

(1895) 03 AHC CK 0010
In the Allahabad High Court

Umrao Chand

APPELLANT

Vs

Bindraban Chand and Another

RESPONDENT

Date of Decision : 23-03-1895

Acts Referred:

Citation : (1895) ILR (All) 475

Hon'ble Judges : John Edge, J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Edge, Kt., C.J. and Banerji, J.—This is an appeal brought u/s 10 of the Letters Patent from the judgment or decree of our brother Knox. Our brother Knox had before him an appeal from an order made by the District Judge of Agra under Act No. V of 1881 granting probate of a will propounded before him.

2. A preliminary objection was taken that an appeal did not lie u/s 10 of the Letters Patent in this case. It was contended that the order of the District Judge of Agra, granting probate was not a decree, but was simply an order, to which Section 591 of Act No. XIV of 1882 applied. That contention was based on the fact that Section 86 of Act No. V of 1881 gives an appeal to the High Court from a District Judge from an order made by him by virtue of the powers conferred on him by Act No. V of 1881, and to the fact that, in that Act, the orders of the District Judge are referred to as "orders," not as "decrees." The contention was also supported by a reference to Section 83 of Act No. V of 1881. It appears to us that, although the term used to express the operative decision of the District Judge in cases arising under Chapter V of Act No. V of 1881 is "order," still, when applying Act No. XIV of 1882, we must see whether the order of Chapter V of Act No. V of 1881 would be an order or would be a decree, as those terms are defined in Section 2 of Act No. XIV of 1882. Section 591, as was decided in Letters Patent Appeal No. 31 of 1894, in the case of Richard Wall v. J.E. Howard Supra p. 438, on the 18th instant, must be read with Section 588, and should be construed as if the words "under this Code" were inserted between the words "by

any Court" and the words "in the exercise of." That being so, if the order from which the appeal was brought to this Court in this case was not an order as defined by Act No. XIV of 1882, but was a decree, Chapter XLIII of Act No. XIV of 1882 would not apply to it, or to any subsequent appeal arising out of it. An order, as defined in Section 2 of Act No. XIV of 1882 means--"the formal expression of any decision of a Civil Court which is not a decree, as above defined." For present purposes a decree, as defined in that section, means--"the formal expression of an adjudication upon any right claimed, or defence setup, in a Civil Court, when such adjudication, so far as regards the Court expressing it, decides the suit or appeal."

3. There can be no doubt that the order of the District Judge granting probate did decide, so far as his Court was concerned, not only a right to have the probate granted, but the defence which was set up to the granting of the application for the probate; consequently it must be a decree within the definition of Section 2 of Act No. XIV of 1882, and, as such, Chapter XLIII of Act No. XIV of 1882 did not apply.

4. It was also suggested, although the point was not pressed, that in this Letters Patent Appeal we were bound by the findings of fact of our brother Knox, and that the appeal before us could not be dealt with in the same way in which a first appeal to this Court might be dealt with. That contention would place an appeal u/s 10 of the Letters Patent in the same position as an appeal to which Chapter XLII of Act No. XIV of 1882 applies--Chapter XLII limits the right of appeal from a decree passed in appeal by a Court subordinate to the High Court, and only applies when the appeal is one from a decree passed in appeal by a Court subordinate to the High Court. The appeal to this High Court having been a first, appeal, and not an appeal to which Chapter XLII of Act No. XIV of 1882 applies, the parties to the appeal are entitled to question not only the law, but the findings of fact of the Judge of this Court from whose judgment or decree this appeal has been brought u/s 10 of our Letters Patent. It would be otherwise if the appeal to this Court had been an appeal to which Chapter XLII of Act No. XIV of 1882 applied. Then the Bench sitting in the Letters Patent appeal would be bound by the same rule which bound the single Judge from whose decree or order the appeal was brought. We hold that an appeal lay from the judgment or order of our brother Knox, and that the parties were entitled to have this Bench consider not only the law, but the evidence in the case.

5. The Court then proceeded to consider the case on the merits, and arriving at the same estimate of the evidence as that taken in the judgment under appeal, dismissed the appeal. The remainder of the judgment, consisting solely of a discussion of the evidence, is unnecessary for the purposes of this present report.--Ed.