APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

SURENDRA NATH PRAMANIK

v.

AMRITA LAL PAL CHAUDHURI.*

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April 23.

Probate—Probate and Administration Act (V of 1881), ss. 50, 78—Change of circumstances necessitating a second bond with sureties—Power of Court to call for a second bond.

The Court of Probate is competent to require a new bond or additional security where the interest of the estate requires it and specially where some new situation arises such as an unforeseen increase of assets or the unexpected breakdown of one or both sureties. If an order made in this behalf is not carried out, the Court may cancel the original grant.

Raj Narain Mookerjee v. *Fulkumari Debi* (1) and *In the goods of Loveday* (2) followed.

Subraya Chetty v. *Ragammall* (3), *Kandhya Lal* v. *Manki* (4), *In the matter of Arthur Knight* (5), *In the goods of Stark* (6), and *In the goods of Kanai Lal Khan* (7) referred to.

Giribala Dassi v. *Bejoy Krishna Haldar* (8) distinguished.

On the 31st January 1909, one Manohar Pal Chaudhuri of Santipore executed a will bequeathing all his property to his two sons Amrita and Madhusudan, and appointed his son-in-law Surendra Nath Pramanick, brother-in-law Purna Chandra Nandi executors, and his wife Nistarini executrix to the will for 12 years.

* Appeal from Original Order, No. 56 of 1919, and Appeal from Original Decree, No. 52 of 1919, against the orders of R. E. Jack, District Judge of Nadia, dated Feb. 15 and March 3, 1919.

(1) (1901) I. L. R. 29 Calc. 68.
(2) [1900] P. 154, 156.
(3) (1904) I. L. R. 28 Mad. 161.
(4) (1908) I. L. R. 31 All. 56.
(5) (1909) I. L. R. 33 Mad. 373.
(6) (1866) L. R. 1 P. & D. 76.
(7) (1913) 18 C. W. N. 320.
(8) (1904) I. L. R. 31 Calc. 688.

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On the 5th December 1909, the executors applied for probate. Application for probate was granted on the 31st January 1910. Bond with two sureties was filed by the executors. On the 8th March 1910 and on the 6th April 1910, probate was made over to the executors who filed inventory and accounts on the 16th January 1911.

On the 6th January 1919, the legatees, Amrita Lal and Madhusudan, applied to the District Judge of Nadia for an order on the executors to make over the estate to them, and serious allegations of maladministration were made against executor Surendra Nath. On enquiry the District Judge was satisfied that the sureties to the administration bond had unexpectedly collapsed and one of them having been adjudicated an insolvent and the other having mortgaged away his properties. The District Judge, thereupon, ordered the executors to furnish fresh security on the 15th February 1919 and the executors, failing to furnish the security called for, cancelled the probate on the 3rd March 1919.

Executor Surendra Nath preferred these two appeals against the two orders of the 15th February and 3rd March.

Babu Samatul Chandra Dutt (with him *Babu Manmatha Nath Pal*), for the appellant. The executors filed administration bond with sureties which was accepted by the Judge. He had no power to demand fresh security. The object of the bond has been satisfied as the inventory and accounts have been submitted. Probate cannot be cancelled except on one of the grounds mentioned in section 50 of the Probate Act. It cannot be revoked for failure to finish fresh security.

Babu Braja Lal Chakravarti (with him *Babu Hira Lal Chakravarti, Babu Mrityunjoy Chatterjee, Babu*

Pankaj Kumar Ganguly and *Babu Pramatha Nath Banerjee*), for the respondents. The original grant of probate was conditional on furnishing bond with sureties, and if the security furnished was no longer sufficient, the Court had ample jurisdiction to call for fresh security. If the Court's order for fresh security was a good and sound order and the executor failed to comply with that order, surely the Court would not allow him to go on administering the estate. In order to give section 78 of the Probate Act full operation, the Court has power to see that the order is effective. Law must provide means for compliance with its order. The language of section 50 of the Probate Act is quite general and includes a case of this kind because under cl. (*d*) the grant has become inoperative by reason of the sureties having become insolvent. The Court is quite competent to say that by reason of subsequent changes the executor cannot be allowed to go on with the administration and the previous grant should be recalled. So far as the interests of the beneficiaries under the will are concerned, the executor cannot be allowed to go on without security.

Babu Samatul Chandra Dutt, in reply. Probate can only be revoked when just cause is shown and "just cause" is defined in section 50. The "just cause" contemplated in section 50 must have been in existence when the grant was made.

Cur. adv. vult.

MOOKERJEE AND WALMSLEY JJ. These appeals are directed against two orders made in a probate proceeding, one for fresh security to be furnished by the executors, another for cancellation of the probate on the refusal of the executors to comply with the order for fresh security. The events which led up to these two orders may be briefly recited.

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One Manohar Pal Chaudhuri made a testamentary disposition of his properties and died on the 9th September 1909. The executors named in the will applied for probate on the 5th December 1909 in the Court of the District Judge of Nadia. The will was proved in due course, and on the 31st January 1910 the District Judge made the following order:

"Will proved; application for probate granted; "bond for Rs. 16,000 with two sureties to be filed on "or before 2nd March 1910."

The petitioners for probate applied for and obtained an extension of time, and the bond filed on the 8th March was accepted on the 4th April 1910. Probate was thereafter made ready and delivered to the executors on the 6th April 1910. The executors apparently took possession of the estate on the authority conferred on them by the probate. On the 15th February 1919, the beneficiaries presented an application to the District Judge, stating that one of the sureties to the bond had become insolvent, that the other had heavily mortgaged his properties, and that for the protection of the estate, which, it was asserted, was maladministered, it was essential that the executors should be called upon to give fresh sureties. The Court, after notice to all parties concerned, held an enquiry, and on the 15th February 1919 recorded that the security given by the executors was no longer sufficient, inasmuch as one of the sureties had become bankrupt and the other had heavily mortgaged his properties. The District Judge accordingly ordered the executors to furnish fresh security for Rs. 16,000 on or before 3rd March 1919. The executors applied to the Judge to review this order, but to no purpose. This was followed by an application for extension of time, which also was refused. On the 3rd March, the Court cancelled the

grant and ordered the executors to return the probate for cancellation, without delay. We are invited in these appeals to consider the legality and propriety of the orders made on the 15th February and 3rd March 1919.

As regards the first of these orders, it is plain that the order was made with jurisdiction and was justified by the events which had happened. Section 78 of the Probate and Administration Act provides as follows:

"Every person to whom any grant of letters of "administration is committed, and, if the Judge so "direct, any person to whom probate is granted shall "give a bond to the Judge of the District Court, to "enure for the benefit of the Judge for the time being, "with one or more surety or sureties, engaging for "the due collection, getting in, and administering the "estate of the deceased, which bond shall be in such "form as the Judge, from time to time, by any general "or special order, directs." Under this provision, the Court is bound to take a bond in the case of administrators but has a discretion in the case of executors. In the case before us, the Court, in the exercise of its discretion, took a bond with two sureties before the probate was committed to the executors. This bond was taken with a view to secure the proper administration of the estate of the deceased. It is consequently essential, if the purpose of the bond is not to be defeated, that it should, unless the Court otherwise directs, remain operative and effective till the administration has terminated. Circumstances, however, have materially changed since the bond was given by the executors; the sureties have become worthless, and the Court is plainly competent to call for fresh security; indeed, it is incumbent upon the Court to take such a step for the protection of the estate. This view is supported by the decision in

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Raj Narain Mookerjee v. *Fulkumari Debi*(1), where it was ruled that under the Probate and Administration Act a District Court, after once having taken a bond with sureties, has jurisdiction to take a second bond with fresh sureties if the necessity for such action should arise. Our attention has been drawn to the decision in *Subraya Chetty* v. *Ragammall*(2), *Kandhya Lal* v. *Manki*(3) and *In the matter of Arthur Gerald Norton Knight*(4); which, it is said, dissent from the view taken in *Raj Narain* v. *Fulkumari*(1). These cases, however, do not touch the point raised before us. They deal with the question of the power of the Probate Court to release a surety to an administration bond from future liability. Upon that subject, there has been some divergence of judicial opinion: *In the goods of Stark*(5), *In the goods of Kanai Lal Khan*(6). The question before us is, whether, when by reason of change of circumstances, the bond has ceased to serve its purpose, wholly or partially, the Court is competent to call for fresh security. The answer must, in our opinion, as well on authority as on principle, be in the affirmative. The bond is taken with a view to ensure the due administration of the estate. The administration is a continuous act, extending, it may be, over many years; it is obviously essential for the fulfilment of the purpose of the bond that it should, unless the Court takes other measures, such as substituted security, remain continuously valid and operative during the whole of this period. We must hold that the Court is competent to require a new bond or additional security where the interest of the estate requires it, and specially where some new situation arises, such as an

(1) (1901) I. L. R. 29 Calc. 68.
(2) (1904) I. L. R. 28 Mad. 161.
(3) (1908) I. L. R. 31 All. 56.
(4) (1909) I L. R. 33 Mad. 373.
(5) (1866) L. R. 1 P. & D. 76.
(6) (1913) 18 C. W. N. 320.

unforeseen increase of assets or the unexpected breakdown of one or both sureties. We have been pressed to take the contrary view on the authority of the decision in *Giribala Dassi* v. *Bejoy Krishna Haldar*(1) where it was ruled that the Probate Court is not competent to call upon an executor (to whom probate has already been granted) to furnish security at any time after the grant of the probate. This decision is clearly distinguishable, and we need not accordingly consider whether it is not based on an unduly narrow construction of section 78 of the Probate and Administration Act and whether it is not capable of the more beneficial interpretation that though probate has been initially granted without a bond, the Court may, in its discretion, subsequently require a bond, provided change in the situation or circumstances of the executor or his conduct of the trust appear to render this a prudent measure. We hold, accordingly, that in this case the District Judge was competent to call for fresh security and that the order of the 15th February must be confirmed.

As regards the second order, it has been argued that the Court was not competent to revoke the probate under section 50 of the Probate and Administration Act, even though the executors refused or failed to comply with the order of the Court, for fresh security. It is further contended that section 50 of the Probate and Administration Act is exhaustive and that the explanation of the expression "just cause" is not merely illustrative: *Ajnoda Prosad Chatterjee* v. *Kali Krishna Chatterjee* (2), *Bal Gangadhar Tilak* v. *Sakwarbai* (3). This may be conceded; the question thus arises, whether the fourth clause of the explanation is applicable here. That clause authorises

(1) (1904) I. L. R. 31 Calc. 688. (2) (1896) I. L. R. 24 Calc. 95.
(3) (1902) I. L. R. 26 Bom. 792, 798.

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revocation on the ground that the grant has become useless and inoperative through circumstances. No inelastic rule can be formulated to test the applicability of this clause; the matter must be determined with regard to the events which have actually happened in each case. But we may state at once that we are not prepared to accept the view that the clause applies only to cases where the circumstances, which have made the grant useless and inoperative, were in existence at the date of the grant though unknown to the Court and to the parties concerned. The phraseology of the clause is sufficiently general to make it applicable to cases where the circumstances contemplated have happened since the date of the grant. This is clear from illustration (*h*) which provides for the case where the person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind. This appears to have been overlooked in the cases of *Bal Gangadhar Tilak* v. *Sakwarbai* (1) and *Gour Chandra* v. *Saratsundari* (2). The view we take is in accord with the decision in *In the goods of Patterson* (3), where the administrator was convicted of a criminal offence and sentenced to a term of imprisonment, *In the goods of Covell* (4) where the administrator disappeared, *In the goods of Sowerby* (5), *In the goods of George Shaw* (6), *In the matter of William Phillips* (7) and *In the goods of Newton* (8) where an administrator became lunatic; *In the goods of Jenkins* (9), *In the matter of Edward Hoare* (10), *In the goods of Bradshaw* (11), *In the goods of Loveday* (12), *In the matter of Calclough* (13),

(1) (1902) I. L. R. 26 Bom. 792.
(2) (1912) I. L. R. 40 Calc. 50.
(3) (1898) 2 C. W. N. cccixn.
(4) (1889) 15 P. D. 8.
(5) (1891) 65 L. T. 764.
(6) [1905] P. 92.
(7) (1824) 2 Add. 335.
(8) (1843) 3 Curt. 428.
(9) (1819) 3 Phil. 33.
(10) (1833) 2 Sw. & Tr. 361; 5 L. T. (N. S.) 768.
(11) (1887) 13 P. D. 18.
(12) [1900] P. 154.
(13) [1902] 2 I. R. 499.

In the matter of William Thomas (1) where the administrator either left the country or absconded or could not be traced or expressed a desire to withdraw. We must consequently take it as settled law that the circumstances which make the grant useless and inoperative and thus justify revocation may have come into existence after the original grant was made. We have next to determine whether, in the present case, the grant has become useless and inoperative through circumstances. It does seem at first sight difficult to apply the clause to a case where the administration bond has become valueless; but if we bear in mind the purpose of the grant we may, without undue strain on the language, bring the case within the clause. In this connection, the following observations of Sir Francis Jeune, *In the goods of Loveday* (2), may be usefully borne in mind:—"The real object "which the Court must always keep in view is the "due and proper administration of the estate and the "interests of the parties beneficially entitled thereto; "and I can see no good reason why the Court should "not take fresh action in regard to an estate where it is "made clear that its previous grant has turned out "abortive or inefficient. If the Court has, in certain "circumstances, made a grant in the belief and hope "that the person appointed will properly and fully ad- "minister the estate and if it turns out that the person "so appointed will not or cannot administer, I do not "see why the Court should not revoke an inoperative "grant and make a fresh grant." The real object which the Court must always keep in view is the due and proper administration of the estate and the protection of the interest of the parties beneficially entitled thereto. From this standpoint, the case may well be deemed to fall within the scope of the fourth clause of section 50.

(1) [1912] P. 177. (2) [1900] P. 154, 156.

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The point of view just indicated shows that the order of the District Judge may be sustained on a somewhat different ground. The order for probate is inseparable from the order for security; indeed, there was in this case only one entire indivisible order, and the grant was not committed to the executor till the security had actually been furnished. As has been explained above, unless the Court otherwise directs, the security must, for the protection of the estate, remain in force till the administration is completed. If the security vanishes, the condition subject to which the grant was made, is no longer fulfilled and in such circumstances the Court has inherent power to withdraw the order for grant so as to prevent an abuse of its process. If this view is not adopted, grave injustice may obviously result. Immediately after the grant has been made, the security may be destroyed, for instance, by earthquake or by the violent action of a river. The Court, as we have seen, is entitled, in such an event, to call upon the executor or administrator to furnish fresh or additional security and must be deemed to possess authority to enforce the order it makes. If the contrary view prevailed, the order of the Court might be defied with impunity and the conclusion would follow that the Court was helpless to prevent an injustice which might be committed by virtue of a grant made by itself. Consequently, should section 50 be deemed inapplicable, the order for cancellation might well be regarded as consequential, made by the Court in the exercise of its inherent power to enforce obedience to its direction.

The result, therefore, is that the second order like the first must be confirmed. The appeals are dismissed with costs.

S. K. B. *Appeals dismissed.*