

(1889) 02 PRI CK 0004

In the Privy Council

Abdul Rahman Khan

APPELLANT

Vs

Muhammad Yusuf Khan

RESPONDENT

Date of Decision : 20-02-1889

Acts Referred:

Citation : (1889) 16 ILRPC 749 : (1889) 16 IndApp 104

Hon'ble Judges : Hobhouse, Macnaghten, R. Couch, JJ.

Judgement

Macnaghten, J. 1. In this case, on the 10th of November 1884, Mr Young, the Judicial Commissioner of Oudh, set aside the judgment of a competent Court, which by law was final, and without appeal. In so doing, he proceeded on an erroneous interpretation which had been placed on Section 622 of the Civil Procedure Code by the Court of Allahabad, and in ignorance of the fact that the error had been corrected by a judgment of this Board in the case of Amir Hussan Khan v. Sheo Baksh Singh I.L.R. 11 Cal. 6 : L.R. 11 I.A. 237, to which Her Majesty gave effect by Her order of the 26th of June 1884. The order of Mr. Young was brought before Mr. Tracy, who happened at the time to be officiating as Judicial Commissioner in his place. On the 23rd of February 1885, Mr. Tracy, having regard to the decision of the Privy Council, discharged the order of Mr. Young. Fifteen months afterwards the matter was again brought before Mr. Young on an application purporting to be made under Section 622. That application was incompetent as being a second application for review, and it would have been out of time if it had been regular in other respects. 2. On the 22nd of June 1886, Mr. Young discharged the order of Mr. Tracy on the singular ground that it was made per incuram, and that it was an order which the Court would not have made if it had been duly informed. From that order of Mr. Young, special leave to appeal to Her Majesty has been granted. 3. Mr. Arathoon, who appeared for the Respondent, admitted that he could not contend that Mr. Young had any jurisdiction to pronounce the order of the 22nd June 1886, but he argued that Mr. Tracy's order was wrong, and that Mr. Young's first order was right. 4. Their Lordships, however, are of opinion that Mr. Tracy was perfectly right in discharging the first order of Mr. Young; and that neither of Mr. Young's

orders can be supported upon any ground whatever.

Their Lordships therefore are of opinion that the order of the 22nd of June 1886 ought to be reversed, and the order of the 23rd of February 1885 affirmed, and that the respondent should pay the costs of the proceedings before Mr. Young, in which the order of the 22nd June 1886 was made. They will therefore humbly advise Her Majesty accordingly; and the respondent must pay the costs of this appeal.