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sideration money to be paid in cash, the plaintiff should refund to him, the defendant, Rs. 1,000, being the amount of a debt due from Mohadeo Lal, a relation of the plaintiff. If that was substantially the agreement set up by the defendant, it seems to us that it comes within proviso 2 to s. 92 of the Evidence Act, which is to the following effect:—

"The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved." In this case the agreement would not be inconsistent with the terms of the written contract. The stipulation that out of Rs. 2,000 paid in cash the plaintiff was to refund Rs. 1,000 in liquidation of a debt from one Mahadeo Lal, is not in our opinion inconsistent with the recital as to the consideration in this contract.

Upon both these grounds, we are of opinion that the District Judge was right in overruling the objection taken before him by the plaintiff as to the inadmissibility of oral evidence to vary the terms of a written contract upon which the suit was brought. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Pigot and Mr. Justice O'Kinealy.

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BRINDA CHOWDHRAIN (PETITIONER) *v.* RADHICA CHOWDHRAIN (OPPOSITE PARTY).*

Hindu Widow—Probate—Interest—Revocation of Probate—Locus standi—Probate and Administration Act—Act V of 1881, *s.* 50.

Where a will has been proved summarily, proof in solemn form *per testes* will not, as a rule, be required on the application of a person who had had notice, or had been aware of the previous proceedings before the grant of probate issued, and had then abstained from coming forward.

The widow of a Hindu testator who has died leaving sons has sufficient *interest* to call upon the executor to prove the will in solemn form *per testes*.

THIS was an appeal from an order of the Judge of the 24-Pergunnahs rejecting an application for revocation of probate The order was as follows: "This is an application for revo

* Appeal from Order No. 325 of 1884 against the order of H. Beveridge Esq., Officiating Judge of 24-Pergunnahs, dated the 13th of September 188

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cation of probate which was granted a year ago. The applicant is a widow of the deceased, and her case is that she had no notice of the proceedings. I do not believe this statement. I find that the case lasted some time before the Judge, that there was an objection which was disallowed. One of the witnesses to the will was a son-in-law of the deceased, and the Judge had no doubt that the will was genuine. Besides it is clear that the widow, *i.e.*, the present applicant, must have known of the application for probate and have ratified the proceedings, for she joined with the executrix in a petition to the Court of Wards. It seems doubtful if the widow has any interest which will enable her to support this application, for she admits there are two sons, and they do not apply, nor does she apply as their guardian. I reject the application."

The applicant appealed to the High Court on the grounds (1) that there was just cause for revocation; (2) that the original proceedings were summary, and that neither general nor special citations were issued; (3) that the applicant should have been allowed to prove by evidence that she had no notice of the previous proceedings; and on other grounds not material to this report. It was stated in one of the grounds of appeal that the objection referred to by the Court below as having been disallowed was so disallowed on the ground that the objector had no *locus standi* to interfere in the probate proceedings.

Mr. *Evans* and Baboo *Kali Kissen Sen* for the appellant.

Mr. *Phillips*, Baboo *Bhobany Chirn Dutt* and Baboo *Rash Behary Ghose* for the respondent.

The judgment of the Court was delivered by

PIGOT, J.—This was an application for revocation of probate of an alleged will of the deceased husband of the applicant. The deceased left two sons.

The application was made on three grounds: (1) That the applicant was not cited and had no notice of the proceedings; (2) that the will was a forgery; (3) that the executrix to whom the grant had been made was (as we understand by reason of her great age) imbecile.

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The District Judge refused the application: First, he disbelieved that the applicant had had no notice on the ground that the proceedings taken when probate was granted had lasted some time before the Judge, and must have been known to the applicant: that she had by her conduct ratified the proceedings, as she did, after the grant of probate, join the executrix in an application to the Court of Wards to take over charge of the estate. He further intimated his opinion that her interest (and therefore her right to intervene) was doubtful as her deceased husband left two sons.

If it appeared that the applicant had had notice, or had been aware of the former proceedings before the grant of probate issued, and had abstained then from coming forward, this would constitute a ground for refusing to allow her to intervene—(see *Ratcliffe* v. *Barnes* (1); *re Pitamber Girdhar* (2)—unless perhaps it were made out that the circumstances leading her to believe that the will was not genuine had not come to her knowledge until after the grant of probate.

We do not, however, think that notice or knowledge of the proceedings before the grant was issued is so brought home to her on the face of the proceedings before us, as to justify a refusal of her application on that ground. Nor do we think that the fact of her having, after probate had been granted, joined in the application to the Court of Wards, with the object of getting the estate out of the hands of the executrix (who is, as she alleges, incapable of managing it), is enough to preclude her from being heard on this application, whatever effect that fact may have upon the enquiry into the genuineness of the will.

Upon the question of interest it appears to us that the widow, although there are sons living, has yet an interest in the estate such as to entitle her to come in under s. 50 of the Act. She is entitled to maintenance, and, if she pleases to institute a suit, to have her maintenance made a charge upon the estate of her deceased husband. She is not entitled, no doubt, to claim a partition; but she is entitled, if the heirs of her husband make a partition, to claim a share: there is some authority for holding that this latter right is one of which she may be

(1) 2 S. & T., 486. (2) I. L. R., 5 Bom., 638.

deprived by express words in her husband's will—see *Comulmonee v. Joygopaul* (1). The widow having an interest comes in and alleges matter which is, under s. 50, ground for revocation, and coupling that section with s. 83, must, if her application be granted, put the party propounding the will to proof of it, leaving it to her, when he has made his proof, to negative it, if she can, by such proof as she can give of the matter which she sets up.

No doubt her petition is drawn in a wholly erroneous fashion, and she sets up allegations which are only appropriate to a suit against an executrix, for an account, for the appointment of a Receiver and for the like relief. These, of course, must be disregarded; but she does also set up a case under s. 50, and that case, we think, ought to be heard.

We may add that as we understand from the record before us the proceedings which took place when the grant was made related to the right of the person who objected to the will, to be heard, and that his right being negatived, he was not heard in opposition to the grant of probate.

We agree in the view expressed by *Markby*, J., as to the object of s. 234 of the Succession Act, which is the same as s. 50 of the Probate and Administration Act. There is no doubt a discretion vested in the Court in determining whether or not to act under that section; but it must be remembered that probate once granted in common form is final unless it be challenged in proceedings taken under this section. We agree with what is said by *Markby*, J., in the case before referred to at page 364, "if there has been no previous contention, and the will has only been proved summarily, or in what is called common form in *England*, that is without any opposition and merely *ex-parte* to the satisfaction of the Judge, who can know nothing of the circumstances or the state of the family," then he ought in all ordinary cases to have the will regularly proved afresh so as to give the objector an opportunity of testing the evidence in support of the will before being called upon to produce his own evidence to impeach it.

(1) Mac. Cons. of Hindu Law, 90; Morley on Part. 26.

We therefore reverse the order of the District Judge, and order that the case be set down and heard before him under ss. 50 and 83 of the Probate and Administration Act. Costs to follow the result.

Appeal allowed.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

KARTIC NATH PANDY (ONE OF THE DEFENDANTS) *v.* PADMANUND SINGH AND ANOTHER (PLAINTIFFS.)*

Receiver—Power of Court to appoint a Receiver—Suit for Arrears of Rent and Ejectment—Bengal Act VIII of 1869, *ss.* 23, 34, 52—*Civil Procedure Code* (*Act XIV of* 1882), *ss.* 503, 505.

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Although having regard to the provisions of ss. 23 and 52 of Bengal Act VIII of 1869, s. 503 of the Civil Procedure Code would not apply to a suit brought under Bengal Act VIII of 1869, merely for arrears of rent; there is no provision in that Act which excludes the operation of s. 503, when a suit is brought for recovery of the tenure itself. When, therefore, a suit was brought under Bengal Act VIII of 1869 for arrears of rent and for ejectment of the defendant,

Held, that a receiver of the rents and profits of the tenure might properly be appointed under the provision of s. 503 of the Civil Procedure Code.

IN these cases the plaintiff sued for the sum of Rs. 36,000, as arrears of rent, and for ejectment of the defendants, under s. 52 of the Rent Act. The applications in the suits which gave rise to this appeal were for the appointment of a receiver under the provisions of s. 503 of the Civil Procedure Code. The plaintiffs alleged that the defendants' lease was about to expire, and that the greater part of the mehal was *Chowli*, and as it was the harvest season, unless a receiver were appointed, they would be unable to realise the greater portion of their claim as the defendants were heavily involved.

The Second Subordinate Judge before whom the application was made, granted the prayer, and nominated a receiver, and the nomination was subsequently confirmed by the District Judge, on the

* Appeals from Original Orders Nos. 376 and 377 of 1884, against the orders of Baboo Dwarkanath Mitter, Second Subordinate Judge of Bhagalpore, dated the 18th of November 1884.