

1879  
 RADHAKISSIEN  
 ROWIA  
 DAKNA  
 v.  
 CHUNNOLOLL  
 DUTT.

I have already stated that I think a refusal to admit execution is a denial within the meaning of the Act. I further think that a wilful refusal or neglect to attend and admit execution, in obedience to a summons for that purpose, is a refusal to admit, and, therefore, a denial. It follows that in this case there was a denial within the meaning of s. 74, and that the refusal to register was a refusal under s. 76, and, therefore, this suit is properly brought under s. 77. I do not think the Registrar is a necessary party to the suit. Had there been anything in the circumstances of the case that led me to think he ought to be made a party, I should have adjourned the hearing to allow of this being done.

The decree will be for the plaintiff in terms of the first prayer in the plaint, with costs on scale No. 1.

Attorney for the plaintiff: *H. H. Remfry.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Morris and Mr. Justice Prinsep.*

1879  
 Dec. 10.

RAJENDRONATH ROY BAHADOOR (JUDGMENT-DEBTOR) v. CHUNNOOMUL AND KALEE CHURN LAHOREE (DECREE-HOLDERS).\*

*Application for Certificate of part-satisfaction—Act X of 1877, s. 258.*

Where a judgment-debtor has out of Court partly satisfied his decree-holder subsequent to the transmission of the decree for execution to another Court, but before actual execution has been applied for, he is entitled, on execution in full being demanded, to an order from the Court to which the decree is transferred for execution, calling upon the decree-holder to certify the fact of such part-payment.

In this case one Chunnoomul and others obtained a decree against the defendant, in the Original Side of the High Court, which was transferred to the District Court of Rajshahye for

\* Appeal, No. 143 of 1879, from a decision of T. T. Allen, Esq., Judge of Rajshahye, dated the 25th April 1877.

execution. On execution being taken out, the defendant objected that he had paid a sum of money to the plaintiff in part-satisfaction of the decree, and that he was willing to pay the balance, and, therefore, prayed that execution might be stayed.

1879  
 RAJENDRO-  
 NATH ROY  
 BAHADOOR  
 V.  
 CHUNNOOMUL.

The Judge of Rajshahye declined to interfere, and passed the following order :—"The objection amounts to a plea of part-satisfaction. No attention can be paid to such a plea, unless certified to this Court under s. 224 of the Code of Civil Procedure. Execution must proceed for the full amount."

From this order the judgment-debtor appealed to the High Court.

Baboo *Sreenath Doss* for the appellant.—The lower Court has refused my plea of part-satisfaction under s. 224 of Act X of 1877, on the ground that no certificate of part-satisfaction has been put in. The payment has been made out of Court, and, under s. 258 of the Code, the Court, on being informed of such part-satisfaction, should issue a notice to the decree-holder to show cause why such payment should not be recorded as certified. [MORRIS, J.—In your application to the Court no dates were given as to the days of payment, and it might, therefore, have been that the Court was justified in rejecting your application as limitation might apply.] If the Court had issued a rule, it would thus have been open to the decree-holder to have questioned the payment, and for the Court to have been informed as to the date of payment.

Mr. *H. H. Remfry* for the respondent.

The judgment of the Court was delivered by

MORRIS, J. (PRINSEP, J., concurring).—The Judge of Rajshahye, to whom the decree had been sent for execution in this case, was wrong in declining jurisdiction and in refusing to entertain the application made by the judgment-debtor under s. 258 of the Civil Procedure Code. If the judgment-debtor had paid money out of Court subsequent to the order under which the certificate was sent to him from the High Court, and if his application was made in due time as required by the law of

1879  
 RAJENDRO-  
 NATH ROY  
 BARADOOR  
 v.  
 CHUNNOOMUL.

limitation subsequent to the payment, there is nothing in our opinion to prevent the Judge from dealing with the application, because, under s. 228, "the Court executing the decree sent to it under this chapter, shall have the same power in executing such decree as if it had been passed by itself."

On this ground, therefore, we reverse the order of the Judge of Rajshahye, and direct him to take up the application and deal with it as required by law. Costs to abide the result.

*Appeal allowed.*

*Before Mr. Justice Morris and Mr. Justice Prinsep.*

1879  
 Dec. 5.

MRINAMOYI DABIA, ON BEHALF OF SHIBCHAND CHUCKERBUTTY  
 (OBJECTOR) v. JOGODISHURI DABIA (APPLICANT FOR PROBATE).\*

*Probate—Insufficient Appearance on behalf of Infant—Succession Act, s. 261—Act X of 1877, Chap. xxxi—Act XL of 1858, s. 3.*

No judgment or order passed in a suit, to which a minor subject to the provisions of Act XL of 1858 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate, or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of a minor, under s. 3 of Act XL of 1858, should be formally placed on the record.

Chap. xxxi of the Civil Procedure Code lays down the form in which a minor should appear as a party, and this form should be strictly followed.

THIS was an application for probate of the will of one Doyamoyi Dabia, made on the 7th September 1877 by one Bholanath Surma Khan, the executor under the will. Previous to any order being passed upon this application, the sole legatee under the will, one Promothonath Sandyal, died a minor. Thereupon, one Jogodishuri Dabia, mother of the testatrix, applied for and obtained probate of the will; Bholanath Khan consenting to the application.

On the 8th January 1878, one Khetternath Chuckerbutty, who styled himself in his petition as 'the father and guardian

\* Miscellaneous Appeal, No. 137 of 1878, from the decision of J. Tweedie, Esq., Officiating Judge of Rajshahye, dated 15th February 1878.