

## ORIGINAL CIVIL.

Before Mr. Justice Wilson.

LACKERSTEEN AND OTHERS v. ROSTAN AND OTHERS.

1881  
April 25.

*Trustee Act (XXVII of 1866), ss. 2, 19, 20, and 32—Appointment of Person to convey Property on behalf of Persons out of the Jurisdiction and under other Disabilities.*

Where property has been, by an order of Court, directed to be sold, and where some of the parties interested in such property are either out of the jurisdiction, married women, or minors, and the place of abode of others of them is unknown, the Court will, on petition, under the Indian Trustee Act, appoint a person to convey the interest of such persons to any purchaser, notwithstanding that, at the time the order is applied for, no contract for the sale of the property has been entered into.

But the Court cannot make such an order with respect to the interest of a party who has not been served, and who has not entered appearance.

THIS was an application, under ss. 20 and 32 of Act XXVII of 1866, for an order, that the Receiver of the High Court (who had previously been appointed Receiver in the suit) should be appointed to convey certain premises in Calcutta, if and when the same were sold, as directed by an order already made for that purpose, to the respective purchasers thereof, for and on behalf of the estates of the several persons interested therein.

It appeared from the petition, that there were thirty-six parties to the suit who would be necessary parties to the conveyance, five of whom were infants, four married women living out of the jurisdiction, in Sydney, Moulmein, Akyab, and Allahabad; that the place of abode of five others was unknown; that three others were in Sydney, three in London, four at Naptes, and one at Nynee Tal. It further appeared, that an order in the suit, dated the 4th April 1881, had directed the property in question to be sold for payment of certain costs, but that, at the time of the present application, no contract of sale had been entered into.

Notice of the application had been served on the attorneys of all the parties to the suit who had appeared by attorney, and

they were represented by counsel, and did not oppose the application. A number of the defendants had not entered appearance in the suit, although they had been duly served with the original writ of summons. No notice of the application had been given to them, and they were not represented at the hearing of the application.

As regards one of the defendants, Joseph Polycarp Lackerteen, the summons in the suit had not been served upon him, and his whereabouts was not known, and there was no appearance made for him in the suit.

The application was for an order that the Receiver might execute the conveyance on behalf of all the parties to the suit, although as to some of them, who were stated to be living in or near Calcutta, it was admitted that no practical difficulty existed in the way of getting their signatures to the conveyance; but that it would be a saving of expense to include them in the order.

Mr. *Stokoe* for the applicants (the plaintiffs in the suit).—The order asked for can be made under ss. 20 and 32 of Act XXVII of 1866, the Indian Trustee Act. Section 32 gives the Court power to make an order vesting property in lieu of conveyance by a party to the suit *after a decree or order for sale*. Section 20 gives the Court power to appoint a person to convey in all cases where it may make a vesting order. Section 2 defines the meaning of the words "person holding such property" used in s. 32. There are thirty-six parties to this suit, many of whom are at a great distance from Calcutta, and it would be impossible to get their signatures to any deed of conveyance which may have to be executed within any reasonable time, and a further difficulty would arise in registering such conveyance and in obtaining its acknowledgment by such of the parties as are married women. It is true that, although an order has been made for sale, no contract for sale has yet been entered into; but the words of the section are wide enough to admit of the application being granted. The cases of *Hancox v. Spittle* (1) and *In re Boden's Estate* (2) were cited.

(1) 3 Sm. and Giff., 478.

(2) 1 D. M. G., 57.

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As to the service of summons in the present case, one defendant, Joseph Polycarp Lackersteen, has not entered an appearance in the suit, nor has he been served with the writ of summons; he is out of the jurisdiction and cannot be found; others have been served, but have not appeared. I ask on the authority of *Hancox v. Spittle* (1) for an order that the Receiver may execute the conveyance for all parties whether under disability or not.

Mr. Agnew, Mr. White, Mr. Allen, and Mr. Sale appeared for some of the defendants, and consented to the order.

WILSON, J.—I cannot make an order as regards the defendant Joseph Polycarp, as he has not been served or entered appearance, but the order may run that the Receiver do convey on behalf of all parties other than Joseph Polycarp.

Attorney for the applicants: *C. C. Robinson.*

Attorneys for other parties: *S. Dignam, J. Camell, A. Watkins, G. C. Farr, and J. F. Watkins.*

*Application allowed.*

## APPELLATE CIVIL.

*Before Mr. Justice Cunningham and Mr. Justice Prinsep.*

MOHUNT MEGH LALL POOREE (JUDGMENT-DEBTOR) v. SHIB  
PERSHAD MADI AND OTHERS (DECREE-HOLDERS).\*

1881  
March 18.

*Execution—Irregularities in Proclamation of Sale—Evidence of such Irregularities—Nazir's Report—Civil Procedure Code (Act X of 1877), ss. 274, 287, 289, 290, 291, and 295—Sale to satisfy Judgment-Creditor who has not attached.*

The proclamation of sale required by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290.

\* Appeal from Order, No. 275 of 1880, against the order of Major W. L. Samuells, Officiating Deputy Commissioner of Hazareebagh, dated the 4th of August 1880.

(1) 3 Sm. and Giff, 478.