

"*finally determined*" their claim. It was suggested in the course of the argument, that upon the face of the decree itself there was something that affected the defendants, respondents, in the words "as it stands at present," so as to afford them matter of appeal. At the hearing I was somewhat disposed to adopt the view and I wish I could do so now, as it would avoid the necessity of my differing with the rest of the Court. I cannot, however, upon further consideration see in the terms of the decree anything but a most positive finding against the plaintiff and in favour of the defendants, with their costs, and I see nothing upon the face of it giving them any ground for appeal. No doubt the decree is most carelessly and inadequately framed and is altogether out of compliance with s. 205 of the Procedure Code, but for the reasons I have already given it is the only document to be looked at for the purposes of appeal, and however full the judgment, that is ineffectual and inoperative, except so far as it finds voice and expression in the words of the decree. But to the extent it goes it deals with the plaintiff, as a non-suit would in the English Courts, and relegates him to an assertion of his rights of possession by a fresh proceeding whenever the proper moment arrives. Under all these circumstances I am of opinion that the Judge of the lower appellate Court was wrong in entertaining the defendants' respondents' appeal and that the present appeal should be allowed.

PRIVY COUNCIL.

IN THE MATTER OF F. W. QUARRY.

Suspension of a pleader for misconduct—Act XX of 1865—Special leave to appeal.

The High Court, acting regularly within its jurisdiction, suspended a pleader from practice for misconduct.

The Judicial Committee, not being prepared to say, from the materials before it, that the High Court's conclusion on a pure question of fact was wrong, refused to grant special leave to appeal.

It would not have followed, even if more doubt had been entertained on such a question, that an appeal would have been granted against Judges so acting.

* Present:—SIR J. W. COLVILLE, SIR B. PHAHOOK, SIR M. E. SMITH, and SIR R. P. COLLIER.

1879

LACHMAN
SINGH.
" "
MOHAN.

P. C.*
1879

November 2

1879

THE MAT-
TER OF F. W.
QUARRY.

THIS was a petition presented by Mr. F. W. Quarry, a pleader admitted in the High Court of the North-Western Provinces in 1871, for special leave to appeal against an order of that Court, dated 3rd April, 1879, suspending him from practice for three months for misconduct as a pleader.

Mr. *J. Graham* was heard for the petitioner.

Their Lordships' judgment was delivered by

SIR J. W. COLVILLE.—This is an appeal made to the discretionary power of the Court to grant special leave to appeal against an order of the High Court dated as long ago as the 3rd of April, 1879, whereby the petitioner was suspended for three months from practising as a vakil. The period of suspension has obviously expired considerably before the time at which this application is made, and that in itself forms some ground why their Lordships should not accede to the application. Their Lordships, however, do not mean to go so far as to say that, if the effect of the order had been to inflict upon the character of the applicant a lasting stigma, and there had been a clear miscarriage of justice shown, the fact that the period of suspension had expired would alone have induced them to refuse this application. But it appears to their Lordships after hearing the statement at the bar, and reading the proceedings which have been filed in support of the application, that the Court below acted within its jurisdiction; that upon the complaint of Mr. Bullock, the Judge of the Small Cause Court, they formulated certain charges, charges which, if substantiated, would have justified their order, that a rule to show cause was served upon the applicant, that he put in his answer, that there were affidavits filed on both sides, that the Court heard both parties, and having heard both parties made the order which is now complained of. Their Lordships think that the Court acted within its jurisdiction when they found upon the evidence that ground was made out upon which the rule should be made absolute, or rather that enough had been made out to justify them in suspending the applicant for the time for which they did suspend him from practice, and, so far as their Lordships can judge from the materials before them, they are not prepared to say that this was not a right conclusion. It would not have followed, even

if their Lordships had entertained more doubt on the subject, that they would have granted an appeal against Judges acting regularly within their jurisdiction upon a pure question of fact. The application must therefore be refused.

1879

IN THE M.
TER OF F.
QUAR. 3

Agents for the petitioner : Messrs. *Carpenter & Son*.

APPELLATE CIVIL.

1879

December

Before Mr. Justice Pearson and Mr. Justice Oldfield.

MUNIA AND OTHERS (DEFENDANTS) v. BALAK RAM (PLAINTIFF).*

Certificates to collect debts—Act XXVII of 1860—Alienation of the Estate of a deceased person for the payment of his Debts—Succession.

Where a person to whom a certificate had been granted under Act XXVII of 1860 to collect the debts due to the estate of a deceased Hindu, but who had no share or interest in such estate, contracted a debt for the purpose of paying debts due from such estate, and charged such estate with the payment of such debt, held that the creditor could not by virtue of the acts of such person claim to recover the moneys advanced by him to such person from the heirs and estate of the deceased, even though such moneys had been applied to the liquidation of the debts of the deceased.

ONE Janki applied, as the widow of one Bisram, deceased, to the District Court of Cawnpore for a certificate under Act XXVII of 1860 to collect the debts due to Bisram's estate. This application was opposed by one Munia and one Lachminia, claiming to be the daughters of Bisram, on the ground that Janki had no right to the certificate, having been the concubine and not the wife of Bisram. The District Court allowed Janki's application on the 28th July, 1876, and granted her a certificate on the 12th December, 1876, empowering her to collect the debts due to Bisram's estate. In the meantime, on the 6th September, 1876, Janki, as the widow of Bisram and heir in possession of his estate, gave one Balak Ram a bond for Rs. 1,901, in which she mortgaged a portion of Bisram's real estate as collateral security for the payment of such money. This bond recited that the money was borrowed with the object of paying the debts due from the estate of Bisram. On the

* Second Appeal, No. 618 of 1879, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 25th February, 1879, modifying a decree of Babu Abinash Chandar Banarji, Subordinate Judge of Cawnpore, dated the 17th June, 1878.