*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Bhup Indar Bahadur Singh* v. *Bijai Bahadur Singh (now represented by Lal Raghu Saran Singh), from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered* 21*st July* 1900.

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Present at the Hearing:
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD LINDLEY.
SIR RICHARD COUCH.
SIR HENRY STRONG.

[*Delivered by Lord Hobhouse.*]

This Appeal is presented against an order made in the course of execution proceedings. The Plaintiff in the suit who was the original Respondent in the Appeal claimed possession of land. On the 12th November 1887 the District Judge passed a decree in his favour, ordering possession, and adding "the Plaintiff is also "entitled to future mesne profits." The Defendant now Appellant appealed to the High Court, who on 19th July 1889 reversed the decree and dismissed the suit. The Plaintiff then appealed to the Queen in Council who on 11th May 1895 ordered that the decree of the High Court should be reversed and the District Judge's decree of the 12th November be affirmed.

After that the Plaintiff prosecuted his claims in execution of the decree so affirmed by the Queen in Council. He recovered possession on 30th November 1895. Then he proceeded to recover mesne profits. He claimed them from 23rd September 1886, on which day his suit was

brought, down to the recovery of possession by him. The Defendant objected that no decree remained to be executed except that of the Queen in Council which made no mention of mesne profits; but the District Judge held that the Queen's Order had come down for execution and "its effect causes reference to be made to the "original decree of this Court as a final decree in "all applications for execution."

Having thus settled that the Queen's Order gave mesne profits by reference to the original decree the District Judge went on to frame issues. The second of such issues was, "For "what period are mesne profits recoverable?" It was arranged that this issue should be treated as preliminary to taking accounts, and should be argued separately. That was done, and the District Judge decided that mesne profits were due for the three years next after the date of the original decree, *i.e.*, from 12th November 1887 to 12th November 1890.

From this decree the Plaintiff appealed to the High Court, who in the first instance addressed themselves to a preliminary objection made by the Defendant that no appeal is given by the Procedure Code in such a matter. The High Court overruled that objection. As it has been renewed here, and earnestly pressed upon their Lordships by Mr. Ross, it may be convenient to dispose of it in the first instance.

The High Court felt considerable difficulty on the point. They allowed the Appeal on the ground that the District Judge had tried the question separately, and had embodied his finding in a formal order. They remark that it practically dismisses the claim of the decree holder for some five or six years' profits; and that in a way which in the Court of the District Judge is final. Therefore they hold it be an appealable order.

6. Treating the question as if it were whether the order under consideration is final or inter-

locutory in its nature, and testing it by the ordinary principles applicable to such questions their Lordships think not only that the High Court are right in the particular circumstances of the case, but that there is not any need to rely upon the accident that the District Judge took the convenient course of trying the liability to account in a separate issue and deciding it in a separate judgment. His decision is a final one in its essence and would be so equally whether it stood alone or was combined with decisions on other points. It resembles in principle a decree for account made at the hearing of a cause, which is final against the party denying liability to account, and is appealable; though it is also in another way interlocutory and may result in the exoneration of the accounting party or even in the award of a balance in his favour. And it can make no difference in point of principle whether the decision be in favour of or against the liability to account. It is equally final in its effect and as such equally open to appeal.

But then Mr. Ross urges that we are not testing the question by general principles, but by the expressions of the Code which relate to appeals. That is true and their Lordships turn to the Code to see what it says.

Section 540 gives a right to appeal to the proper Court from the decrees or from any part of the decrees of Courts exercising original jurisdiction. By Section 2 a decree is thus defined, "The formal expression of an adjudi-
" cation upon any right claimed or defence set
" up in a Civil Court, when such adjudication
" so far as regards the Court expressing it
" decides the suit. . . . An order . . . . de-
" termining any question mentioned or referred
" to in Section 244, but not specified in Section
" 588, is within this definition." Section 244 is that which gives to the Court engaged in executing a decree jurisdiction to determine

questions arising between the parties relating to the execution of the decree. Section 588 specifies a large number of orders from which appeals lie, including many made in execution proceedings but not including such an order as the one under discussion. It appears to their Lordships that the plain meaning of Section 2. is to make this Order a decree appealable under Section 540. Mr. Ross has not shown any reason why the words of the Code should not be construed in their plain and obvious sense. On the contrary the obvious sense is that which best accords with ordinary convenience and ordinary rules of practice.

Turning from this purely technical question to the substance of the appeal, the High Court found the issue before them to be very simple. The District Judge held that it turned on the construction of Sections 211 and 244 of the Code. Section 244 prescribes that questions arising in execution including this question should be decided in the execution and not by separate suit. Section 211 enacts that in suits for possession of immoveable property "the Court "may provide in the decree for the payment of "rent or mesne profits in respect of such pro- "perty from the institution of the suit until the "delivery of possession to the party in whose "favour the decree is made, or until the ex- "piration of three years from the date of the "decree (whichever event first occurs)."

The effect of the District Judge's application of these sections is somewhat startling; because though executing the Queen's Order he holds himself to be limited in point of time as though he was executing his predecessor's decree made in his own Court, and he counts the three years for which alone he thinks he has the jurisdiction to estimate mesne profits not from the date of the Queen's Order, but from the date of the decree of his own Court.

Now the Plaintiff, it must be held, was entitled to possession throughout. In 1887 he got a decree for it, and had that been executed he would have had the profits. But there was an Appeal, and in 1889 the High Court took a view adverse to him and passed a decree in the face of which he could claim nothing. Five years afterwards he succeeded in displacing that decree and in re-establishing his original right to possession. Then he is told that from the 12th November 1890 down to the 30th November 1895 the law debars him from recovering the income of his property, and allows his opponent to keep it.

The District Judge expresses an opinion that the Plaintiff might have brought a separate suit for this income and that if he has lost some years' profits it is by his own laches. How he could be charged with laches for not instituting a suit which with the decree of the High Court standing against him must have come to naught, is not easy to say. And if he were now to bring a fresh suit or if he had done so in 1895 after reversal of the adverse decree a substantial part of his just claim would be barred by Article 109 of the Limitation Act. But their Lordships will not further discuss the exact bearings of the two cited Sections of the Code, because the High Court has given the simple and obvious solution of the difficulty which puzzled the District Judge.

The Court is now executing not the District Judge's decree of 1887, but the Queen's Order of 1895, which by affirming the District Judge's decree has adopted its terms and has carried on their effect down to a later date. All that the Courts below had to do, and all that this Board has now to do, is to construe the Order of May 1895 and to carry it into execution. Its meaning is hardly open to doubt. It affirms the

District Judge's decree which awarded "future "mesne profits." That signifies profits future to the 12th November 1887. The Order of 1895 speaking with the language of the decree of 1887 clearly carries all profits up to its own date. If there had been delay for three years after 11th May 1895 Section 211 would be called into operation with reference to the Order of that date. But to call it into operation with reference to the decree of 12th November 1887 is to deprive the later Order of its obvious meaning. It is true that one of the arguments used for the Defendant was that the later Order has no meaning as regards mesne profits because they are not expressly mentioned; but that is clearly wrong and was hardly pressed at this Bar.

Agreeing with the High Court their Lordships will humbly advise Her Majesty to dismiss this Appeal and the Appellant must pay the costs.