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different. The dominant question is the broad one whether substantial justice has been done, and, if substantial justice has been done, it is contrary to the general practice to advise the Sovereign to interfere with the result. The point in the present appeal is therefore whether, looking at the proceedings as a whole and taking into account what has properly been proved, the conclusion come to has been a just one.

In the result their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed. There will, as hitherto has been usual in such cases, be no order as to costs.

J. V. W. *Appeal dismissed.*

Solicitors for the appellant: *T. L. Wilson & Co.*

Solicitor for the respondent: *The Solicitor, India Office.*

CIVIL RULE.

Before Mookerjee and Cuming JJ.

1916

Aug. 29.

SHASHI BHUSHAN BOSE

v

MANINDRA CHANDRA NANDY.*

Administration Suit—Procedure and Practice—Valuation of suit—Creditor's action against trustee for administration of trust and for accounts—Plaintiff representing body of creditors—Jurisdiction—Civil Procedure Code (Act V of 1908), O. XXI, r. 13, App. A. No. 41 and D. Nos. 17-20—Court Fees Act (VII of 1870) ss. 7 (iv) (f), 11; Sch. II, Art. 17 (vi)—Suits Valuation Act (VII of 1887), s. 8.

An administration suit by a creditor is an action for account within the meaning of s. 7 (iv) (f) of the Court Fees Act. In such a suit the plaintiff is entitled to place his own valuation on the relief claimed.

* Civil Rule No. 372 of 1916, against the order of Benode Behari Mitra, Subordinate Judge of 24-Parganas, dated April 6, 1916.

On the analogy of section 11 of the Court Fees Act, after the preliminary decree has been made in a creditor's suit for administration and the other creditors have been invited to establish their claim, if any, against the debtor, each creditor who puts forward a claim not already transformed into a judgment debt, may well be required to pay court-fees *ad valorem* on his application, as if it were a plaint in a suit for the recovery of the sum he claims.

The valuation for the purpose of jurisdiction must be identical under s. 8 of the Suits Valuation Act, with the valuation for the purpose of court-fees.

Where a suit is valued on the basis of the claim of the plaintiff and instituted in the Court of the lowest grade of pecuniary jurisdiction and a claim is thereafter preferred by a creditor, who could, in respect of his claim, institute a suit only in a Court of higher grade, the remedy will be the transfer of the suit at that stage from the Court of the lowest grade to the Court competent to try a claim of enhanced value.

RULE obtained on behalf of Shashi Bhushan Bose, the petitioner.

On the 4th April, 1911, Shashi Bhushan Bose lent one Amarnath Bose the sum of Rs. 1,000 on a promissory note repayable on demand. On the 23rd September, 1911, Amarnath Bose transferred all his moveable properties by a deed of trust in favour of the Maharaja of Cossimbazar and directed him to pay up all his creditors including the petitioner. On the 3rd April, 1914, not having received from the trustee, who had taken possession of the trust properties, payment of the amount due to him on the promissory note, Shashi Bhushan Bose instituted a suit against Amarnath Bose and the Maharaja of Cossimbazar for the recovery of Rs. 1,000 as principal and Rs. 540 by way of interest at 18 per cent. per annum, aggregating the sum of Rs. 1,540. In the plaint he alleged, *inter alia*, that, so far as he was aware, the trustee had not paid up the other creditors of Amarnath Bose, and asked by way of relief for the administration of the estate, for an account to be taken of the trust properties and the

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income thereof, for the appointment of a receiver for the purpose, for the ascertainment of the creditors of Amarnath Bose by issue of public notice, for the determination and payment of their debts to them and, finally, for leave to conduct the suit on his own behalf as well as on behalf of all the other creditors with liberty to the other creditors to join as co-plaintiffs should they so desire. For the purposes of jurisdiction, the plaintiff valued the suit at Rs. 6,540, alleging that the sum due to him was Rs. 1,540, and the sums due to the other creditors would exceed Rs. 5,000. He paid *ad valorem* court-fees, namely, Rs. 105, on the valuation of his own claim of Rs. 1,540 and an additional court-fee of Rs. 10 for the other reliefs claimed in the suit. Subsequent to the institution of the suit Amarnath Bose died and on the 29th March, 1915, his heirs and representatives were substituted as defendants. After the suit had advanced considerably, it came on for hearing on the 6th April, 1916, when a preliminary objection on the question of court-fees payable by the plaintiff was raised by the defendant. The Subordinate Judge directed that the plaintiff should pay *ad valorem* court-fee upon the exact amount of the debts of Amarnath Bose, for the ascertainment of which the plaintiff could, if so advised, adduce evidence on the point; and on his failure to do so he would have to pay *ad valorem* court-fee upon the amount of debts as mentioned in the trust-deed. The plaintiff, thereupon, applied to the High Court for a Rule on the Maharaja and the heirs and representatives of Amarnath Bose to set aside this interlocutory order.

Babu Jogesh Chandra Roy, *Babu Gobinda Chandra Dey Roy* and *Babu Upendra Kumar Roy*, for the petitioner.

Dr. Dwarkanath Mitra, for the opposite party.

The Senior Government Pleader (Babu Ram Charan Mitra), for the Secretary of State.

Cur. adv. vult.

MOOKERJEE AND CUMING JJ. We are invited in this Rule to set aside an interlocutory order in an administration suit instituted by a creditor. The order in question calls upon the plaintiff to amend his plaint in the manner following, namely, to ascertain all the creditors of his debtor and the sums payable to them, to alter the valuation of the claim by the addition of the amount so ascertained, to the amount due to himself, and to pay court-fees *ad valorem* on the amended valuation. The plaint recites that the first defendant, Amarnath Bose, on the 4th April 1911 borrowed from the plaintiff a sum of Rs. 1,000 on a promissory note repayable on demand with interest at 18 per cent. per annum, that he has neither paid the principal nor the interest, and that on the 23rd September 1911, he executed a trust deed in favour of the second defendant, the Maharaja of Cossimbazar, whereby he transferred all his immoveable properties to the Trustee with direction to pay up all his creditors inclusive of the plaintiff. The plaint further recites that the Trustee has taken possession of the trust properties, but has not paid the plaintiff his dues, and so far as the plaintiff can ascertain, the Trustee has not paid up the other creditors of the first defendant. The plaintiff, accordingly, prays that the estate may be administered, that an account may be taken of the trust properties and their income, that a receiver may be appointed for the purpose, that the creditors may be ascertained by issue of public notice, and that their debts may be determined and paid. The plaintiff also asks for leave

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to conduct the suit on behalf of all the creditors with liberty to the other creditors to join as co-plaintiffs, should they so desire. The plaintiff alleges that the sum due to him on the date of the commencement of the suit was Rs. 1,540, and that the sums payable to the other creditors would exceed Rs. 5,000. He valued the suit for purposes of jurisdiction at Rs. 6,540, but paid court-fees on his own claim only, viz., Rs. 105 on a valuation of Rs. 1,540. He paid an additional sum of Rs. 10, apparently on the ground that the claim for administration could not be estimated at a money value within the meaning of Sched. II, Art. 17 (vi) of the Court Fees Act, 1870. This suit was instituted on the 3rd April, 1914, and after it had advanced considerably, it came up for hearing on the 6th April, 1916, when a preliminary objection was taken on the question of court-fees payable on the plaint. It may be stated that the first defendant, the debtor, had died meanwhile, and his infant heirs had been brought on the record on the 29th March, 1915. The Subordinate Judge took up the question of court-fees and made the order we are now called upon to revise. The question raised is one of first impression, and we have had the advantage of arguments not only on behalf of the plaintiff and the trustee defendant but also by the Senior Government Pleader who appeared on behalf of the Secretary of State as a question of the Revenues of the Crown was concerned.

It is plain that the Court Fees Act, 1870, does not in express terms provide for an administration suit. We must consequently consider the nature of an administration suit, which is explained in standard treatises on Equity Pleading and Chancery Practice. Lord Redesdale (Pleadings in Chancery, page 167) points out that, as early as 1766, in *Corry* v. *Trist*, some of a number of creditors, parties to a trust deed for

payment of debts, were permitted to sue, on behalf of themselves and the other creditors named in the deed, for execution of the trust, although one of those creditors could not in that case have sued for a single demand without bringing the other creditors before the Court: *Worraker* v. *Pryer* (1). This seems to have been permitted purely to save expense and delay; if a great number of creditors, thus specially provided for by a deed of trust, were to be made plaintiffs, the suit would be liable to the hazard of frequent abatements; and if many were made defendants, the same inconvenience might happen and additional expense would unavoidably be incurred. Reference may, in this connection, be made to the decisions in *Routh* v. *Kinder* (2), *Boddy* v. *Kent* (3), *Weld* v. *Bonham* (4), *Douglas* v. *Horsfall* (5), *Handford* v. *Storie* (6), *Peacock* v. *Monk* (7), *Newton* v. *The Earl of Egmont* (8), *Atherton* v. *Worth* (9), *Richardson* v. *Hastings* (10), *Smart* v. *Bradstock* (11) and *Powell* v. *Wright* (12). Reference may also be made to an instructive exposition given by Story in his work on Equity Pleadings (sections 99-103 (*a*) and 216-218), where it is pointed out that the suit must be framed as on behalf of all the creditors, as otherwise accounts may have to be taken *de novo* in separate suits by different claimants: *Leigh* v. *Thomas* (13). The suit is in essence for an account and application of the estate of the debtor for the satisfaction of the dues of all the creditors; the whole administration and

(1) (1876) 2 Ch. D. 109.
(2) (1789) 3 Swans 144n.
(3) (1816) 1 Meriv. 361.
(4) (1824) 2 Sim. & Stu. 91.
(5) (1825) 2 Sim. & Stu. 184.
(6) (1825) 2 Sim. & Stu 196.
(7) (1748) 1 Ves. (Senr.) 127.
(8) (1831) 4 Sim. 574; (1832) 5 Sim. 130.
(9) (1764) 1 Dick. 375.
(10) (1844) 7 Beav. 323.
(11) (1844) 7 Beav. 500.
(12) (1844) 7 Beav. 444.
(13) (1751) 2 Ves. (Senr.) 312.

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settlement of the estate are assumed by the Court, the assets are marshalled, and the decree is made for the benefit of all the creditors. [See Civil Procedure Code, 1908, Order XX, rule 13, App. A. 41; App. D. 17-20; *Good* v. *Blewitt* (1), *Adair* v. *New River Co.* (2) and *Cockburn* v. *Thompson* (3)]. Creditors other than the plaintiff may come in under the decree and prove their debts and obtain satisfaction of their demands, equally with the plaintiff in the suit, and under such circumstances, they are treated as parties to the suit. If they decline so to come in, they will be excluded from the benefit of the decree, and yet they will, from necessity, be considered as bound by the acts done under the authority of the Court. [*Hallett* v. *Hallett* (4) where Chancellor Walworth expounds the whole doctrine with great clearness.] But although such is the nature of the suit, it is well settled that where one creditor sues on behalf of himself and the others for administration of the estate of the debtor, the defendant may, at any time before judgment, have the action dismissed on payment of the plaintiff's debt and all the costs of the action: *Pemberton* v. *Topham* (5), *Holden* v. *Kynaston* (6) and *Manton* v. *Roe* (7); and this principle was recently applied in the case of *Athalur Malakondiah* v. *Lakshminarasimhalu Chetty* (8). An administration suit by a creditor is, consequently, an action for an account within the meaning of section 7 (iv) (*f*) of the Court Fees Act, and this was the view adopted in *Khatija* v. *Shekh Adam Husenally Vasi* (9). In such a suit, the plaintiff is entitled to place his own valuation on the relief

(1) (1815) 19 Ves. 336.
(2) (1805) 11 Ves. 429.
(3) (1809) 16 Ves. 327.
(4) (1829) 2 Paige 19.
(5) (1839) 1 Beav. 316.
(6) (1840) 2 Beav. 204.
(7) (1844) 14 Sim. 353.
(8) (1914) 26 Mad. L. J. 312.
(9) (1915) I. L. R. 39 Bom. 545; 17 Bom. L. R. 574.

claimed: *Ma Ma* v. *Ma Hmon* (1). In the present instance, he values the relief at Rs. 1,540, and that valuation is neither arbitrary nor fictitious. We are not able to appreciate on what principle the plaintiff can be called upon to ascertain in advance all the creditors of his debtor and their dues, and value the suit accordingly. That in essence is the fundamental point for determination in the suit itself, and it is inconceivable how it can be decided by the plaintiff before trial. We do not feel pressed by the argument of the Senior Government Pleader that if the plaintiff is allowed to value the suit according to the relief he seeks, the Revenues of the Crown will suffer, because the other creditors of the debtor will obtain relief without payment of court-fees. There need not, in our opinion, be room for such apprehension.

When, after the preliminary decree has been made and creditors have been invited to establish their claims, if any, against the debtor, each creditor, who puts forward a claim not already transformed into a judgment debt, may well be required to pay court-fees *ad valorem* on his application, as if it were a plaint in a suit for the recovery of the sum he claims. Such a procedure can be sustained on the analogy of section 11 of the Court Fees Act. The only real difficulty in connection with the matter is the question of jurisdiction. If the suit is, as we think it must be, treated as a suit for "account," within the meaning of section 7 (iv) (f) of the Court Fees Act, the valuation for purposes of jurisdiction must be identical, under section 8 of the Suits Valuation Act, with the valuation for purposes of court-fees. It is thus conceivable that the suit so valued on the basis of the claim of the plaintiff, may be instituted in the Court of the lowest grade of pecuniary jurisdiction, and a

(1) (1906) 4 L. B. R. 279.

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claim may thereafter be preferred by a creditor who could, in respect of his claim, institute a suit only in a Court of higher grade. The remedy in such a case would be the transfer of the suit at that stage from the Court of lowest grade to the Court competent to try a claim of enhanced value. This course was in fact adopted in a somewhat similar case: *see* the decision in *Bhupendra Kumar Chakravarty* v. *Purna Chandra Bose* (1). The view we take thus obviously avoids all anomaly and at the same time removes all hardship. In the case before us, there is in reality no difficulty, actual or potential. Since the institution of the suit, several creditors of the first defendant have put forward claims of a value such as can be tried only by subordinate Judges. The suit is, therefore, properly triable by a subordinate Judge, and as the aggregate value of the claims already put forward exceeds ten thousand rupees, the appeal against the decree will lie, not to the District Judge but to this Court. We may here point out that the claimants who subsequently appeared, should not have been formally joined as plaintiffs, specially as some of them are said to have already obtained decrees on their claims, unless, indeed, it was alleged and proved that their interests would be in serious jeopardy if the plaintiff had the conduct of the proceedings: *Vassonji Tricumji & Co.* v. *Esmailbhai Shivji* (2). The proper course would have been to allow them an opportunity to prove their claims and to participate in the distribution of the assets of the estate. Our conclusion is that it was not obligatory upon the plaintiff to pay court-fees on a higher valuation than the amount claimed by him, and that the plaint is not open to objection on the ground that it is insufficiently stamped.

(1) (1910) I. L. R. 43 Calc. 650.

(2) (1909) I. L. R. 34 Bom. 420; 11 Bom. L. R. 1054.

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The result is that this Rule is made absolute and the order of the Court below discharged. The records will be returned to the Subordinate Judge so that he may proceed with the trial of the suit on the merits on as early a date as practicable. The petitioner will have his costs of this Rule from the estate of his debtor in the hand of the Trustee-defendant.

O. M. *Rule absolute.*

INSOLVENCY JURISDICTION.

Before Sanderson C. J. and Mookerjee J.

MALCHAND

v.

GOPAL CHANDRA GHOSAL.*

1916

Nov. 17.

Insolvency—Debtor and creditor—Adjudication—Debtor presenting his own petition—Application for discharge—Abuse of process of Court—Jurisdiction to annul adjudication—Presidency Towns Insolvency Act (III of 1909) ss. 14, 15, 21, 38—Rules of the Insolvency Act, 1900, rule 142(a).

Where debtors were adjudicated insolvents and an order for annulment of that adjudication was made, and the debtors subsequently presented their petition to be again adjudicated insolvents on the same materials and in respect of the same debt and the same creditors as in their prior application for adjudication:

Held, that the subsequent application to be adjudged insolvents was an abuse of the process of the Court and that the Court had jurisdiction to annul the latter adjudication in insolvency.

Ex parte Painter (1), *In re Betts* (2), *In re Hancock* (3), *In re Archer*

*Appeal from Original Order, No. 32 of 1916, in Insolvency Case No. 78 of 1915.

(1) [1895] 1 Q. B. 85. (2) [1901] 2 K. B. 39.
(3) [1904] 1 K. B. 585.