

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.

NARASIMMULU (PLAINTIFF), APPELLANT,

v.

GULAM HUSSAIN SAIT AND ANOTHER (DEFENDANTS),
RESPONDENTS.*

1892.
July 25.
August 2.

Probate and Administration Act—Act V of 1881, ss. 45, 82—Administration de bonis non—Will relating to self-acquired property—Suit by testator's son.

A Hindu by his will bequeathed certain land, his self-acquired property, to his infant son. On his death, his widow, who was the executrix named in the will, took out probate, but she died intestate before she had fully administered the estate. The son now sued by his next friend to recover arrears of rent which had accrued due on the land, which had been leased to the defendants by the testator :

Held, that letters of administration *de bonis non* should have been taken out, and that since the plaintiff did not represent the estate of the testator, he was not competent to maintain the suit.

APPEAL against the judgment of Mr. Justice Wilkinson, sitting on the original side of the High Court in civil suit No. 217 of 1890.

The facts of the case appear sufficiently for purposes of this report from the following judgment.

The plaintiff preferred this appeal.

Krishnasami Chetti for appellant.

Mr. *Kernan* and Mr. *R. F. Grant* for respondents.

JUDGMENT.—This is an appeal by the plaintiff against a decree of Mr. Justice Wilkinson dismissing the suit.

The plaintiff, an infant, by his next friend, brought a suit against the defendants, alleging that the defendants were tenants of certain premises under a lease granted by plaintiff's adoptive father since deceased, that the rent of the premises is in arrear, and that defendants refuse to pay the same to the plaintiff. It was alleged in the plaint that, since the death of testator, defendants held the premises as plaintiff's tenants, but that point was not pressed. It appears that the late C. Lutchminarasu Chetty, plaintiff's adoptive father, granted a lease of certain premises on

* O. S. Appeal No. 28 of 1891.

NARASIMMULU
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 GULAM
 HUSSAIN SAHIB.

the 18th June 1886. In March 1887, C. Lutchminarasu Chetty died having made a will appointing his wife, Chenchammal, the executrix, and leaving the bulk of his property to his adopted son, the plaintiff. It was not disputed that C. Lutchminarasu Chetty's property was self-acquired. Chenchammal, the executrix, took out probate of the will and proceeded to deal with the property, but before she had fully administered the property she died. By an instrument dated 14th July 1887, exhibit B, she appointed certain persons to be guardians of the minor son, the plaintiff. It must be taken for the purposes of the present suit that Chenchammal died intestate and without having fully administered the estate. The defendants admit that the sum claimed is due from them for rent and pay the amount claimed, viz., Rs. 3,230 into court, but they allege that the plaintiff is not entitled to bring this action on the ground that he is not the duly constituted representative under the will of C. Lutchminarasu Chetty. We are of opinion that the learned Judge was right in dismissing the suit. The present plaintiff does not represent the estate of C. Lutchminarasu Chetty as, by his will, duly proved, the whole of his estate vested in the executrix Chenchammal, and it is not suggested that the plaintiff sues either as representing the executrix or as administrator *de bonis non* of the testator. We are of opinion that, as the executrix of the will died intestate and without having fully administered the trusts of the will, an administration of another sort becomes necessary. This is called administration *de bonis non*, that is, of the goods left unadministered by the former executor. See section 45, Probate and Administration Act No. V of 1881. We are further of opinion that the word "may" in that section is not to be construed as merely permissive, but as directory as showing the course which the Legislature intends shall be adopted. See *De Souza v. Secretary of State*(1). As at the present time the estate of the testator is absolutely unrepresented, this suit must fail and we dismiss this appeal with costs.

Branson & Branson, attorneys for respondents.

(1) 12 B.L.R., 428.