ORIGINAL CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Cunningham.

SREENATH ROY (PLAINTIFF) *v.* RADHANATH MOOKERJEE (DEFENDANT.)

1882 *July* 7.

Appeal—Administration Suit—Order directing an account—Civil Procedure Code (Act X of 1877), *s.* 244.

An order directing an account is not an order in the nature of a final decree, and is unappealable; such an order merely directs certain proceedings to be taken, in order that a final decree may thereafter be made.

BY a decree, dated the 3rd September 1877, in an administration suit between *Sreenath Roy* v. *Radhanath Mookerjee and others*, it was, amongst other things, ordered that Sreenath Roy was entitled to recover from the estate of Jogendronath Mookerjee a sum of Rs. 18,000 with interest, and the further hearing of the suit was adjourned for the taking of accounts, the Receiver of the Court being appointed Receiver to the estate of Jogendronath Mookerjee; and the consideration of further directions was reserved until after the accounts and enquiries directed should be taken and made, liberty being reserved to all parties to apply as they might have occasion.

In 1874 and 1875 two suits, Nos. 67 of 1874 and 307 of 1875, between *Radhanath Mookerjee, an infant (son and heir of Jogendronath Mookerjee) by his mother and next friend* v. *Chunder Kant Mookerjee and others*, and *Koosum Coomaree Dabee, widow of Ramnarain Mookerjee* v. *Chunder Kant Mookerjee and others*, were instituted for the partition of the joint family estate of Ramnarain Mookerjee; and on the 13th September 1880, an order was passed in these two suits (which had been amalgamated), directing that the accounts filed by the defendants in the first suit should be taken as they stood up to the death of Jogendronath, and that the defendants Chunder Kant and Prankristo should pay to the infant plaintiff, Radhanath, in that suit, Rs. 5,000 in full of the said account; and that they should, out of the infant plaintiff's share in the joint estate, when the value of the same should have been ascertained, make provision for the payment

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of the costs of the suits to administer the estate of Ramnarain and Jogendronath Mookerjee and for the payment of the debts of the said Jogendronath and the legacies left by Ramnarain.

The defendants Chunder Kant and Prankristo, under the provisions of rule 594 of the High Court, paid into the hands of the Court Receiver, in pursuance of the order last mentioned, Rs. 5,000 to the credit of the infant Radhanath.

The plaintiff in the administration suit, Sreenath Roy, then applied to the Court for an order, directing the Court Receiver to transfer the said sum of Rs. 5,000, after deducting his usual commission and charges, to the credit of the administration suit, and for the application of that sum in payment of the debt due to him and the other creditors of the estate of Jogendronath who had proved their claims: and further asked that the Receiver might be directed to sell the properties then in his possession for the above purposes.

The grounds for the application were (1), that the Receiver had not as yet made any provision for the payment of the debts of Jogendronath, and that there was ample property belonging to the estate of Jogendronath which had come to the hands of the infant defendant, and which was in the hands of Receiver to satisfy these debts; (2) that the debt due to Sreenath Roy, under the decree of the 3rd September 1877, had been outstanding for more than four years, and that interest was running on it both to his detriment and that of the infant Radhanath Mookerjee.

Nobin Chund Boral, attorney on behalf of the infant Radhanath Mookerjee, opposed the application and put in an affidavit, stating that on the 18th September 1877, the cause in which their present application was made was set down on the reference board, and that Mr. Justice Wilson, after going through the accounts, and on being informed that the bulk of the property belonging to the estate of Jogendronath Mookerjee, deceased, consisted of one undivided fifth share in certain landed property, which formed the subject-matter of the partition suits numbered 67 of 1874 and 307 of 1875, which had been amalgamated for the purpose of taking the accounts, directed the reference to stand over until the accounts were taken; that he had a large claim for

costs which had been already ordered to be paid to him out of the joint estate, and he submitted that the relief sought could not be granted on the present application inasmuch as the suit should have been set down for further directions and the application then made.

Mr. *Allen* for the plaintiff.

Mr. *Trevelyan* for the defendant.

On the 16th March 1882, Mr. Justice Wilson refused the application with costs.

The plaintiff appealed.

Mr. *R. Mittra*, for the respondent, objected that no appeal would lie.

Mr. *Allen* for the appellant contended that the order passed by the Court must be taken as an order made under s. 244 of Act X of 1877, it being a question relating to the "execution, discharge and (partial) satisfaction" of the decree in the administration suit; and that under s. 2 of the same Act, "an order," determining any question mentioned or referred to in s. 244, but not specified in s. 588, is defined to be "a decree," and is therefore appealable: and, further, that an appeal lay under s. 15 of the Charter from the judgment of a single Judge of the High Court: and he submitted that on one or other of these grounds an appeal did therefore lie.

The following judgments were delivered by the Court (GARTH, C.J., and CUNNINGHAM, J.)

GARTH, C.J.—I am of opinion that the preliminary objection must prevail, and that no appeal lies in this case.

Mr. Allen has contended that the order which is appealed against is one made under s. 244 of the Civil Procedure Code, and is therefore appealable under s. 2 of that Act, as amended by Act XII of 1879.

The suit in which the order was made is an administration suit brought by the plaintiff, a creditor, for administering the estate of Jogendronath Mookerjee, and for having the plaintiff's debts ascertained, and paid out of the assets. A decree was obtained, declaring the plaintiff entitled to the sum which he claims, and directing an account to be taken in the usual way.

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The party to the suit who represents the estate is an infant, who appears by guardian, and an attorney named Nobin Chund Boral acts for the guardian.

It then appears that in another suit a sum of Rs. 5,000 has been placed in the hands of the Receiver, on account of the infant defendant in this suit; and an application was made to the Judge in the Court below that this Rs. 5,000 should be paid over to the credit of this suit, and that it should be applied in payment of the debts to the plaintiff and the other creditors of the intestate, who have proved their claims in the suit; and that the said Receiver should sell the properties in his possession and apply the proceeds towards payment of the said debts *pro tanto*.

This application, so far as it concerned the Rs. 5,000, would seem to have been a reasonable and a necessary one; but it was objected to on the part of the infant; and the learned Judge refused the application, not (so far as I can judge from the note which was made by the officer of the Court), because there was no ground for making it, but because it was not made in proper form.

However this may be, the plaintiff did not apply again, as suggested by the learned Judge. If he had done so, and if the sum of Rs. 5,000 had really belonged to the estate, the application would probably have been successful. But he took the course of appealing to this Court, and has insisted upon his right of appealing upon the ground that the order of the learned Judge was a decree made under s. 244 of Act X of 1877, as being "*a decision upon a question which related to the execution of the decree.*"

I am clearly of opinion, looking at what I conceive to be the true meaning of the word "execution" in that and the preceding sections of the Code, that the order in this case is not appealable.

The section forms part of Chapter XIX of the Code, comprising ss. 223 to 343, which all relate "to the execution of decrees," and from the tenor of those sections it seems clear to me that the words "execution of decrees" at the heading of the chapter mean the enforcement of the decrees of the Courts, by what is generally known as "*process of execution.*" The different kinds

of execution dealt with in those sections are against the person and property of the judgment-debtor, or for the restoration of any specific property, land, or goods, or for compelling the judgment-debtor, by attachment, to obey the decree of the Court.

But the order with which we are dealing is of a totally different character.

The order for accounts is not in the nature of a final decree. It only directs certain proceedings to be taken, in order that a final decree may hereafter be made; and the application by Mr. Allen was only an interlocutory one, made in the course of those proceedings, and certainly not for the purpose of enforcing the decree of the Court by a process of execution properly so called.

Mr. Allen contends that his application was one in aid and execution of the decree which the Court has already made; now, if an order of this kind can be appealed against, it seems to me that all the numerous interlocutory orders made in the course of taking accounts or otherwise carrying out the directions of the Court would be equally appealable.

I think therefore that upon this ground the appeal should be dismissed, with costs on scale 2.

CUNNINGHAM, J.—I am of the same opinion. I would only add that the reasons that my Lord has given seem to be reinforced by the language of s. 213, and the form No. 130 of the fourth schedule of the Code of Civil Procedure, which show that in the view of the framers of the Code what is called an administration decree is not really a decree at all, but merely a preliminary order.

Appeal dismissed.

Attorney for plaintiff: Messrs. *Swinhoe Law & Co.*

Attorney for defendant: Baboo *Nobin Chund Boral.*