

1879

JHOTEM
SAHOO
v.
OMESH CHUN-
DER SIRCAR.

an *ex parte* order, because at that time the respondent had not entered appearance, and on a proper cause being shown, such an *ex parte* order is liable to be cancelled by the Court which passed it; but the Subordinate Judge in this case is not competent to revoke the order of the District Judge. The decision cited by the Subordinate Judge does not support his view of the law. In that case the appeal was ordered to be registered by a single Judge of the Allahabad High Court, and the case coming on for hearing, upon the objection of the respondent, who had not appeared at the time when the appeal was ordered to be registered, the Court held that the appeal should not have been registered, and cancelled the first order. There the same Court, upon proper cause being shown, cancelled the first order.

We therefore set aside the decree of the lower Appellate Court, dismissing the appeal of the defendant, and remand the case to that Court for retrial.

The pleader for the respondent contends, that as the order of the District Judge directing the appeal to be registered was passed without taking any evidence upon the matter, that order ought to be set aside by this Court under the provisions of s. 15 of the Charter Act. But under the circumstances of this case, we do not think that in the interests of justice we are called upon to interfere with that order of the Judge.

The costs of this appeal will abide the result. This order will govern appeal No. 315 of 1878.

TESTAMENTARY AND INTESTATE JURIS- DICTION.

Before Mr. Justice Pontifex.

1879

May 8.

.IN THE GOODS OF RAM CHAND SEAL, DECEASED.

Letters of Administration to Hindus—Limited Grant—Succession Act (Act X of 1865), s. 190—Hindu Wills Act (Act XXI of 1870).

If Hindus take out letters of administration at all, they must take out general letters. Letters of administration limited to certain property cannot be granted.

This was an application for limited letters of administration by the representatives of one Ram Chand Seal, who was at the

time of his death^a a Hindu inhabitant of Calcutta. It appeared that the deceased had left immoveable properties in Calcutta which had passed to the petitioners as heirs; and that they were in possession, and realizing rents from the tenants who had attorned to them; and that letters of administration were not required for the same: but the deceased had left certain Government securities and shares in Limited Companies, and certain claims and dues owing to his estate, and that letters of administration were requisite in order to enable the petitioners to deal with those properties. The petitioners now asked that letters of administration to the estate and effects of the deceased might be granted to them to negotiate and deal with the Company's papers and the shares, and realize interest and dividends thereon, and to realize the dues abovementioned.

Mr. Bonnerjee for the petitioners.—It is unnecessary to take out letters of administration with respect to the immoveable property, as that is already in the possession of the petitioners, and they are receiving the rents and profits. It is not compulsory upon Hindu representatives to take out letters of administration, for s. 190 of the Indian Succession Act, which provides that no right to an intestate's property can be established unless letters of administration have first been granted by a Court of competent jurisdiction, is omitted from the Hindu Wills Act. Here the letters of administration are only required for a certain purpose, and the representatives should only be compelled to pay in proportion to the benefit they derive from the grant.

PONTIFEX, J.—If Hindus take out letters of administration at all, they must take out general letters. I cannot grant you letters of administration limited as you wish.

Attorneys for the petitioner: *Swinhoe, Law, and Co.*

1879

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OF RAM
CHAND SEAL.