Privy Council Appeal No. 22 of 1915.

Hajee Mamode Hossen and others - - *Appellants,*

v.

Mamode Hadee - - - - - - *Respondent,*

Same - - - - - - - *Appellants,*

v.

Same - - - - - - - *Respondent,*

(CONSOLIDATED APPEALS)

FROM

THE SUPREME COURT OF MAURITIUS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH JANUARY, 1916.

Present at the Hearing:

EARL LOREBURN.
LORD ATKINSON.
LORD PARKER OF WADDINGTON.
LORD SUMNER.

[*Delivered by* EARL LOREBURN.]

One question alone was raised in this case: Had the Supreme Court of Mauritius, at the date when this matter arose, jurisdiction to entertain an appeal from a judgment of the Supreme Court of Seychelles annulling a decision of a family council? The family council removed the guardian of an infant. The Supreme Court of Seychelles disallowed the removal of that guardian, and thus restored him. Can the Supreme Court of Mauritius entertain an appeal from that restoration? The method or the machinery by which this point came to be raised is not material, although it was very clearly explained, and properly explained, by learned counsel in argument.

The 448th article of the Civil Code says, in substance, that when a family council deprives a tutor of his guardianship, the *tuteur subrogé* shall, if the decision is objected to, go to the Court of first instance, which Court *prononcera sauf l'appel*—which means shall pronounce—reserving any

right of appeal which may exist according to the law regulating that Court. Their Lordships cannot say that it means there shall be an appeal whenever there is such a thing as a Court of Appeal from the tribunal in question, however narrow may be the jurisdiction of that Court of Appeal. It is quite clear that Article 448 does not create a right of appeal, but merely preserves it if it is created *aliunde*.

Now no right of appeal is given in matters of guardianship under Clause 14 of the Seychelles Judicature Order in Council, 1903. It is necessary to see what is the jurisdiction conferred by that Order. The 14th clause gives a right of appeal "whenever the subject-matter of the suit or other proceeding . . . . exceeds the sum of Rs. 2,000." That contemplates suits and proceedings in which matters of value capable of valuation are concerned. The clause has no reference to such a question as the removal of the guardian of an infant. Nor does Clause 15 confer a right of appeal here, because, although it enumerates certain matters in which there is a right of appeal to the Supreme Court of Mauritius, that enumeration does not include cases of guardianship.

Another point was raised by the learned counsel for the appellants, namely, that Article 889 of the Civil Procedure Code gives a right of appeal in the following words: "*Les jugements rendus sur délibération du conseil de famille seront sujets à l'appel.*" Their Lordships think that this does confer a right of appeal wherever there is a competent Court. But the question remains whether the Supreme Court of Mauritius is such a Court. It is not so, because its jurisdiction is limited in the Order in Council to which reference has already been made.

The result is that this appeal fails, and their Lordships will humbly advise His Majesty that it ought to be dismissed with costs.

In the Privy Council.

HAJEE MAMODE HOSSEN AND OTHERS

v.

MAMODE HADEE.

SAME

v.

SAME.

(CONSOLIDATED APPEALS.)

DELIVERED BY EARL LOREBURN.

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