CIVIL REVISION.

Before M. C. Ghose and Mukherjea JJ.

NISHI KANTA DAS

v.

PRAMATHA NATH DAS.*

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Aug. 3, 4, 5.

Court-fee—Administration-suit—Written-statement of a creditor-defendant claiming a sum of money, if chargeable with a court-fee—Creditor defendant, Liability of, to pay court-fee—Stage in the suit at which such liability arises—Court-fees Act (VII of 1870), s. 11.

A written-statement of a creditor-defendant in a suit brought by another creditor for administration of the estate of a deceased debtor, cannot, even after a preliminary decree in favour of such defendant has been made, be regarded as a plaint for recovery of money claimed in such written-statement. No court-fee is, therefore, chargeable on such written-statement for the claim for money contained in it.

Shashi Bhushan Bose v. *Manindra Chandra Nandy* (1) commented upon and distinguished.

When, in course of administration of the deceased debtor's estate in such suit, a dividend is offered to a creditor-defendant, the latter may be required to pay court-fees on the dividend actually declared but not on the entire sum of money he has claimed in his written-statement.

An administration suit is not an account suit for all purposes.

Quaere. Can such creditor-defendant be required to pay court-fee, by instalments, on the amounts of dividends, respectively, as they are declared from time to time, before the total amount available to such creditor-defendant is ascertained ?

CIVIL RULE obtained by two of the creditor-defendants in a suit brought by another set of creditors for the administration of the estate of a deceased debtor.

The facts of the case and arguments in the Rule appear sufficiently from the judgment of Mukherjea J.

Jitendra Kumar Guha and *Surajit Chandra Lahiri* for the petitioners.

*Civil Revision, No. 51 of 1938, against the order of Jogesh Chandra Chatterji, Second Subordinate Judge of Dacca, dated Aug. 30, 1937.

(1) (1916) I. L. R. 44 Cal. 890.

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Abdul Quasem for the receiver.

The Officiating Senior Government Pleader, Ramaprasad Mookerjee, for the Crown.

M. C. GHOSE J: This is an application under s. 115 of the Code of Civil Procedure by defendants Nos. 19 and 19-*ka* in an administration suit. The plaintiff instituted a suit against defendant No. 1 for the administration of the estate of his deceased father. The other creditors, including the present petitioners, were made defendants in the said suit. The petitioners proved that the deceased owed them a sum over Rs. 18,000. The claim was accepted as correct by the Court. Then a certain pleader of Dacca was appointed a receiver. He collected a certain amount of money and deposited it in Court, whereupon the Court, on February 20, 1937, directed distribution of dividends to the extent of $7\frac{1}{2}$ per cent. of their claims to the creditors whose claims had been proved. The receiver then asked the creditors to take their dues after paying court-fees on the entire amounts of their claims respectively. The petitioners stated in reply that they were not liable to pay court-fees on the entire claim, inasmuch as the estate of the debtor would not be sufficient to meet the claims of the creditors in full, and that if they are to pay any court-fee at all it should be paid on the amount actually distributed to them. The Court by its order No. 240, dated August 30, 1937, directed these petitioners to pay court-fees on their entire claim, namely, a sum over Rs. 18,000.

Upon hearing the learned advocates for the petitioners, for the receiver, and the learned Senior Government Pleader on behalf of the Crown, it appears that the order of the Court below in directing the petitioners to pay court-fees on the sum of Rs. 18,000 is unjust and inequitable. These petitioners were not the plaintiffs in the suit. They were creditors of the deceased person and they were summoned as defendants and asked to state their claims. They stated their claims in full, though they

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knew that the estate of the deceased was not sufficient to pay their claims in full. Under O. XX, r. 13 (2) of the Code of Civil Procedure, 1908, in such an administration suit the Court will observe the same rules as to the respective rights of the creditors as may be in force for the time being with respect to the estate of a person adjudged insolvent.

If the petitioners had been the plaintiffs and made a claim to get the sum of Rs 18,000 out of the estate of the deceased, they would certainly be found liable to pay court-fees on the sum of Rs. 18,000. But they have not done so and it is, in my opinion, unjust and inequitable to call upon them to pay court-fees on that sum while offering them a dividend to the extent of $7\frac{1}{2}$ per cent. of their claim.

Having regard to the claims of the fiscal authorities on the one hand, and fair dealing towards the petitioners, who were the creditor-defendants in an administration suit on the other, the proper order would be that the defendant-petitioners ought not to be called on to pay court-fees on any sum beyond what they have paid.

The Rule is accordingly made absolute on these terms with costs—hearing fee being assessed at two gold *mohurs*.

The receiver's costs will be paid out of the estate.

MUKHERJEA J. I agree with my learned brother in the order that has been passed by him. The petitioners before us are two of the creditor-defendants in a suit commenced by another set of creditors for administration of the estate of a deceased debtor who is now represented by defendant No. 1. Both these petitioners were impleaded as parties defendants before the preliminary decree, which was passed on September 28, 1934. They set out in their written-statements their claims against the estate of the deceased aggregating to more than Rs. 18,000, and the preliminary decree, besides containing other directions, declared in general terms, that the claims

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of the creditors were proved. One Amulya Mohan Ray was appointed a receiver to carry on the administration of the estate in pursuance of the directions contained in the preliminary decree.

By an order dated February 28, 1937, the Subordinate Judge allowed certain dividends to be paid to the creditors on a basis of 7½ per cent. upon the amounts found to have been due to them. The petitioners received notices from the receiver asking them to receive the amounts declared in their shares amounting to about Rs. 1,100 on payment of proper court-fees. The petitioners, as the records of the Subordinate Judge show, declared their willingness to pay court-fees on the actual amounts they were going to receive as dividends, but they were not willing to pay court-fees upon the entire amounts of their claims, irrespective of what were being paid to them as dividends. The matter came up before the Court on a reference made by the receiver and the Court decided the point against the petitioners and in favour of the receiver. It is this order which we have been invited to revise.

In this matter, as a question of revenue was involved, we had, besides hearing the learned advocates on both sides, had the advantage of having an able argument addressed to us by Mr. Ramaprasad Mookerjee, the Senior Government Pleader, who appeared for the Crown. It has been contended before us by the Senior Government Pleader that the petitioners, though defendants in the administration-suit, were in the position of plaintiffs, and they would have to pay *ad valorem* court-fees on the claims they made, as if their written-statements were plaints for recovery of specific sums of money. It is contended further that the court-fees sought to be recovered from them could be realised on the analogy of s. 11 of the Court-fees Act. On the other hand, it is argued on behalf of the petitioners that there is no provision in the Court-fees Act covering a case of this description, and as the Act is a fiscal statute, it must be construed strictly and cannot be applied by analogy.

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Now, it cannot be disputed that an administration-suit is, at its inception, a suit for accounts. What is sought for really, is an application of the assets left by the deceased debtor to the settlement of all amounts due to the creditors. It is the Court which takes upon itself the task of an administrator and it collects the assets which are then marshalled and distributed among the various creditors. At the same time it would not be correct to say that the plaintiffs instituted the suit on behalf of and representing all the creditors. If that were so, no question of payment of court-fees by the other creditors would arise. As observed by Sir Asutosh Mookerjee in *Shashi Bhushan Bose* v. *Manindra Chandra Nandy* (1) once a decree is passed in an administration-suit the creditors other than the plaintiff can come in under the decree and on proof of their debts obtain satisfaction of their demands. If they decline to come in, they would be excluded from the benefit of the decree, though they would be bound by the acts done under the authority of the Court. The learned Judge observed at the same time :—

> 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.

Till, therefore, the decree is passed, it is the plaintiff who is the *dominus litis* and has the carriage and conduct of the proceedings. No other person, whatever his interest may be, can be said to occupy the position of a plaintiff up to that stage at any rate. It is the plaintiff who can abandon or compromise the suit in any way he likes, and so far as the other creditors are concerned, it seems to be well settled now that they cannot avoid limitation with regard to their own debts simply because the administration suit is commenced, unless a decree has actually been passed. The decree once passed, would certainly be binding on all the creditors and the rules laid

(1) (1916) I. L. R. 44 Cal. 890.

down by O. XX, r. 13 of the Civil Procedure Code make it clear that the Court is to apply the principles of insolvency laws in distributing the assets, actually realised, among the various creditors of the deceased. The question now is, whether a creditor-defendant, in whose favour the decree in the administration suit has been made, is bound to pay court-fees at all, and if so, at what stage. So far as the present case is concerned the petitioners before us put forward their claims in their written-statements. As I have said before, they could not be regarded as plaintiffs, at any rate, at that stage, and it would be doing violence to the language of s. 11 of the Court-fees Act if it is said that the written-statements put in by these petitioners were plaints for recovery of money.

Mr. Mookerjee has drawn our attention to the decisions of the Allahabad High Court in the cases of *Parmanand* v. *Jagat Narain* (1) and *Ram Charan* v. *Bulaqi* (2) as authorities for showing that in a suit for accounts between partners or between a principal and an agent, if it is proved, on taking of accounts, that there is a balance due to the defendant, the Court can and should in such cases pass a decree in favour of the defendant after taking from him the requisite court-fees. This principle need not be disputed, but, in my opinion, it is of no real assistance in the present case. If a decree for a specific sum of money is made in favour of a defendant as a result of accounting between him and the plaintiff, he may be regarded as a plaintiff in a cross suit for recovery of that sum of money and may be asked to put in the proper court-fees payable on that amount. But in an administration-suit, no decree for any specific sum of money can be passed in favour of the creditors. A preliminary decree in such cases, as form No. 17 in appendix D to sch. 1 to the Code of Civil Procedure shows, should direct a taking of accounts as to what was actually due to the plaintiff

(1) (1910) I. L. R. 32 All. 525. (2) (1924) I. L. R. 46 All. 858.

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and other creditors by the estate of the deceased and it would contain directions as well, as to the realisation of assets by sale or such other means as the Court thinks proper. It seems to me that an administration suit is analogous to an account suit up to a certain stage only, and that the two are not identical for all purposes, at least so far as the ultimate decision of the Court is concerned. The account suit ends in a decree for a specific sum of money, be it in favour of the plaintiff or in favour of the defendant. There is no duty cast upon the Court in such cases to have anything to do with the realisation of the assets of the debtor and the distribution of the same amongst the creditors. An administration suit, on the other hand, partakes to some extent of the nature of an insolvency or winding up proceedings. The Court here realises the assets in such way as it thinks proper; it marshalls these assets, according to the rules of administration, and distributes them among all the creditors in the way recognised in insolvency proceedings. This, in my opinion, makes a fundamental distinction between an administration suit and an account suit and we cannot say, on the analogy of an account-suit, that the defendant-creditor is to be regarded as a plaintiff in a suit for the whole amount that he actually claims in the proceedings, even though, after due administration, he may be entitled to a very small fraction of the same. There is no such provision in the Court-fees Act, and, in my opinion, the extreme contention raised by Mr. Mookerjee that the defendant-creditors must pay the court-fees upon the full amount of their claims as made in their written-statements is not tenable.

The trial Judge based his decision upon the observation of Sir Asutosh Mookerjee in the case of *Shashi Bhushan Bose* v. *Manindra Chandra Nandy* (1) which has been referred to above. That was a case where the question arose as to what were the court-fees payable by the plaintiff in an administration suit. The trial Court, whose order was set

(1) (1916) I. L. R. 44 Cal. 890.

aside by this Court, was of opinion that the plaintiff should pay court-fees upon a calculation of the total debts due to all the creditors by the deceased debtor and for the ascertainment of which, evidence was directed to be adduced at that stage. The plaintiff in that suit had valued it as Rs. 1,540 which was the sum due to him. It was held by the learned Judges that a suit for administration was a suit for accounts and consequently it was permissible on the part of the plaintiff to mention any value he liked and he was not bound to pay full court-fees on the total amount of debts that might be due upon the estate of the deceased. It was argued on behalf of the Crown, which was represented in that case, that if the plaintiff was allowed to value the suit according to the relief he sought, the revenue of the Crown might suffer, as the other creditors of the debtor would, in that case, obtain relief without payment of proper court-fees. In answer to that it was observed by Sir Asutosh Mookerjee that there need not be any such apprehension at all. It was said by the learned Judge:—

> 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 s. 11 of the Court-fees Act.

The observation is undoubtedly an *obiter dictum*, and has been held to be so, in the case of *T. S. Ramaswami Ayyar* v. *M. A. Rangaswami Ayyar* (1), though I must say that an expression of opinon of a Judge of the eminence of Sir Asutosh Mookerjee is entitled to the highest respect. To me it seems that it was a mere suggestion thrown out by the learned Judge as a thing to be considered by the Court in cases where this matter would come up for decision. It was not, however, his considered opinion upon the point, as the case did not require any decision on that point at all, and he did not purport to decide it

(1) (1931) I. L. R. 55 Mad. 26.

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finally. It seems to me that even taking the observation as it is the decision of the Court below cannot be justified. The observation contemplates a case where after a preliminary decree is passed, an advertisement is issued, inviting creditors who ex-*hypothesi* were not parties to the suit to lodge their claims with a view to have their dues ascertained. In such cases, it is said, the claim may be considered as a plaint for recovery of money. Whether this proposition is right or wrong, the circumstances that are present here do not certainly attract the operation of this principle. Here, the petitioners before us were parties defendants before the preliminary decree was passed, and they have not, after the decree was passed, come up before the Court to have any adjudication of their claims. No claims have been preferred by them on the basis of the preliminary decree, and the observation of Sir Asutosh Mookerjee referred to above is not applicable in this case.

In my opinion, s. 11 of the Court-fees Act cannot be invoked to support the decision of the Court below. Mr. Mookerjee has drawn our attention to the amended provisions of s. 11 of the Court-fees Act as it obtains in Bengal. It is conceded that its wording does not include a suit for administration, but it is said that the words " a suit for accounts" are sufficiently comprehensive to include an administration suit as well. As I have said already, the two are not identical, and, even though on certain points there is a resemblance between them, the analogy is not complete. Even if it be regarded as a suit for accounts, we have to construe the word "plaintiff" as used in s. 11 to mean the defendant as well, and, if we are prepared to do that, it is difficult to say in the facts of the present case that any court-fee has been paid by the petitioners which is less than the court-fee which would have been payable had their written-statements contained the whole of the claim to which the Court has found they are ultimately entitled. Having regard to the nature of the decree that is passed in a suit for administration, it is

difficult also to say that any relief has been given in excess of what the plaintiff or the defendant claimed in the suit itself. Above all, we must construe a fiscal statute in favour of the subject and must not extend it by analogy. I am, therefore, of the opinion that the petitioners were not bound to pay court-fees on the entire amount which they claimed against the estate of the deceased and the decision of the Subordinate Judge to that effect must be set aside.

As I have already pointed out, the petitioners did not dispute their liability to pay court-fees on the actual amount of dividends that was allowed to them by the Court. It may be said that this was a decree for money for the said amount passed in favour of the defendants. There has, however, been no final decree passed in the case as yet, and I am told that other dividends might be declared before the final decree is made. I do not know of any provision in the Court-fees Act under which court-fees are leviable in instalments, as dividends are declared from time to time. The proper time to levy court-fees might arise, if at all, when the amount payable to the defendant is finally ascertained. As, however, the petitioners did not raise this question, and admitted their liability to pay these amounts, I agree on that ground alone, in the order which has been made by my learned brother without deciding this matter finally in the present case.

The result is that the Rule is made absolute with costs—hearing fee, two gold *mohurs*. The receiver's costs will be paid out of the estate.

Rule absolute.

P. K. D.