

of calling evidence and of satisfying the Court that the suit was one really for the benefit of the infants, but had chosen to adduce no evidence, the suit must be dismissed with costs against him personally: Khantomoney bearing her own costs.

1885

GERRER-
BALLA
DABEEv.
CHUNDER
KANT

MOOKERJEE.

Suit dismissed.

Attorney for plaintiffs: *Mookerjee & Deb.*

Attorney for defendants: *Carruthers.*

Before Mr. Justice Wilson.

IN THE MATTER OF FLORENCE EMILY BROWNLOW AND LILIAN
• KATE BROWNLOW, INFANTS.

1885

March 2.

Practice—Petition without suit—Payment out of Court of monies on petition without suit.

Case in which an order was made on a petition without suit directing the payment out of certain monies paid into Court under an order entitled, "In the matter of Florence Emily Brownlow and Lilian Kate Brownlow, infants."

THIS was an application for the payment out of Court of certain monies which had been lodged in Court pursuant to an order of the Court, dated the 24th July 1872, which order was, however, not entitled in any suit, nor under any section of any Act.

The present petition was the petition of F. E. Brownlow, and was headed, "In the matter of Florence Emily Brownlow and Lilian Kate Brownlow, infants, and set out the following facts, *viz* :—

That previous to 1872 the father of the petitioner had invested certain monies in Government securities of the 4 per cent. loan of 1856-57, of the value of Rs. 1,400 and Rs. 1,000 in the name of his daughters, Florence Emily Brownlow, and Lilian Kate Brownlow (since deceased), respectively. That the loan of 1856-57 was called in in 1872, and certain of the notes issued thereunder were transferred to a new loan, but the authorities of the Public Debt Office had declined to transfer the two securities abovementioned to the new loan on the ground that the petitioners for such transfer were infants, and that no one was authorized to apply for such transfer on their behalf, and for the same reasons declined to pay off the notes. That

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the father of the petitioner having been advised that he was not entitled to have the custody of the proceeds of these securities without obtaining an order of Court for that purpose, it was, therefore, arranged that the proceeds should be paid into Court to an account entitled, "The account of Florence Emily Brownlow and Lilian Kate Brownlow," and that an order of Court should be applied for for the purpose. And accordingly, on the 27th April 1872, the father applied to the High Court in its Ordinary Original Civil Jurisdiction for an order, that one R. L. Upton should be appointed guardian of the estate of the infants, limited to Rs. 2,400, and that he should be at liberty to receive from the Secretary and Treasurer of the Bank of Bengal the sum of Rs. 2,400 on his undertaking to pay the same into Court; an order was made under this petition, and the said R. L. Upton obtained the proceeds of these notes; and on the 24th July 1872 paid the same to the Comptroller-General of Accounts of the Government of India, and Secretary and Treasurer of the Bank of Bengal, with the privity of the Accountant-General, by whom the said proceeds were carried to the credit of the account directed in the order, and entitled as above set out. The Accountant-General then invested the proceeds in Government securities. Lilian Kate Brownlow died in the year 1876 a minor, and her father took out letters of administration to her estate, and he, on the 8th of May 1877, applied to the Court for an order, directing the Accountant-General to divide the sum invested by him, and standing to the credit of the infants in proportion to the shares due to the infants respectively, and for payment out of the share of the deceased; and obtained an order from Mr. Justice *Macpherson* directing the payment out to him of the share belonging to the said Lilian Kate Brownlow. Florence Emily Brownlow, who was now of age, applied to have her share paid out to her. The application was not made on notice, but Mr. R. L. Upton, the guardian abovementioned, was a member of the firm of Messrs. Sanderson & Co., who were the petitioners' attorney.

Mr. *Henderson* for the petitioners stated that a similar order had been made with regard to the share of the other sister; and that under the practice of the Old Supreme Court a guardian might be appointed on a petition without suit; and that the guar-

dian of the present applicant having paid money into Court under an order in such a petition, the present petitioner, who was now of age, was entitled to apply in the same way for the payment out.

Mr. Justice WILSON made the order prayed for.

Order as prayed.

Attorneys for petitioner: Messrs. *Sanderson & Co.*

1885
 RUTNESSUR
 BISWAS
 v.
 HURISH
 CHUNDER
 BOSE.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Pigot.

RUTNESSUR BISWAS (PLAINTIFF) v. HURISH CHUNDER BOSE
 (DEFENDANT.)*

1884
 December 2.

*Damages for breach of clause in lease—Rent suit—Assessment of damages—
 Substantial damage—Nominal damage.*

B obtained a lease of certain lands from *A*, agreeing thereunder to pay to *A* a certain rental for the land, and also a sum of Rs. 183-6-3 yearly to *A*'s superior landlord, obtaining a receipt therefor.

A sued *B* for the rent due to himself, and for the sum due to his superior landlord. *Held*, that *A* was entitled to recover the sum due to his superior landlord as damages for breach of the contract, and that the amount of such damages ought not to be taken as nominal, but should be assessed on the footing of the sum for which *A* might become liable to his superior landlord.

THIS was a suit described in the plaint as one for arrears of rent due for the years 1284-1285.

It appeared that up to the year 1279, one Rysona Dasi was the holder of 469 bighas of *ganti jama* lands, and in that year she granted an *ijara* lease of these lands to one Gobind Chunder Sircar for a term of nine years on the following terms, *viz.*, (1), that the Government revenue and rent due to the zemindar, amounting to Rs. 183-5-11, should be annually paid to the Collector and the zemindar respectively, and *dakhillas* taken for such payments; (2), that Rs. 125 should be yearly paid out of the profits of the land; (3), that eight pots of molasses made of date juice should be annually presented, or in default Rs. 3 instead thereof.

↑ Appeal from Appellate Decree No. 1021 of 1883 against the decree of Baboo Amrita Lal Chatterji, Subordinate Judge of Nuddea, dated the 31st of January 1883, modifying the decree of Baboo Sri Nath Pal, First Munsiff of Bongong, dated the 9th of September 1881.