

APPEAL FROM ORIGINAL CIVIL.

Before Mookerjee, Acting C. J., and Fletcher J.

SOURENDRA MOHAN SINHA

v.

MURARILAL SINHA.

1920

June 15.

Costs—Appearance of a third party—Administration action—Creditor of heir.

In an administration action a creditor of the heirs of the deceased was allowed to intervene :

Held, that the unsuccessful claimant should not be made liable for the costs of such intervener.

Williams v. Buchanan (1), *Hanbury v. Upper Inny Drainage Board* (2), *In re Salmon, Priest v. Uppleby* (3), *In re Watts, Smith v. Watts* (4), *In re Schwabacher, Stern v. Schwabacher* (5) referred to.

APPEAL by Sourendra Mohan Sinha from a judgment of Beachcroft J. in exceptions from a report of the Assistant Referee.

In an action for the administration of the estate of one Chandilal Sinha, Sourendra Mohan Sinha, the appellant, who alleged to have a large claim against the estate of Chandilal Sinha and filed a suit in Burdwan Court, was allowed to prove his claim in an enquiry before the Assistant Referee of the High Court. Mr. K. P. Basu, the Receiver appointed in the administration action, opposed the claim of Sourendra. Prithichand Lal Chowdhuri, a creditor of the heirs of Chandilal Sinha who was allowed to intervene on his own risk as to costs, also opposed the claim of Sourendra Mohan. On the Report of the Assistant Referee, Sourendra Mohan took exceptions and from the

* Appeal from Original Order, No. 2 of 1919, in Suit No. 570 of 1910.

(1) (1891) 7 T. L. R. 226.

(3) (1889) 42 Ch. D. 351.

(2) (1883) L. R. 12 Ir. 217.

(4) (1882) 22 Ch. D. 5.

(5) [1907] 1 Ch. 719.

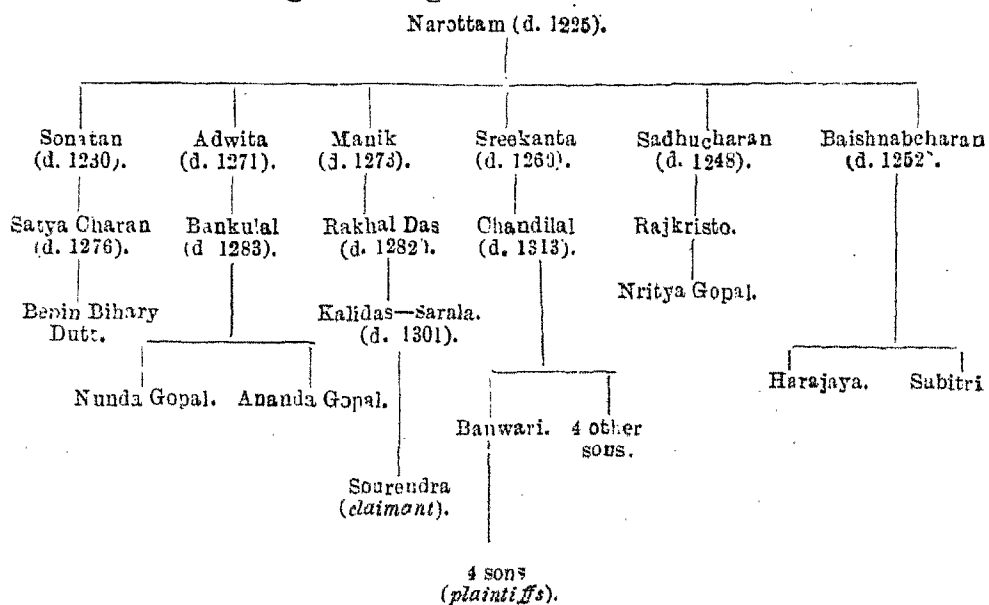
judgment in the exceptions he preferred this appeal. The facts more fully appear from the judgment itself.

Mr. H. D. Bose, for the appellant Sourendra Mohan Sinha. The costs of Prithichand ought not to be allowed. He is not a creditor of the estate of Chandilal Sinha but only a creditor of his heirs. He is not a necessary party and was allowed to intervene at his own risk as to costs.

Mr. P. C. Sen (with him *Mr. B. K. Chaudhuri*), for Prithichand. Prithichand had the conduct of the proceedings. He is a successful litigant and ought to get his costs.

Mr. S. K. Mullick, for the Receiver, Mr. K. P. Basu.
Cur. adv. vult.

MOOKERJEE, A. C. J. This is an appeal from the judgment of Mr. Justice Beachcroft on exceptions to a report of the Assistant Referee disallowing the claim of the appellant against the estate of his grand-uncle which is the subject-matter of an administration suit on the Original Side of this Court. The facts material for the determination of the question raised before us may be briefly narrated by reference to the annexed genealogical table :



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Chandilal Sinha, who in his lifetime carried on an extensive business in Calcutta and other places, died on the 11th August, 1906, and left an estate of considerable value both movable and immovable. After his death, his business was continued by some of his sons who incurred various liabilities to outsiders in course of time. On the 13th June, 1910, the present suit for the administration of his estate, for partition, and for incidental reliefs was commenced by his heirs. On the 20th June, 1910, Mr. K. P. Basu, an Advocate of this Court, was appointed Receiver of the estate of Chandilal Sinha, and shortly thereafter he proceeded to take possession of the properties. On the 16th August, 1912, a preliminary decree was made whereby the suit was referred to the Assistant Referee with directions to take the usual administration accounts and to make the usual enquiries. The decree further directed that creditors be invited by public advertisement to prove their claims against the estate before the Assistant Referee within a specified time. In answer to the advertisements four claims were filed, only one of which represented debt left by Chandilal. An adjudication was held by the Assistant Referee on the claim so filed and a report followed. On the 26th January, 1915, the Assistant Referee submitted a report; after the accounts had been taken and the enquiries directed by the administration decree had been made, the report was confirmed by a decree dated the 19th April, 1915, whereby the Receiver was directed to satisfy the claims which had been allowed in the report. Meanwhile on the 15th December, 1913, the present appellant Sourendra Mohan Sinha, a grand-nephew of Chandilal Sinha, had instituted a suit in the Court of the Subordinate Judge of Burdwan to enforce a claim against the estate of his grand-uncle. He obtained a Rule from

the Burdwan Court to restrain the Receiver from dealing with the estate of Chandilal Sinha. On the other hand, the Receiver, on the 21st September, 1915, obtained a Rule against the claimant with a view to restrain him from proceeding with his application in the Burdwan Court. On the 10th December, 1915, an order was made by this Court, at the instance of the claimant, giving him liberty to prove his alleged claim against the estate of his grand-uncle in the administration suit. Accordingly the claim was filed on the 17th December, 1915. The substance of the claim was that he was entitled to realise from the estate of Chandilal Sinha a large sum of money, as the latter had, during his minority, taken possession of and managed the estate of his father Kalidas Sinha. On the 17th January, 1916, liberty was given to the Receiver to appear before the Assistant Referee and to contest the claim. Some weeks earlier, a similar order had been passed on the 5th December, 1915, on the application of one Prithichand Lal Chowdhuri who claimed to be a creditor, not of Chandilal Sinha but of the heirs of Chandilal Sinha, against whom he had obtained a decree for money on the 29th June, 1910, in a suit instituted by him in the Court of the Subordinate Judge of Purnea on the 5th June, 1909. In the order made on the application of Prithichand Lal Chowdhuri, it was explicitly stated that he was given liberty *at his own risk as to costs* to oppose the claim of Sourendra Mohan Sinha against the estate of Chandilal Sinha deceased. In these circumstances, Prithichand Lal Chowdhuri and the Receiver both appeared before the Assistant Referee and contested the claim of Sourendra Mohan Sinha. After a protracted investigation which, it is said, extended over 110 hearings, the Assistant Referee reported against the claim. Mr. Justice Beachcroft, after a hearing

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which lasted for 30 days, confirmed the report of the Assistant Referee and dismissed the claim with costs. On the present appeal, the decree made by Mr. Justice Beachcroft was intended to be assailed on a variety of grounds on the merits, and adjournments were repeatedly taken to enable the appellant to scrutinise the accounts. But ultimately Mr. Bose, who appeared on behalf of the claimant appellant, intimated that the grounds on the merits could not be pressed with any hope of success and that he would consequently confine himself to the question of costs which involved an important point of principle.

Mr. Justice Beachcroft has held, with regard to the hearing before the Assistant Referee, that both the creditor Prithichand and the Receiver were entitled to their costs. As regards the hearing of the exceptions, he has allowed all costs of Prithichand and the Receiver, subject to the reservation that there would be only one set of counsel's fees, inasmuch as the main argument was that of the counsel for the Receiver and the Court had not been given any additional assistance by the presence of additional counsel, because the defence of Prithichand and the Receiver were identical. In our opinion, the order as to costs cannot be supported.

Prithichand Lal, who is frequently described in these proceedings as one of the creditors, had really no *locus standi* to intervene. He was not a creditor of the estate of Chandilal Sinha which was under administration; he was merely a creditor of the heirs of Chandilal Sinha; even his application to attach any portion of the assets left by the latter had been unsuccessful. The way in which he is described as one of the creditors seems to indicate that this distinction was not realised, and he appears to have been treated as if he was a creditor of the estate under

administration. It is not necessary for us to determine now whether he should have been at all allowed to intervene as a creditor of the heirs of Chandilal Sinha; this, at any rate, is clear that he was permitted to intervene at his own risk as to costs and to oppose the claimant. His intervention was wholly unnecessary. The Receiver was quite competent to defend the estate from assailants who put forward stale or unfounded claims. As was ruled by the Court of Appeal in *Williams v. Buchanan* (1), where a third party with no sufficient reason appears and defends an action separately, he must bear the costs of so doing, even though the plaintiff be unsuccessful in the action. Lord Esher M. R. observed that although the Court had a discretion in the matter [*Hanbury v. Upper Inny Drainage Board* (2)], the Court would refuse the third party his costs, as no one had a right unduly to increase the costs of litigation except at his own expense. He had no reason to think that the defendant would not fight the action to the uttermost, and it would certainly not be fair to make the plaintiff pay the costs of the appearance of the third party whom he did not want to see; he had no reason for going to the expense of a separate appearance and ought not consequently to have costs against any body; he had in fact chosen to indulge in a luxury for which he must pay. Bowen L. J. added that the third party might have gone to the defendant's solicitors and got them to act for him, as his case and that of the defendant were identical. The same principle was applied in *Re Salmon, Priest v. Uppleby* (3). The substance of the matter thus is that the intervention of Prithichand, assuming it to have been proper, did not change the character of the proceeding or

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alter its scope; he voluntarily came into it as a prudent measure, not of immediate protection but of possible personal benefit hereafter, when, upon the completion of the administration proceedings and the termination of the administration suit, the residue, if any left, of the estate of Chandilal might ultimately pass into the hands of his heirs. In these circumstances, it would be clearly unjust to compel the claimant to pay an additional bill of costs of the intervener. This view is substantially in accord with that adopted by Jessel M. R. in *Re Watts, Smith v. Watts* (1) and by Parker J., in *Re Schwabacher, Stern v. Schwabacher* (2).

The result is that the appeal is allowed in part and the decree modified only in respect of costs. The claimant will pay the Receiver his costs of and incidental to the reference and of the application to the Court; such costs will be assessed as of a hearing on scale No. 2 and the fees of one counsel only will be allowed. The claimant appellant will also pay the Receiver the costs of this appeal. Prithichand Lal, as also other parties will pay their own costs of the reference, of the application before Mr. Justice Beachcroft and of this appeal. The order as to costs will include all reserved costs.

FLETCHER J. I agree.

N. G.

Appeal allowed in part.

Attorney for the appellant: *C. C. Mitra.*

Attorneys for Prithichand: *Mitter & Bural.*

Attorney for the Receiver: *M. N. Sen.*

(1) (1882) 22 Ch. D. 5, 12.

(2) [1907] 1 Ch. 719.