

(1909) 07 CAL CK 0064
In the Calcutta High Court

L.O. Clarke

APPELLANT

Vs

Brajendra Kissore Roy Chowdhuri

RESPONDENT

Date of Decision : 13-07-1909

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110

Citation : 3 Ind. Cas. 786

Hon'ble Judges : Lawrence Jenkins, C.J.; Caspersz, J

Bench : Division Bench

Judgement

1. This is an application to us for a certificate that, as regards amount, value and nature, this case fulfils the re-requirements of Section 110 of the Code of Civil Procedure, and that it is otherwise a fit case for appeal to His Majesty in Council. The decree from which it is desired to appeal, is one passed in affirmation of a decree of a single Judge on the Original Side of this Court whereby a sum of Rs. 500 was awarded as damages for trespass. It is, therefore, clear that, as regards amount and value, this case does not comply with the provisions of the Code entitling the applicant to a certificate. But if we read the prayer of the petition as though it prayed in the alternative that the case is otherwise a fit case for appeal to His Majesty in Council, then we have to consider how far it would be right for us to accede to the application on that ground.

2. In this connection, we have to bear in mind what was said by their Lordships of the Privy Council in a case bearing at any rate a close resemblance to the present *Spooner v. Juddow* 4 M.I.A. 353. It was there pointed out by Lord Langdale that it would be very wrong to put a party to the great expense of an appeal to the Privy Council in a case where a small amount was at issue. It is true that ultimately their Lordships admitted that appeal, but that was done upon terms, which we cannot impose; and indeed, it is a part of the applicant's argument here before us, that we have no power to impose any condition upon the applicant or upon the Government, at whose instance and costs this application is being preferred. Without giving any further ground, I think, this

affords a sufficient reason for us to hold that we cannot, with our limited powers, certify this to be a fit case for appeal to His Majesty in Council.

3. I do not suggest that the applicant was wrong in applying to us, for, in so doing, he has followed the procedure indicated by their Lordships of the Privy Council in the case of *Moti Chand v. Ganga Prasad Singh* 29 I.A. 40 : 6 C.W.N. 362 : 24 A. 174 and it will be open to the applicant, after our refusal, to make an application direct to the Privy Council. We must dismiss this application with costs.