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fact the only means open to the plaintiff of correcting the error, if it is one, which has been made in the execution proceedings.

It is clear, that if two out of three partners are sued for a debt due from the partnership, and a decree is obtained against those two, and execution issues against the partnership property, if the third partner should apply successfully in the execution proceedings to have his share in the property released, the plaintiff's only remedy would be a regular suit, not for the purpose of making the third partner *personally liable* for the debt, but for *the purpose of making the share of the third partner available to satisfy the decree.*

The case will be remanded to be tried upon its merits; and the lower Court will frame, if necessary, an additional issue or issues. The appellant will have the costs of this appeal.

Case remanded.

ORIGINAL CIVIL JURISDICTION.

Before Mr. Justice Pigot.

REMFRY *v.* DE PENNING AND ANOTHER.

1884 *July* 23.

Indian Succession Act (*X of* 1865), *s.* 282—*Judgment-creditor—Execution of Decree—Priority—Executor—Administrator—Administrator-General's Act* (*II of* 1874), *s.* 35.

A decree for money was obtained against a person who afterwards died intestate. Letters of administration to his estate were granted to the Administrator-General of Bengal. The decree-holder applied for execution of his decree against the assets in the hands of the Administrator-General.

Held, that he was entitled to have his decree satisfied out of the assets of the deceased, although those assets were not sufficient to pay in full all the claims made against the estate.

IN this case, a decree was obtained on the 2nd of May 1879 against Peter De Penning and John Biddle for Rs. 5,500 and costs. John Biddle died on the 12th of August 1883, and on the 7th of March 1884 the Administrator-General of Bengal obtained letters of administration to his estate. On the 10th of June 1884 the plaintiff obtained a rule, calling upon the Administrator-General of Bengal, as administrator of the estate of John Biddle, to show cause why the decree should not be executed against him. It was admitted that Biddle was domiciled in British India at his death.

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Mr. *Trevelyan* showed cause on an affidavit of the Administrator-General, which stated that Biddle's estate was of about the value of Rs. 4,127, that claims against that estate to the amount of Rs. 12,400 (excluding the plaintiff's claim) had been sent in to him; that one of the creditors claimed a lien on the assets of the estate; and submitted that under the circumstances the plaintiff had no priority over the other creditors. Counsel relied on ss. 282 and 283 of the Indian Succession Act, X of 1865, and distinguished the case of *Nilkomul Shaw* v. *Reed* (1) on the ground that there the decree had been obtained against the Administrator.

Mr. *Bonnerjee* in support of the rule.—The words of s. 282 of the Succession Act, namely, "no creditor is to have a right of priority over another by reason that his debt is secured by an instrument under seal, or *on any other account*," do not stand in the plaintiff's way. The words, "on any other account," must be read as applying to matters *ejusdem generis* with what precedes. In the *Alliance Bank of Simla* v. *Hoff*, decided by Mr. Justice Cunningham on the 15th of January 1884, execution was ordered to issue against the executor of a judgment-debtor for the full amount of the decree, though the testator's estate was not sufficient to pay all his debts. That order was made on the authority of *Nilcomul Shaw* v. *Reed* (1). There is nothing in the Administrator-General's Act to place him in a higher position than any ordinary administrator as far as the present case is concerned. This cannot be considered as a suit against the Administrator-General. See *Haninabalu Sannappa* v. *Cook* (2).

Judgment of the Court was delivered by

PIGOT, J.—In this case execution must issue; s. 35 of the Administrator-General's Act is limited to the express purpose for which it was enacted, and there is nothing in that Act or in the Civil Procedure Code to change the position of the Administrator-General, or to put him in a better position than any ordinary suitor. I must follow the course pursued in the suit of the *Alliance Bank* v. *Hoff* (3), and execution must issue.

Rule made absolute.

Attorneys for the plaintiff: *Watkins & Co.*

Attorneys for the defendants: *Harris & Simmons.*

(1) 12 B. L. R., 287. (2) 6 Mad. H. C. R., 346. (3) Unrep.