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the produce to be given, and not the specific quantity or the number of measures of grain, &c., which can only be ascertained after the harvest.

NOTE.—The same question was, with some others arising under Act VIII of 1865, referred to a Full Bench in 1874. See 7, Madras H.C. 313-322 note, and Addenda. A majority of the Full Bench then took the same view as was taken in this case, and this has been followed in several subsequent cases of the like nature.

## APPELLATE CIVIL.

*Before Sir W. Morgan, C.J., and Mr. Justice Innes.*

*In the matter of the Estate and Effects of Lee Chengalroya Naicker, deceased.*

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SOMASUNDARAM CHETTI AND FIVE OTHERS, APPELLANTS,  
v. THE ADMINISTRATOR-GENERAL, RESPONDENT (1).

*Administrator-General's Act—Order allowing commission—Right of appeal.*

*Rule as to rate of commission.*

An order passed by a single Judge of the High Court under Act II of 1874, s. 27, allowing to the Administrator-General commission at a certain rate, is subject to appeal to the High Court under the 15th clause of the Letters Patent. [*The Justices of the Peace v. Oriental Gas Company (Limited)* (2) and *Subbi v. Ahmedbhai Habibbhai* (3) distinguished from *DeSouza v. Coles* (4) and from the present case.]

Though such order, being discretionary, would not under ordinary circumstances be interfered with on appeal, yet, where it is not in accordance with the rule laid down in s. 54 of the Act, the Appellate Court will interfere to rectify it.

Where there has been only collection, but no distribution of the assets by the Administrator-General, such order ought, in accordance with the rule laid down in s. 54 of the Act, to award only half of the full commission of 5 per cent.

This was an appeal against an order of Mr. Justice Kernan (5) by which the Letters of Administration to the estate and effects of Lee Chengalroya Naicker, deceased, granted to the respondent were revoked, and the respondent was allowed a commission of 4 per cent. upon all property belonging to the said estate which had come to his hands as administrator thereof. The appeal was

(1) Appeal No. 31 of 1876.

(2) 8 Ben. L. R., 433.

(3) 9 Bom. H. C. R., 398.

(4) 3 Mad. H. C. R., 384.

(5) Dated 9th September 1875.

directed against the amount of the commission so allowed as being in the appellants' contention excessive.

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A statement of facts admitted on both sides was, by agreement of appellants and respondent, laid before the Appellate Court, and from this it appeared (*inter alia*) that the said Lee Chengalroya Naicker died at Madras on the 8th April 1874, leaving a will and a codicil and property to a very considerable amount within the jurisdiction of the High Court of Madras; that by an order of the High Court passed on the 29th April 1874 it was ordered, under Section 18 of Act II of 1874, that the Administrator-General (the respondent) should collect and take possession of the said property and invest the same according to the provisions of that Act; that on the 6th August 1874 it was ordered that the Administrator-General was at liberty to apply for Letters of Administration to the estate and effects of the said Lee Chengalroya Naicker; that on the 9th July 1875 the grant of probate to the appellants, as executors of the said will and codicil of Lee Chengalroya Naicker, was registered in the office of the Administrator-General, though such probate did not issue to the appellants till the 15th October 1875; and that on the 9th September 1875 the order was made which was the subject of the present appeal. The statement also showed that the respondent, as administrator of Lee Chengalroya Naicker's estate, had taken possession of the books and accounts of the latter, had recovered certain debts due to the estate, executed certain house-repairs and improvements covenanted to be done by the deceased, paid off certain debts, carrying interest, to which the estate was liable, paid calls on certain shares, and assessment and quit-rent on certain lands belonging to the estate, made all necessary repairs thereto, received dividends on certain shares, interest on the Government Securities, and rents of the land belonging to the estate, and invested in Government Securities all surplus moneys for the benefit of the estate, and that by what he had done the estate had been saved from considerable losses which would otherwise have accrued to it.

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The *Advocate-General* for the appellants:—An appeal to the High Court lies against this order by virtue of s. 15 of the Letters Patent of the High Court: *DeSouza v. Coles*(1). The fact that no

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right of appeal is expressly given by the Administrator-General's Act(1) against orders made under the Act does not show that no such right exists. Very considerable powers are conferred on the Courts by this Act. Besides the order now in question, suppose, for instance, an order passed under s. 19 of the Act; the legislature cannot have intended that no appeal should lie against such an important order as that.

The Administrator-General is not entitled to any commission on certain portions of the estate as to which he has done nothing. As to the rest, he is only entitled, at most, to 2½ per cent., all that he has done having been collection, and there having been no distribution. *In the goods of Simpson*(2): Act II of 1874, s. 54.

Mr. *Johnstone* for the respondent:—Mr. Justice Bittleston's decision in *DeSouza v. Coles*(3) as to the meaning of "judgment" in Clause 15 of the High Court Letters Patent was dissented from both by the Bengal High Court in *Justices of the Peace v. Oriental Gas Co. (Limited)*(4) and by the Bombay High Court in *Soubai v. Ahmedbhai Habibbhai*(5). Moreover the order appealed against is a discretionary one (see s. 27 of Act II of 1874), and therefore, even if it were subject to appeal, ought not to be interfered with, as was decided in the very case relied on by the Advocate-General, *DeSouza v. Coles*(3). The Act itself (II of 1874) gives no right of appeal. As to s. 19 of the Act, there is no hardship in an order under that section not being open to appeal, for a citation may always be issued (see Act X of 1865, s. 250), and a contention thus raised, and a regular suit instituted.

This case is different to the case of *In the goods of Simpson*(2). There the Administrator-General had only taken manual possession of the property. Here there has been more than that; there has been not only collection, but there has been also the trouble of *keeping and preserving*. The rate of commission which has been allowed is, therefore, I maintain, a reasonable and proper one.

The Court delivered the following

JUDGMENT.—The order made by the learned Judge, allowing to the Administrator-General a commission of 4 per cent. on the revocation of the Letters of Administration granted to him, must, we think, be rescinded.

(1) Act II of 1874.

(2) 1 Mad. H. C. R., 171.

(3) 3 Mad. H. C. R., 384.

(4) 8 Ben. L. R., 433.

(5) 9 Bom. H. C. R., 398.

It has been contended that this order is not open to appeal; also that the Court should not interfere with an order which may be considered to rest wholly in the discretion of the Judge who made it.

The 27th Section of the Administrator-General's Act (1874) gives to *the Court* the power to make the order; and, although by one of the rules(1) of the Court a single Judge sitting in his chambers is authorized to deal with the matter, there is nothing to show that his authority thus derived is final and conclusive.

The words of the 15th clause of the Charter (whereby an appeal to the Court is given from the *judgment* of one Judge) and the decisions of this and other High Courts upon that clause were referred to. In the Bengal decision(2) it was held that an order (for a *mandamus*) which concluded nothing but only initiated further proceedings was not open to appeal. In the Bombay case(3) an order made in a suit for the production of documents was held not to be appealable. In an earlier case(4) in this Court, an appeal was admitted against an order refusing an application under the 12th clause for leave to institute a suit in the Court, the cause of action having in part arisen beyond the local limits of the jurisdiction. The order in the last-mentioned case determined the question of jurisdiction and is distinguishable from the orders which, according to the other decisions, were held not to be appealable. Although in some passages of Mr. Justice Bittleston's judgment a more extended meaning is given to the word *Judgment* in the 15th clause of the Charter, the case itself is not in conflict with the others. An order which, like that in the Madras case, or like the one now under consideration, determines some right or liability, differs widely from interlocutory and other orders in which no right or liability is finally adjudged.

In the present case, which is not an adjudication in a suit but an order made under the Administrator-General's Act, we are of opinion that the order ascertaining the commission payable to that officer is in the nature of an adjudication, and that it is open to revision and appeal by the Court.

As to the objection that the matter rests in the jurisdiction of the authority making such an order, it is clear

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(1) Rule [L.] 5, of 5th July 1866.

(3) 9 Bom. H. C. R., 898.

(2) 8 Ben. L. R., 433.

(4) *DeSouza v. Coles*, 8 Ma

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in an ordinary case, the Court would not interfere or control the discretion which has been exercised.

But the case is peculiar. The section authorizes the making of an order for payment of "the whole or any part of any commission which would otherwise have been payable under this Act;" and the 5th part of the Act contains provisions regulating the commission of the Administrator-General. A clause in the 54th Section, after declaring that the commission to which he "shall be entitled is intended to cover not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration," enacts that one half of the commission (of 5 per cent.) shall be payable upon the collection of the assets and the other half on their distribution in the due course of administration. The Act itself, therefore, furnishes a rule for the guidance of the Court in the award of commission under the 27th Section; and even admitting (which we do not decide) that an order like the present does not contravene its terms, we must hold that the rule laid down in the 54th Section should be observed by the Court making an order under the earlier section; and that when the work of collection only has been done half the commission and no more should be paid.

The order will be rescinded and an order made allowing commission at the rate of 2½ per cent. Each party will bear his own costs of the proceedings.