *Emperor* (2), it was held that the terms 'judgment' and 'final order' undoubtedly connote different and distinct meanings, and judgment cannot be interpreted as embracing interlocutory orders. In several cases it includes every order which terminates a proceeding pending in a High Court so far as that Court is concerned.

In *Kuppuswami Rao* v. *The Governor-General of India* (3), which was also a criminal case, the term 'judgment' was interpreted to indicate a judicial decision given on the merits of the dispute brought before the Court and it was also held that to constitute a final order it is not sufficient merely

(1) 54 C.W.N. 874.
(2) A.I.R. 1939 F.C. 43.
(3) A.I.R. 1949 F.C. 1.

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to decide an important or even a vital issue in the case, but the decision must not keep the matter alive and provide for its trial in the ordinary way.

The term 'final order' was again interpreted in *Mohammad Amin Brothers, Limited* v. *The Dominion of India* (1), where the test for determining the finality of an order was given whether the judgment or order finally disposes of the rights of the parties. The finality must be a finality in relation to the suit.

As after the interpretation of these words the Constitution has adopted the words 'judgment, decree or final order', the construction to be put on these words must be the same as put on them by the Federal Court under section 205 of the Government of India Act and it cannot be said, therefore, that by the use of the word 'judgment' instead of the words 'final judgment,' the article in the Constitution has broadened the scope of appeal.

Appeals do lie and have been brought against judgments under clause 10 of the Letters Patent but it is doubtful if an appeal would lie against a judgment as defined in section 2(9) of the Code of Civil Procedure [see *Dayabhai* v. *Murugappa* (2)]. Thus judgment is the adjudication of the proceeding or the suit as the case may be.

In the Australian case, *Commonwealth* v. *The Bank of New South Wales* (3), the appeal had been taken against the order of the High Court declaring section 46 of the Banking Act of 1947, to be invalid. It was held that under section 74 of the Commonwealth Constitution an appeal lies from a judicial act and not from the pronouncement of an opinion on a question of law.

(1) A.I.R. 1950 F.C. 77.
(2) I.L.R. 13 Rang. 457. (F.B.).
(3) 79 C.L.R. 497.

The word 'final order' was interpreted in several judgments. The Privy Council in *Radha Kishan* v. *The Collector of Jamunpur* (1), held it to mean "an order which finally decides any matter that is directly at issue in the case in respect of the rights of the parties", and the same interpretation was put by Sir Shadi Lal, C. J., in a Full Bench decision, *Sultan Singh* v. *Murli Dhar* (2). The word has also been used in Order LVIII, Rule 3 of the Rules and Orders of the English Supreme Court and it was interpreted by Lord Alverstone, C. J., with which Lord Halsbury, L. C., concurred. He laid down the test in the following terms:—

> "Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then it ought to be treated as a final order; but if it does not, it is then an interlocutory order, *Bozson* v. *Altrincham Urban District Council* (3). See also *Standard Discount Company* v. *La Grange* (4), and *Salaman* v. *Warner* (5)."

Therefore, according to the Constitution an appeal will lie to the Supreme Court if the decision of a Court falls within the words "judgment, decree or final order" and each one of these words has a different connotation. But all of them have reference to adjudication, determination or disposal of a proceeding, suit or rights of the parties.

The next condition required under the Article of the Constitution is that the amount or value of the subject-matter in dispute should be Rs. 20,000

(1) I.L.R. 23 All. 220, 227
(2) I.L.R. 5 Lah. 329
(3) (1903) I.K.B. 547, 548
(4) (1877) 3 C.P.D. 67, 71
(5) (1891) 1 Q.B. 734

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or more. Here the framers of the Constitution have used the words "subject-matter in dispute" meaning thereby the matter which is sought to be adjudicated upon or the matter which the unsuccessful party by a formal proceeding seeks to set aside or vary in his favour by the appellate Court.

The third point which arises is as to what is the meaning of the words "judgment, decree or final order appealed from". Does it mean the whole "judgment, the whole decree or whole final order" or a part thereof. In other words are the words 'appealed from' descriptive or of limitation. If the former, the proposed appeal would be against the whole "judgment, decree or final order", if the latter only against that part which the proposed appellant is aggrieved against.

In *The Commonwealth* v. *Bank of New South Wales* (1), Lord Porter, defined an appeal to be the formal proceeding by which an unsuccessful party seeks to have the formal order of a Court set aside or varied in his favour by an appellate Court. The Privy Council had to interpret the word 'decision'. In section 74 of the Australian Commonwealth Constitution the appeal is described as an appeal "from a decision of the High Court" and it was held that "Decision" is an apt compendious word to cover "judgments, decrees, orders and sentences", an expression which occurs in section 73 of that Act. Lord Porter also pointed out that it was used in the comparable text of the Judicial Committee Acts of 1833 and 1843, as a general term to cover "determination, sentence, rule or order" and "order, sentence or decree." Lord Porter said:—

"Further, though it is not necessarily a word of art there is high authority for saying that even

(1) 79 C.L.R. 497, 625. (P.C.).

without such a context the "natural" obvious and *Prima facie* meaning of the word 'decision', is a decision of the suit by the Court". *See Rajah Tasadduq Rasul Khan* v. *Manik Chand* (1), Per Lord Davey.

It is not necessary to refer to the facts in the Privy Council case from Australia, *The Commonwealth* v. *Bank of New South Wales* (2). But I may give the facts of the case from India. In that case the trial Court had given a decree for specific performance of a contract by cancelling the conveyance in favour of the Raja who was found not to be a *bona fide* purchaser and by executing a sale deed in accordance with a certain draft sale deed of September 2, 1897. The appellate Court dismissed the appeal and confirmed the finding as to specific performance but held that the alleged approved draft of conveyance put forward by the plaintiff had not been proved and that he could obtain a decree for specific performance by execution of any sufficient conveyance. A certificate was given by the High Court under section 596 of the Civil Procedure Code of 1882, and a preliminary objection was taken that the decree appealed from did not affirm the decision of the Court immediately below. Lord Davey delivering the judgment of the Board after referring to the definition of the words 'decree' and 'judgment' said that the meaning of the word 'decision' is decision of the suit by the Court and that meaning should be given to the section. Harries, C. J., in *Raja Brajasunder Deb* v. *Raja Rajendra Narayan Bhanj Deo* (3), has also construed the word 'decision', occurring in section 110 of the Code of Civil Procedure, to mean the decision of the Court taken as a whole. He also pointed out that an appeal is

(1) 30 I.A. 35
(2) 79 C.L.R. 497
(3) I.L.R. 20 Pat. 459 (F.B.).

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not preferred against an item or items in a decree but against a decree as a whole though for the purposes of valuation the subject-matter in dispute alone is valued in appeal. He relied upon a judgment of the Privy Council, *Jowad Hussain* v. *Gendan Singh* (1), where it was strenuously urged that the appeal was not against a decree but only against the items in a decree, and Viscount Dunedin, observed at page 27:—

> "The appellant's counsel strenuously urged that the appeal was not against the decree, but only against the items in the decree. This is a complete misunderstanding. An appeal must be against a decree as pronounced. It may be rested on an argument directed to special items, but the appeal itself must be against the decree, and the decree alone."

The language of section 96 of the Civil Procedure Code also shows that the appeal must be directed against the whole decree and not a part of it. This section provides:—

> "An appeal shall lie from every decree passed by any Court * * * *."

which means that the appeal lies against the decree as pronounced by the Court and not merely against a portion of the decree to which objection is taken by an aggrieved party. The wording of Order 41, Rule 1 of the Code also supports this. This rule requires that the memorandum of appeal is to be accompanied by a copy of the decree appealed from and as there is only one decree the intention of the law obviously is that the appeal is against

(1) I.L.R. 6 Pat. 24

that decree even though the controversy in appeal may be confined to an item or items in or a part of the decree. In Rule 22 of Order 41 the words used are "appealed from any part of the decree" and in rule 33 the words are "notwithstanding that the appeal is as to part only of the decree". These words cannot, in my opinion, be construed to mean that the appeal itself is against a part of the decree and they do not go counter to the decision of the Privy Council in *Jowad Hussain's case* (1). All they mean in the context is that the objections may be directed against a part of the decree or the controversy in appeal may be confined to a portion of it, but the appeal has to be brought against the decree as pronounced.

There are three tracks of decisions in regard to the question now in dispute and the words which have caused difficulty in the interpretation of section 110 of the Code of Civil Procedure, which is now embodied in Article 133(1) of the Constitution of India, are "the judgment, decree or final order appealed from affirms the decision of the Court immediately below". One set of decisions is that where a decree is passed in favour of a party and in appeal the decree is varied in his favour then in regard to the portion for which he has not been able to get any relief the decision must be taken to be one of affirmance. The second set of decisions is the opposite view that if the decision as a whole of a suit by the Court is not affirmed by the appellate Court and there is a variation, then whether the variation is in favour of the proposed appellant or not, he can take an appeal to the Supreme Court as a matter of right. There is also a middle course which has been suggested by some later rulings.

(1) I.L.R. 6 Pat. 24

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I shall first take up the first view. In *Sree Nath Roy* v. *Secretary of State* (1), the principle laid down was that the decree appealed from was a decision of affirmance where both the Courts were agreed as to the subject-matter of the proposed appeal to the Privy Council. In that case the Land Acquisition Collector made an award of Rs. 28,287 which on a reference to the District Judge was upheld. On appeal being taken to the High Court, the High Court increased the amount of compensation by Rs. 7,000 and it was held that the decree of the High Court affirmed the decision of the Court below in regard to the amount in controversy in the proposed appeal and, therefore, appeal could not be taken as a matter of right. The Punjab Chief Court took the same view in *Bhagat Singh* v. *Jai Ram and Jamna Das* (2), and this was the view of the Allahabad High Court also in *Kamal Nath* v. *Bithal Dass* (3), but the Privy Council in *Annapurnabai* v. *Ruprao* (4), held differently. It is the interpretation of this judgment which has caused a great deal of divergence of opinion in the Courts in India. In that case a boy was adopted by the junior widow with the consent of the senior widow. A suit was brought by the respondent to challenge this adoption. The junior widow as one of the defendants denied the allegation of adoption and also claimed to be entitled to Rs. 3,000 per annum for maintenance out of the estate. The adoption was held proved and the District Judge gave a decree for maintenance at the rate of Rs. 800 which on appeal to the Judicial Commissioner was enhanced to Rs. 1,200. In all other respects the decree was affirmed. The defendant wanted to appeal to the Privy Council

(1) 8 C.W.N. 294.
(2) 22 P.R. 1915.
(3) I.L.R. 44 All. 200.
(4) I.L.R. 51 Cal. 969.

but leave was refused on the ground that the decree of the first Court had been affirmed except in respect of a small change and no substantial question of law arose. The matter was taken to the Privy Council and there it was argued by Sir George Lowndes for the defendant-petitioners:—

> "The value of the subject-matter of the suit exceeded Rs. 10,000 as also did the subject-matter of the proposed appeal even if the maintenance alone is regarded as in dispute, its value, having regard to the widow's prospects of life, exceeded Rs. 10,000. The appellate Court did not affirm the decree of the first Court but varied it; consequently it is not material under section 110 whether any substantial question of law is involved. Having regard to concurrent findings, the petitioners desire to appeal only with regard to the amount of the maintenance."

The judgment of the Privy Council was delivered by Viscount Dunedin, who said:—

> "In the opinion of their Lordships the contention of the petitioners' counsel as to the effect of section 110 of the Code is correct. They had, therefore, a right of appeal. Special leave to appeal should be granted; but should be limited to the question of maintenance. The petitioners' chance of success is not material to their application."

I shall now take the case of the Lahore High Court. The first case is *Hakim Rai* v. *Ganga Ram* (1). In that case after the preliminiary decree

(1) A.I.R. 1938 Lah. 836

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was passed the trial Court passed a final decree in favour of the plaintiff for Rs. 3,286. Both sides appealed to the High Court. The plaintiff's claim was for Rs. 7,000 but the decretal amount was enhanced to Rs. 11,725 in favour of the plaintiff. Both sides sought leave to appeal to the Privy Council. The question was raised in the course of the application of the plaintiff as to whether the decree affirmed the decision of the trial Court. Following the Privy Council judgment in *Annapurnabai's case* (1), leave was given to the plaintiff. Tek Chand, J., observed at page 837:—

> "This variation no doubt was all in favour of Hakim Rai, and he cannot have any appealable grievance against such variation, but none the less, the decree of this Court was not one of affirmance and having regard to the clear wording of section 110 and of the ruling of their Lordships of the Privy Council in 51 Cal. 969 it must be held that the requirements of the section have been fulfilled and Hakim Rai is entitled to appeal to His Majesty in Council as of right."

This is in favour of the argument submitted by the Union of India.

In the next case *Mst. Shahzadi Bi* v. *Mt. Rahmat Bi* (2), it was held that it would be anomalous to grant leave to appeal to His Majesty in Council to an applicant on matters in which a High Court has concurred with the trial Court merely on the ground that in another matter the High Court had modified the decree of the trial Court.

(1) I.L.R. 51 Cal. 969.
(2) A.I.R. 1937 Lah. 761.

The matter again came up before a Full Bench of the Lahore High Court in *Brahma Nand* v. *Shree Sanatan Dharam Sabha* (1), and *Wahid-ud-Din* v. *Makhan Lal* (2). In the former case the suit was brought by the Sabha for accounts and for removal of the Mahant. The trial Court held that it was a public trust and granted a decree to the plaintiff removing the defendant from the trusteeship of the property, appointed the Sabha as a new trustee and passed a preliminary decree for accounts. This decree was affirmed by the District Judge and in an appeal to the High Court by the defendant, the plaintiffs-respondents abandoned their relief as to accounts. The Court held in favour of the Sabha as to the nature of the property and dismissed the appeal, but in the decree drawn up there was variation in regard to the relief as to accounts. The Mahant sought leave to appeal to the Privy Council, and the question which was debated was whether the decree passed by the High Court "was one of affirmance or of variation." Din Mohammad, J., who delivered the main judgment referred to *Annapurnabai and another* v. *Ruprao* (3), and to the divergence of opinion which existed in the various Courts in India as to the interpretation to be put on that judgment. At page 164, he said:—

> "From a review of the above authorities it will be clear that the High Courts of Calcutta, Madras, Bombay, Patna and Lahore have, in spite of the Judgment of their Lordships of the Privy Council in the case of *Annapurnabai* v. *Ruprao* (3), held the view that no leave to appeal to His Majesty in Council can be

(1) I.L.R. 1945 Lah. 156
(2) I.L.R. (1945) Lah. 242
(3) I.L.R. 51 Cal. 969

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granted on account of any modification made by the appellate Court in the applicant's favour when his sole object in going to the Privy Council is not to moot the point on which the decree has been varied but to challenge the finding on which it has been affirmed, unless a substantial question of law arises in that behalf".

He also referred to the contrary view taken by the Patna High Court including the judgment of the Full Bench of that Court in *Raja Brajasunder Deb* v. *Raja Rejendra Narayan Bhanj Deo* (1), and also the view taken in other cases, and then held that as the respondents had of their own accord withdrawn the relief as regards accounts, therefore, the variation was not the result of an adjudication but of the parties' own action.

"It was as if that part of the case had been entirely removed from the adjudication of this Court and consequently it ceased to have any concern with it whatever." To all intents and purposes the decree of the High Court affirmed the decision of the Court below and, therefore, leave could not be granted as a matter of right. No doubt the trend of the opinion of the court in that case was in favour of the view which is now submitted by the opposite party, the proposed respondent, but it is not a case which can help the opposite party very much. The matter was made clearer by Becket, J., who said that "the decree may have been varied * * *, but there is really nothing in the decree which can properly be said not to affirm any decision of the Court below, the variation being merely due to the voluntary relinquishment of a relief formerly sought."

(1) I.L.R. 20 Pat. 459.

In *Wahid-ud-Din* v. *Makhan Lal* (1), the main judgment was again delivered by Din Mohammad, J. In regard to the right of a person to go in appeal to the Privy Council where the non-affirmance is in his favour it was held that if the High Court partly affirms and partly reverses the decision of a Court immediately below, the person aggrieved by the affirmance portion of the decree has no right of appeal to the Privy Council against that portion of the decree, merely because in the other portion of the decree a variation has been made enirely to his satisfaction and he has no "appealable grievance" left in respect thereof. The learned Judge referred to his previous judgment. He also referred to *Raja Tasadduq Rasul Khan* v. *Manak Chand* (2), but he was of the same opinion as in the previous case.

In another Lahore case, *Sm. Attar Kaur* v. *Lala Gopal Das* (3), it was laid down by a Division Bench that the true test as to whether the decree of the High Court is a decree of affirmance is to see whether the decision of the Court below as a whole has been affirmed by the High Court and not whether the point or points left in dispute have been affirmed and, therefore, where the High Court affirms the finding of the Court below on some points but reverses it on others and the party intends to agitate in appeal to the Privy Council the findings of the High Court on all the points, the permission to appeal to His Majesty in Council must be granted though the appeal does not involve any substantial question of law. In this case the petitioner was the plaintiff and she claimed possession of five shops and a monthly allowance of Rs. 30 on the basis of her husband's will, a decree for Rs. 19,000 on account of the rent

(1) I.L.R. 1945 Lah. 242
(2) 30 I.A. 35
(3) A.I.R. 1948 Lah. 1

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of the shops, declaratory decree that she was entitled to reside in the house bequeathed to her and a declaratory decree that the award made as between her and Gopal Das was not binding on her. The trial Court dismissed the suit holding that the plaintiff was bound by the previous decree of the Senior Sub-Judge based on the award. On appeal being taken to the High Court the plaintiff was partially successful. The Court followed the judgment of Sir Trevor Harries, C. J., in *Raja Brajasunder Deb* v. *Raja Rajendra Narayan Bhanj Deo* (1).

It thus comes to this that the Punjab Chief Court was in favour of the first view and in two judgments the opposite view was taken, i.e., if there is a variation howsoever small it is not a decision of affirmance. In two Full Bench decisions the first view was adopted but it appears that the Bench in one of the cases was of the view that the variation was due to the voluntary giving up of the claim to accounts. The reason may be good or bad but the judgment does show that the Bench would not have held it to be a case of affirmance if the claim relating to accounts had been decided in favour of the appellant on merits. In *Wahid-ud-Din's case* (2), the Court adopted the view of *Sri Nath Rai's case* (3), which seems to have been differed from in all Courts in India.

There then remains the judgment of this Court in *Chaudhri Abdur Rehman Khan* v. *Chaudhri Raghbir Singh* (4). In that case in a suit to challenge the sale made by an ancestor the nature of the property and consideration and necessity for the sale were challeged. There was

(1) I.L.R. 20 Pat. 459.
(2) I.L.R. (1945) Lah. 242.
(3) 8 C.W.N. 294.
(4) 53 P.L.R. 39.

a variance in the decree in regard to a portion of the property and the amount on the payment of which possession was to be taken. Leave to appeal to the Supreme Court was sought in that case and it was argued that as the amount on the payment of which the plaintiff could get possession was raised from Rs. 2,760 to Rs. 9,790, the decision was one of non-affirmance, but this contention was negatived mainly on the ground of the Full Bench decision in *Brahma Nand's case* (1), and the Full Bench decision in *Wahid-ud-Din's case* (2). The reasoning in *Raja Brajasunder Deb* v. *Raja Rajendra Narayan Bhanj Deo* (3), was not accepted on the ground that the decision of the Court below did not mean decree of the Court below and that the view taken by the Privy Council that an appeal lies against the decree as a whole and not against a part of the decree was erroneous. This case was followed by Harnam Singh and Khosla, JJ., in an unreported judgment of this Court *Delhi Improvement Trust* v. *Ch. Kehar Singh* (4). In both these cases reliance was mainly placed on the two Full Benches of the Lahore High Court which I have discussed above and nothing more need be said.

I have already dealt with *Shri Nath Rai* v. *Secretary of State* (5). After the decision of the Privy Council in *Annapurnabai's case* (6), the matter was again considered in *Narendra Lal Das Chaudhary* v. *Gopendra Lal Das Chaudhary* (7). There a suit was brought for partition of joint family property valued at Rs. 10,00,000. A preliminary decree was passed and an appeal was

(1) I.L.R. 1945 Lah. 156
(2) I.L.R. 1945 Lah. 242
(3) I.L.R. 20 Pat. 459
(4) C.M. App. No. 609|C of 1955
(5) 8 C.W.N. 294
(6) I.L.R. 51 Cal. 969
(7) A.I.R. 1927 Cal. 543

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taken to the High Court by the plaintiff where the decree of the trial Court was varied and he was given a bigger share than he had been given by the trial Court. In regard to other matters his appeal was dismissed and he sought leave to appeal to the Privy Council. Rankin, C.J., held that the authority of *Annapurnabai's case* (1), was not wholly followed, but the learned Chief Justice was of the opinion that that case overruled *Sree Nath Rai's case* (2), to this extent that where there is a dispute as to the amount of decree or as to the amount of damages, the reasoning of *Sree Nath Rai's case* (2), is not a correct application of that principle.

In *Bibhuti Bhushan Dutta* v. *Sreepati Dutta and others* (3), *Sree Nath Rai's case* (2), was followed and it was held that where the appellate Court modifies the original decree upon a single point and that completely in the applicant's favour, he cannot because of that modification have a right of appeal on other points on which the Courts have concurred without a substantial question of law. Reference was made to the observations of Rankin, C. J., in *Narendra Lal* v. *Gopendra Lal* (4), and the interpretation put by Rankin, C. J., was followed, but in the latest judgment of the Calcutta High Court, *Probodh Chandra* v. *Hara Hari Roy* (5), a doubt was cast in regard to the correctness of the previous judgments and it was held that whether a judgment is or is not a judgment of affirmance, is a matter at least of doubt and where there is doubt the Court would resolve it by deciding in favour of the applicant and granting him leave.

(1) I.L.R. 51 Cal. 969.
(2) 8 C.W.N. 294.
(3) I.L.R. 62 Cal. 257.
(4) A.I.R. 1927 Cal. 543.
(5) A.I.R. 1954 Cal. 618.

In two earlier Allahabad cases *Bhagwan Singh* v. *The Allahabad Bank* (1), and *Kanwal Nath* v. *Bithal Das* (2), it was held that if a decree varies the decree of the lower Court to the prejudice of the applicant it cannot be said that the decree does not affirm the decision of the Court immediately below and the same view seems to have been taken in *Sri Narain Khanna* v. *Secretary of State* (3). *In Waqir Ali Khan* v. *Narain Das* (4), a similar view was taken, but two subsequent Full Benches of the Allahabad High Court in *Nathu Lal* v. *Raghubir Singh* (5), and *Jagoo Bai* v. *Harihar Prasad Singh* (6), following *Annapurnabai's case* (7), have held that any modification prevents a decision being one of affirmance. In *Nathu Lal's case* (5), the appeal was dismissed, but the cross-objections filed were allowed with the result that there was only one decree by which the decision of the Court immediately below was varied. Interpreting the language of Section 110 of the Code of Civil Procedure, Sir Shah Mohammad Sulaiman, C. J., said at p. 149:—

> "There is no reason why we should introduce new words in the section and say that the expression 'affirms the decision of the Court below' necessarily means 'affirms the decision substantially' or means 'affirms the decision on grounds other than costs'. If the decree of the Court below had been varied, no matter to what extent, the decree cannot be one of affirmance."

(1) I.L.R. 43 All. 220
(2) I.L.R. 44 All. 200
(3) A.I.R. 1939 All. 723
(4) A.I.R. 1939 All. 322
(5) I.L.R. 54 All. 146 (F.B.)
(6) I.L.R. 1941 All. 180 (F.B.)
(7) I.L.R. 51 Cal 969

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Jaggo Bai v. *Harihar Prasad Singh* (1), was a suit for return of consideration money together with interest on the ground of breach of contract; the trial Court gave a decree for consideration money *plus* interest at 6 per cent which came to Rs. 18,700. On appeal the interest was reduced to Rs. 12,380 at 4 per cent. It was held that as the High Court did not completely affirm the decision of the trial Court, it could not be said that the proposed appellant could not appeal to the Privy Council as of right. Thom, C. J., who delivered the judgment of the Bench referred to the judgments of the Court in *Waqir Ali Khan* v. *Narain Das* (2), and *Sri Narain Khanna* v. *Secretary of State* (3), and was of the opinion that those decisions could no longer be considered good law. In a later Allahabad Judgment *Mt. Jman Kanwar* v. *Lal Bahadur* (4), the view taken by Sulaiman, C. J., and by Sir John Thom, C. J., was followed that where an appeal is brought to the High Court on a number of items of property and the appeal is allowed as to some of the items and dismissed with regard to others, the decree cannot be treated as affirming the decision of the Court immediately below and the proposed appellant would be entitled to leave under section 110 of the Code of Civil Procedure as of right.

In the latest Full Bench judgment of the Allahabad High Court, *Rani Fateh Kunwar* v. *Raja Durbyai* (5), P. L. Bhargava, J., accepted the view of Sir Trevor Harries, C. J., which was also reiterated in the latest Full Bench decision of the Patna High Court in *Kanak Sunder* v. *Ram Lakhan* (6). The facts in this (Allahabad)

(1) I.L.R. 1941 All. 181.
(2) I.L.R. 1939 All. 443.
(3) A.I.R. 1939 All. 723.
(4) I.L.R. 1946 All. 328.
(5) I.L.R. (1952) 2 All. 605.
(6) A.I.R. 1956 Pat. 325, 336.

case were that Fateh Kunwar, the widow of an alleged adopted son brought a suit claiming to be entitled to the whole estate as such widow. She pleaded a family settlement and custom. Her husband was held to be validly adopted but the plea of family settlement was rejected. The suit was dismissed except that she got maintenance of Rs. 3,000 per annum. The defendant appealed and Fateh Kunwar cross objected. The appeal was allowed and the cross objections dismissed. Against this decree, the widow applied for leave to appeal to the Supreme Court. Her contention was that the appellate Court had varied the decree of the trial Court. The opposite party urged that the preponderance of opinion in the High Courts in India was in favour of the view that where the High Court has affirmed the decree of the trial Court with regard to certain points and has reversed it with regard to the other points and if the points raised are divisible then no appeal will lie with regard to those points upon which there has been an affirmation of the decree of the Court below. The majority judgment was given by Agarwala, J., and the following propositions of law were laid down:—

(i) if the proposed appeal is in respect of the matter upon which there is a variation then irrespective of the variation being in favour of the appellant or the respondent the former has a right of appeal

(ii) if the proposed appeal consists of matters about some of which there is affirmance and about the rest there is non-affirmance then again there is a right of appeal;

(iii) if the proposed appeal is in respect of that matter upon which the High Court has affirmed the decree of the trial

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Court, there is no right of appeal unless there is a substantial question of law involved.

If this criterion were to be accepted then the word 'decision' would not receive the meaning which was given to it by the Privy Council in *Rajah Tasadduq Rasul Khan* v. *Manik Chand* (1). In other words it would mean that the appeal is not against the whole judgment, decree or final order but against parts of it. In other words the word 'decision' would be equivalent to the subject-matter in dispute which is used in clause (a) of Article 133(1). This is contrary to the interpretation put on it by the Privy Council.

In *Abdus Samad* v. *Mst. Aisha Bibi* (2), it was held that where the main appeal against the decision of the trial Court fails, but the decision is partly modified on cross-objections, the decision is one of non-affirmance and an appeal to the Supreme Court will lie even if there is no substantial question of law. In this case Mst. Aisha Bibi claimed possession of a 1/6th share in the properties of her parents by partition. The value of the subject-matter of the suit, i.e., her share was Rs. 6,311-11-. The trial Court passed a decree in her favour as to items in one of the lists attached to the plaint. An appeal was taken to the Chief Court by the defendants and the plaintiffs preferred cross-objections. The appeal was dismissed but the cross-objections were allowed. The result was that the whole of the plaintiff's suit was decreed. The defendants sought leave to appeal to the Privy Council claiming that the decree appealed from did not affirm the decision of the trial Court. The bench was of the opinion that the

(1) 30 I.A. 35
(2) I.L.R. (1947) Luck. 461

word 'decision' means the decision of a suit as a whole and not a part of it and that the legislature did not intend to give a right of appeal against each component part of a decree. The Court did not accept the view taken by the Nagpur High Court in *Abdul Majid Khan* v. *Dattoo Raoji* (1), where it was held that where there are several controversies in the suit and the decision of the Court is on one decree, the adjudication with regard to each matter is in itself a decree, and it was held that the word 'decision' in section 110 of the Code of Civil Procedure, means the decision of a suit so far as it is the subject-matter of the proposed appeal and not the decision of the suit as a whole.

I shall now deal with Bombay cases. It appears that in the Bombay High Court the view taken in decided cases is that if the decree varies the "decree" of the trial Court in favour of the proposed appellant, then it is a decision of affirmance and there is no right of appeal. This was held in *Kapurji Magniram* v. *Pannaji Debichand* (2), and in *Govind Dhondo Kulkarni* v. *Vishnu Keshav Kulkarni* (3). In the latter case the plaintiff brought a suit for recovery of possession of half share of the suit property by partition. Several defences were taken, the trial Court held that the plaintiff had proved his adoption but it was invalid and that the whole of the property in dispute was joint family property and the suit was dismissed. In appeal to the High Court the adoption was held to be proved and that out of the immovable properties described in the plaint, only some items were joint and the rest were not and the plaintiff's claim was allowed in respect of

(1) A.I.R. 1946 Nag. 307
(2) A.I.R. 1929 Bomb. 359
(3) I.L.R. 1948 Bom. 881

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these properties and dismissed in regard to the rest. He applied for leave to appeal to the Privy Council. The Court was of the opinion that because the dispute before the Privy Council would be with respect to properties in regard to which the claim had been rejected by both the Courts, the case was one of affirmance and not of non-affirmance. This case may be distinguished on the ground that there were different sets of properties with regard to which the decree was varied, but it is not necessary in the present case to go into this question or the correctness of this view.

It appears that the view taken by the Lahore High Court in *Wahid-ud-Din* v. *Makhan Lal* (1), and by the Madras High Court in *Kailasa Tever* v. *Kasivishwanathan* (2), received the approval of the learned Judges and Jahagirdar, J., particularly was of the opinion that that is a correct interpretation of the judgment of the Privy Council in *Annapurnabai* v. *Ruprao* (3). With due respect, I would say that if the view that has been taken by the Privy Council in *Jowad Hussain's case* (4), that the appeal lies against the whole decree and in *Tasadduq Rasul Khan* v. *Manik Chand* (5), that the word 'decision' means the whole decision of the whole suit, then the view taken by the Bombay High Court is contrary to the true meaning of the judgment of the Pivy Council in *Annapurnabai's case* (3), and I would, therefore, prefer to follow the judgment of the Patna High Court in *Raja Brajasunder Deb* v. *Raja Rajendra Narayan Bhanj Deo* (6).

(1) I.L.R. 1945 Lah. 242
(2) I.L.R. 1944 Mad. 890
(3) I.L.R. 51 Cal. 969
(4) I.L.R. 6 Pat. 24
(5) 30 I.A. 35
(6) I.L.R. 20 Pat. 459

It is not necessary to discuss all the Madras cases. In *Venkitasami Chettiar* v. *Sakkutti Pillai* (1), there were several subject-matters in a suit and the appellate Court reversed the original decree upon a single point in favour of a proposed appellant, he was held to have no further grievance in that matter and he could not, because of that reversal, have a right of appeal on other points on which the Courts had concurred. It was also held that what is to be seen is not the decision as a whole but the decision as it affects the subject-matter in dispute in the proposed appeal to the Privy Council. The same view was taken in *Lakshman Chettiar* v. *Thangam* (2), but in *Gangadara Ayyar* v. *Subramania Sastrigal* (3), a Full Bench held the case to be one of non-affirmance where the facts were that a suit was brought against G. P. and N. and others, for declaration that eleven items of property belonged to the estate of a certain person and that the deed of settlement executed by the mother of that person in respect of those properties was void. The trial Court gave a declaration in respect of six out of eleven items of the property and dismissed the rest of the claim. G. P. and N. appealed to the High Court on the ground that the trial Court had erred in giving a declaration in respect of six items. The plaintiff filed cross-objections. The appeal was dismissed but the cross-objections were allowed. G. P. and N. sought leave to appeal to the Privy Council and an objection was raised that because there was a concurrent finding of fact with respect to six items of property the requirements of section 110 of the Code of Civil Procedure will not be fulfilled. It was held that the decision was one of variance

(1) A.I.R. 1936 Mad. 881
(2) I.L.R. 1947 Mad. 744
(3) I.L.R. 1947 Mad. 6

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and not of affirmance and the proposed appellant had a right of appeal.

In *Ventapragada Viaraghava Rao* v. *Mothey Narasimha Rao* (1), the question was discussed at great length and the whole case law was reviewed. In that case a suit had been brought for eviction from a picture-house which was resisted on the ground of restriction under the Madras Rent Control Act. This was negatived by the trial Court and the suit was decreed with damages at Rs. 200 per day. On appeal the High Court held that the defendants were not tenants but trespassers and in regard to the quantum of damages it reduced the rate from Rs. 200 to Rs. 50 a day. The defendants applied for leave to appeal and it was held that the decision was not one of affirmance and, therefore, appeal lay as a matter of right.

In a latter Full Bench case *Chittam Subba Rao* v. *Vela Mankanni Chelamayya* (2), the facts were these. The plaintiff brought a suit for a declaration that the will alleged to have been executed in favour of the first defendant was false and forged and for possession of the properties which were set out in the schedules. There was also a prayer for *mesne* profits and for rendering of accounts. The defendants depended upon another will. The suit was decreed and it was held that the will propounded by the plaintiff was genuine and that by the defendants was not. A decree for possession of properties given in one of the schedules was passed and also for rendition of accounts. On appeal being taken to the High Court the decree of the trial Court was set aside in regard to the relief of accounts, but the other findings were upheld. The defendant applied for leave to appeal to the Supreme Court.

(1) I.L.R. 1950 Mad. 381
(2) I.L.R. 1953 Mad. 1

The Full Bench took the same view as was ken in the majority judgment of the Allahabad igh Court in *Rani Fateh Kunwar* v. *Raja Durbi-i Singh* (1). At page 14 are set out the three ques-ons which the learned Chief Justice has iswered:—

"(i) If the judgment or decree of the High Court varies the decision of the lower Court in respect of a matter in controversy in the proposed appeal to the Privy Council, then there is a right of appeal not only to the person against whom the variation has been made but even to the party in whose favour the variation has been made. But it is necessary that the matter in respect of which there has been a variation should be the subject-matter of the proposed appeal to the Privy Council.

(ii) A matter in controversy cannot be split up or analysed or dissected into component parts or arbitrary divisions. The true test will be to determine the nature of the dispute or controversy.

(iii) If the matter in respect of which there has been a variation is not the subject-matter of the proposed appeal, then such variation would not confer a right of appeal as regards matters unconnected with the matter in respect of which there has been a variation. A *fortiori*, this will be the case when the variation has been completely in favour of the applicant."

(1) I.L.R. (1952) 2 All. 605.

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At page 18, Rajamannar, C. J., said in regard to *Annapurnabai* v. *Ruprao* (1):—

> "I think one should not construe the short pronouncement of Lord Dunedin in that case as if it were in itself a statutory provision. That pronouncement must be understood having regard to the facts of that case, and so understood, I am of opinion that Rankin, C. J.'s view in *Narendra Lal* v. *Gopendra Lal* (2), is logical, simple and reasonable and not 'illogical, laboured and not particularly well reasoned as Raghaya Rao, J., thinks (see page 395). With all respect to that learned judge, I do not agree with him that Rankin, C. J., was in any way delimiting the effect of the Privy Council decision in a manner not warranted by the plain language of their Lordships."

But Sir George Rankin, C. J., himself pointed out in *Narendra Lal* v. *Gopendra Lal* (2), that the rule laid down in *Sree Nath Rai's case* (3), that where there is a dispute as to the amount of the decree or to the amount of damages the reasoning of. *Sree Nath Rai's case* (3) is not a correct application of that principle. If the decree appealed from does not affirm the decision of the trial Court and the decision means the whole decision of the suit then any variation, howsoever small, must be taken to be a case of non-affirmance and not a case of affirmance and that in my view is deducible from the judgment of the Privy Council in *Jowad Hussain* v. *Gendan Singh* (4).

(1) I.L.R. 51 Cal. 969
(2) A.I.R. 1927 Cal. 543
(3) 8 C.W.N. 294
(4) I.L.R. 6 Pat. 24 at 27-28

In the cases decided by the Patna High Court, the preponderance of opinion seems to be that any variation in a decree falls within the rule of non-affirmance of the decision of the Court immediately below. This was the view expressed by that Court in *Ali Zamin* v. *Mohammad Akbar Ali Khan* (1), and in *Thakur Jamuna Prasad Singh* v. *Jagarnath Prasad Singh* (2). This was also the view taken by another Division Bench in *Hameshwar Singh* v. *Kameshwar Singh* (3). In this case it was held that it is immaterial whether the effect of the modification is in favour of the proposed appellant or it is to his detriment. In *Mahabir Prasad* v. *Brij Mohan Prasad* (4), it was held that where the modification of the judgment was upon a single point and that completely is in the applicant's favour, so that he has no further grievance in that matter, the decree must be taken to be one which affirms the decision of the Court below. This was a reversion to the view taken by Sir George Rankin, C. J., in *Narendra Lal Das* v. *Gopendra Lal Das* (5). In *Raja Brajasunder Deb* v. *Raja Rajendra Narain Bhanj Deo* (6), the matter was reviewed by a Special Bench and practically all the cases decided by different Courts. were examined and it was held that under section 110 of the Code of Civil Procedure, a proposed appellant can appeal as of right in a case where there is a variation in the decree and the decision of the Court below is not affirmed. The true test for determining whether the decree is one affirming the decision or not is whether the decision of the Court below has been affirmed by the High Court or not and not whether the decision of the point or points left in controversy has been affirmed by

(1) A.I.R. 1928 Pat. 609.
(2) I.L.R. 9 Pat. 558.
(3) A.I.R. 1933 Pat. 262.
(4) I.L.R. 15 Pat. 637.
(5) A.I.R. 1927 Cal. 543.
(6) I.L.R. 20 Pat. 459 (F.B.)

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the High Court and, therefore, where the decree of the High Court reverses the decree of the trial Court in part and maintains it with regard to the remainder of the claim, the decree cannot be said to affirm the decision of the Court below and appeal is competent to the Privy Council as of right.

The Patna High Court has again examined its previous decision in *Kanak Sunder Bibi* v. *Ram Lakhan Pandey* (1). The facts of that case were that one Pawanjai Kumar Jain executed a deed of gift with respect to all the properties that he had including his interest in two houses, to his sister Kanak Sunder Bibi and he and Rajkumar Jain were adjudged insolvents. One of the two donated houses was sold in execution of a mortgage decree and the balance of the sale price after payment of the decretal debt was realized by the Receiver, half of which was the share of Rajkumar Jain. An application under Section 53 of the Provincial Insolvency Act was made for the annulment of certain transfers made by Pawanjai Kumar Jain which included the deed of gift. The Insolvency Court annulled the deed of gift. The Court proceeded for the purpose of the insolvency proceeding on the assumption that the deed of gift was valid and operative and therefore it left the question of its validity and effectiveness open and that after the discharge of the insolvent any one of the properties left would revert to the donee. With regard to the other house which was not sold it ordered that it be divided into two equal shares between the father and the son. Against the order of the Insolvency Court the donee preferred an appeal to the High Court and Rajkumar Jain, one of the insolvents, filed a cross objection praying that the deed of gift in question should be declared a sham and void transaction.

(1) A.I.R. 1956 Pat. 325 (F.B.)

The High Court affirmed the order of the Insolvency Court with regard to the annulment of the deed of gift and held that the transfer in favour of the donee Kanak Sunder Bibi was without valuable consideration and she was not a purchaser within the meaning of Section 53 of the Provincial Insolvency Act. The order of the Insolvency Court in regard to the division of the other house was varied. The cross-objection of Rajkumar Jain was allowed to a limited extent. The result of the proceedings in the High Court was that there was a variation in the order passed by the Insolvency Court in two respects :—(i) with regard to the direction of the division of the other house and (ii) with regard to the order relating to the reversion of the left over properties to the donee. An appeal was sought to be taken to the Privy Council by Kanak Sunder Bibi. In the proposed appeal she challenged the order of the High Court both with regard to the annulment of the deed of gift on which the two Courts were in agreement as well as the direction leaving open the question of reversion of the left over properties to the donee on which the order of the High Court was at variance with that of the Insolvency Court. The matter was heard by a Full Bench. Choudhary, J., who gave the leading judgment was of the opinion that on a true interpretation of Article 133 of the Constitution of India, if the judgment, decree or final order of the High Court varies a portion of the decree or order of the Court immediately below, then a party is entitled as of right to go in appeal to the Supreme Court against that portion of decree or order, only in respect to which the High Court has concurred with the Court below if the proposed appeal satisfies the requirements of valuation and it is immaterial whether the variation is in favour of or to the prejudice of the proposed appellant. Relying upon

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Sir Trevor Harries, C. J.'s judgment in *Raja Brajasunder Deb* v. *Raja Rajendra Narayan Bhanj Deo* (1), he was of the opinion that the expression "appealed from" is descriptive and means that the appeal is preferred against a decree or an order as a whole and not against an item of a decree or an order and it conveyed the sense that the appeal is preferred from the whole of the decree or order and the word decision was equivalent to the word decree. Therefore, the test in order to determine whether the judgment, decree or final order of the High Court affirms the decision of the Court below or not is to see whether, taken as a whole, there is affirmance or non-affirmance of the decision of the Court below.

Das, C.J., however was inclined to the opinion express by Rajamannar, C.J., in *Chittam Subba Rao* v. *Vella Mankanni Chelamayya,* (2), but the facts of the Patna case, he held, fell within one of the propositions laid down by the learned Chief Justice of Madras. Ramaswami J. who gave a separate judgment was also of the opinion that the words 'appealed from' do not restrict or qualify the meaning of the expression judgment, decree or final order and that they are merely descriptive because there could be no appeal from any particular item or subject-matter of a decree. The appeal lies against the whole decree as pronounced by the Court and not from certain portions of it as was held in *Jowad Hussain* v. *Gendan Singh* (3). Defining the word 'decision' he held that it must be construed to mean the decision of the trial Court taken as a whole and relied upon *Rajah Tasadduq Rasul Khan* v. *Manik Chand* (4). And therefore the test laid down by the learned Judge was

(1) I.L.R. 20 Pat. 459
(2) I.L.R. 1953 Mad. 1.
(3) I.L.R. 6 Pat. 24.
(4) 30 I.A. 35.

whether the decision of the trial Court as a whole has been affirmed by the High Court or whether the decision on any particular point or subject matter of controversy has been affirmed by the High Court. If the former, the petitioner will also have to show substantial question of law and if the latter he will have a right of appeal.

The cases that I have referred to above show that in Allahabad, Patna and Madras the view taken is this that if there is a variation in the decree by the appellate Court in appeal, the decree cannot be said to affirm the decision of the Court immediately below whether the variation is in favour of the proposed appellant or not. Of course the latest full benches of Allahabad and Madras have modified this view in some particulars but as far as the facts of the present case are concerned their view still remains the same, i.e., an appeal would lie as a matter of right. The position, I must admit, is really very anomalous. If a litigant in appeal is absolutely unsuccessful, he has no right of appeal to the Supreme Court unless he also shows that there is a substantial question of law or brings the case under the phrase "fit for appeal", but if he succeeds partially and howsoever small may be the measure of his success, he gets a right of appeal because the decree is no longer one affirming the decision of the Court immediately below, but that is the view which was taken by the Privy Council in *Annapurnabai's case* (1), and has now been taken, as I have said above, by the Allahabad, Patna and Madras High Courts. The Calcutta High Court does not seem to have struck to its old view as given by Sir George Rankin in *Narendra Lal Das Chaudhury* v. *Gopendra Lal Das Chaudhury* (2). The Bom-

(1) I.L.R. 51 Cal. 969
(2) A.I.R. 1927 Cal. 543

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bay High Court no doubt is still holding its old view, but the facts of the latest case in which this opinion was given were different.

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Sir Trevor Harries, C. J., in *Raja Brajasunder Deb* v. *Raja Rajendra Narayan Bhanj Deo* (1), has held that the decision of the Court immediately below the Court passing the decree as used in Section 110 of Code of Civil Procedure means the same as the expression decree of the Court below. This has the authority of the Privy Council in *Rajah Tasadduq Rasul Khan v. Manik Chand* (2), where in the head note it is so said and that has been accepted by the Privy Council in later judgment, *The Commonwealth and others* v. *Bank of New South Wales* (3), and the appeal, as was held in *Jowad Hussain* v. *Gendan Singh* (4), is brought against the whole decree and not against a part of the decree, then any variation in the decision of the appellate Court must necessarily be non-affirmance of the decision of the Court immediately below.

I have analysed the various cases which were cited and I am forced by the cold and irresistible logic of the judgment of Sir Trevor Harries in *Raja Brajasunder Deb* v. *Raja Rajendra Narayan Bhanj Deo* (1), and by preponderance of authority that our opinion in *Chaudhri Abdur Rehman Khan* v. *Ch. Raghbir Singh* (5), must be reversed, and I would therefore hold that the proposed appellant can appeal to the Supreme Court as a matter of right, and would allow this petition. Because of the divergence of opinion of the various Courts, the case had to be referred to a Full Bench to resolve

(1) I.L.R. 20 Pat. 459.
(2) 30 I.A. 35.
(3) 79 C.L.R. 497.
(4) I.L.R. 6 Pat. 24.
(5) 53 P.L.R. 39.

the divergence, the parties must in these circumstances bear their own costs of these proceedings. I, therefore, agree with the order proposed by the Hon'ble the Chief Justice.

Kapur, J.

REVISIONAL CIVIL

Before Bhandari, C.J.

MANOHAR LAL,—*Petitioner*

versus

MOHAN LAL,—*Respondent*

Civil Revision No. 31 of 1956.

1956

Sept., 7th

East Punjab Urban Rent Restriction Act (III of 1949)—Court—Inherent powers of—Rent Controller—Position and Powers of—Whether can set aside exparte order passed by himself.

Held, that every Court has inherent powers to do all things that are reasonably necessary for the administration of justice including the power to prevent abuses, oppression and injustice and the power to relieve a party in default independently of Statute.

Held, that a Rent Controller cannot be regarded as a Civil Court although he has been entrusted with a number of functions which are analogous to those performed by judicial officers. He is only a *persona designata* who has been brought into existence for the specific purpose of performing certain functions savouring of a judicial character but which are in reality only quasi-judicial.

A proceeding taken by a Rent Controller under the statute partakes of the nature of a judicial proceeding. He is under a statutory obligation to follow the procedure prescribed by law but he is not bound to follow the technical rules of procedure which apply to trials in a Court of law.