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Court of first instance upon remand. These objections never having been urged before the lower appellate Court, that Court has naturally not dealt with these points, taking it for granted that the present plaintiffs-appellants had no objections to urge.

Under these circumstances I do not think that, hearing this appeal as a second appeal, I can for the first time allow those objections to be taken here as grounds of second appeal.

The appeal is dismissed with costs.

*Appeal dismissed.*

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*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.*

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*July* 21.

LACHMAN DAS (PLAINTIFF), *v.* CHATER AND ANOTHER (DEFENDANTS).*

*Administration-bond—Breach of condition—Compensation—Act* X *of* 1865 *(Succession Act)*, ss. 256, 257—*Act IX. of* 1872 *(Contract Act)*, s. 74, *exception.*

An administration-bond executed by an administrator in accordance with s. 256 of the Succession Act is not an instrument of the kind referred to in the exception to s. 74 of the Contract Act, so as to make the obligor liable, upon breach of the condition thereof, to pay the whole amount mentioned therein; and an assignee of the bond under s. 257 of the Succession Act cannot recover more damage than he proves to have resulted to himself or to those interested in the bond.

*Held* therefore, where neither the assignee of such a bond nor any one else had suffered any damage by reason of the breach of a condition requiring the obligor to file an inventory of the estate within a specified period, that the assignee was not entitled to recover from the obligor any compensation in respect of such breach.

THE facts of this case were as follows:—On the 23rd January, 1883, one Marcar Chater took out letters of administration to the estate of one J. R. Shircore, and on the same date executed an administration-bond in favour of the District Judge of Agra, in accordance with the provisions of s. 256 of the Succession Act (X of 1865). One John Owen joined in the execution of the bond as surety. The amount of the bond was Rs. 7,000; and the executants made themselves jointly and severally liable to the District Judge of Agra for the time being, engaging for the due collection and administration of the estate according to law, and to make a true inventory of the estate and to exhibit the same in the District Court on or before the 22nd January, 1884.

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* First Appeal, No. 106 of 1886, from a decree of Babu Promoda Charan Banerji, Subordinate Judge of Agra, dated the 17th March, 1886.

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Application was subsequently made to the District Judge by certain creditors of the estate, namely, the plaintiff, Seth Lachman Das, Chotay Lal, Nand Ram, and Hardwar Nath, under s. 257 of the Succession Act, representing that the engagement to file the inventory on or before the 22nd January, 1885 had not been kept; and by an order dated the 15th June, 1885, the Judge assigned the bond to the plaintiff, Seth Lachman Das, on the ground that the conditions of the bond had been broken in the following respects:—(i) that the inventory had not been exhibited within the time prescribed, (ii) that accounts had not been properly presented, (iii) that the assets had not been applied within a reasonable time to the satisfaction of the claims of creditors. The plaintiff then brought the present suit against Chater and Owen, to recover "for himself and as trustee for all persons interested in the estate of the deceased," Rs. 7,000, the amount of the bond. The suit was instituted in the Court of the Subordinate Judge of Agra on the 5th December, 1885. Meanwhile, on the 4th February, 1885, the defendants had filed the inventory of the estate in the Court of the District Judge.

The defence was in effect that the engagements of the bond had been substantially fulfilled, that the estate had been duly administered and all the debts paid except that of the plaintiff and one other creditor who had refused to accept the dividends offered to them, that the entire assets were Rs. 3,300, and that the plaintiff could not in any event recover more than that amount.

The substantial portion of the Subordinate Judge's judgment was as follows:—

"There can be no doubt that an inventory was not exhibited on or before the 22nd January, 1884, as required by the bond, or within six months from the grant, as required by s. 277 of the Indian Succession Act. And it is also an undisputed fact that the accounts were not presented in proper form. It was not until the 4th February, 1885, that the administrator, Mr. Chater, submitted an inventory and an account to the District Judge through the post. The requirements of the rules prescribed by the High Court for the presentation of inventories and accounts (Civil Rules and Orders, p. 146) were not fulfilled in any respect.

"It is contended that mere failure to submit an inventory or accounts in time was not sufficient to pronounce the bond forfeited, and this intention seems to be valid. In matters like these, the practice of the Courts in England should be the best guide. It was held in *Crowley* v. *Chipp* (1), quoted in Williams on Executors and Administrators, p. 511, that 'the Court might, in its discretion, decline to make any order, notwithstanding it was clear that there had been a breach of the bond. On that occasion an administratrix had not exhibited an inventory and accounts within the time assigned by her administration-bond, but no proceedings had been instituted against her for the purpose of calling for an inventory. An application was made to the Ecclesiastical Court, by a creditor of the deceased, for an order that the bond might be 'attended with,' for the purpose of being sued upon at law; and it was contended that since the non-delivery of the inventory at or before the day specified in the bond clearly constituted a breach of the condition, the Court ought to order the bond to be delivered out. But Sir H. Jenner Fust said that he should be extremely unwilling in any case upon the mere non-delivery of an inventory to allow the bond to be 'attended with,' and he refused to make any order until the parties should have cited the administratrix to bring in an inventory. She afterwards brought one in, whereupon the Court dismissed the parties.' In another case, cited at page 518, the Court refused to permit the bond to be put in suit, on the ground that an inventory and account had not been called for from the administrator. These cases are clear authorities in support of the defendants' contention that the mere non-delivery of an inventory and account do not justify the forfeiture of the bond. The reasons which would induce a forfeiture appear to be that 'the administrator has not delivered a true and perfect inventory, or that he has not made a just and true account'. (Williams, page 546). In this case, when the administrator omitted to submit his inventory and account, the proper course would have been, as was done in the case cited above, to call upon him to file an inventory. But this was not done. He did subsequently file an inventory and accounts. They were not, it is true, verified before a zila Judge or Justice of the Peace, but the defendant, Mr. Chater, has, in this suit, sworn to their correctness. He has

(1) I. Curt. 458.

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pledged his oath that the inventory is true and complete, and that the account is true and correct. The plaintiff has not attempted to show that the defendant's allegations are untrue in regard to any item except one, namely, Mr. Shircore's law books. It is said that the books were valuable, and were removed to Calcutta in order that they might fetch a higher price. Mr. Chater has sworn that he sent the books to Mackenzie, Lyall and Co., a well-known firm of auctioneers in Calcutta, for sale, and that he has entered in his accounts the amount which was received by him as the proceeds of the sale. There is nothing to contradict his sworn statement; and although the books may have been sold for less than their proper value, it cannot be said that he was at all to blame in the matter. The correctness of no other item has been impugned. I accordingly hold that the inventory and accounts submitted by the defendants are true and correct, and that there has been no breach of the conditions of the bond in respect of inventory and accounts such as to induce a forefeiture of it.

"The only other ground on which the bond has been pronounced forfeited is that the assets have not been applied to the payment of debts within a reasonable time. This breach is not, it seems, a valid ground for forefeiture. It is laid down in Williams on Executors and Administrators, page 547, that 'it is no ground of forfeiture that the administrator has not paid the debts of the intestate, and therefore a creditor could not sue upon the bond and assign for breach the non-payment of a debt to him.' There has not, it appears, been any culpable negligence on the part of the defendant in regard to the payment of debts. The defendant swears that, shortly after the death of Mr. Shircore, his household effects were sold in Agra. An advertisement was published in the *Pioneer*, and the claims of some of the creditors were received. In 1884, the defendant states he was in bad health and was obliged to go to Darjeeling, and therefore nothing was done. That he did actually go to Darjeeling also appears from the plaintiff's application to the District Judge, dated 4th November, 1884. In February, 1885, the defendant published a second advertisement in the *Pioneer*, and several claimants appeared. Among these were the plaintiffs Seth Lachhman Das and Hira Lal, proprietor of the firm of Chhotay Lal, Nand Ram, who sent to the defendant affida-

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vits in support of their claims in March, 1885. In August, 1885, the defendant gave notice to all the creditors whose claims had been admitted, and among the persons to whom notices were given were the plaintiffs Seth Lachman Das, Chhotay Lal, Nand Ram and Hardwar Nath, the three persons who had moved the District Judge to assign the bond. All the registered creditors, including Hardwar Nath, have received dividends and granted receipts..... The only persons who refused to do so were the plaintiff and Hira Lal, proprietor of the firm Chhotay Lal, Nand Ram. So that, except two of the creditors, the rest have been paid. The non-payment to these creditors is owing to their own laches. They themselves neglected to send in their claims, although all creditors had been called upon to do so, and it is therefore their own fault that they have not been paid. Besides, 'a bond could only be enforced for the general benefit of persons interested in the estate of the intestate, and not for the non-payment of a particular debt'. (Williams on Executors, p. 549). As all the persons interested in the estate except two have been paid, the bond cannot be enforced on the ground that these two persons have not been paid. For the above reasons, the grounds for which the bond was forfeited were not such as could induce its forfeiture."

The Court accordingly dismissed the suit. The plaintiff appealed to the High Court.

Mr. *G. T. Spankie* and Babu *Jogindro Nath Chaudhri*, for the appellant.

Mr. *J. E. Howard* for the respondents.

EDGE, C. J.—This is an action on an administration bond. The defendants are the administrators; the bond was for Rs. 7,000, and one of the conditions was that the administrators should make a true inventory of the estate and exhibit the same at the Court of the Judge of Agra on or before the 22nd January, 1884. The condition to which I have referred is the one relied on in this appeal. As a matter of fact the administrator did not exhibit his inventory in the Court of Agra until February, 1885. The bond was a bond given in accordance with s. 256 of the Indian Succession Act. It was assigned to the plaintiff under s. 257 of the Act. The case came on for trial before the Subordinate Judge of Agra. He

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dismissed the suit, thinking that no substantial breach of the bond had been proved. I am of opinion that the failure to exhibit the inventory was a breach of a condition of the bond. It is an important matter in the administration of an estate that the administrator should file his account in proper time. It is contended that as there had been a breach, which has been admitted, of the bond, the amount recoverable was the sum of Rs. 7,000 mentioned in the bond. It is said that the bond in question was one which came within the exception of s. 74 of the Contract Act, and consequently the whole sum mentioned in the bond became payable on the breach. I think the bond referred to in that exception is of the class of which an illustration is given in the illustrations to the section, and that the bond in question does not come within that exception. If an administration-bond came within that exception, and on breach of any of the conditions of the bond the whole amount of the bond became payable, the result might be that the creditors and heirs of an intestate might receive more, so far as the creditors were concerned, than their debts, and so far as the heirs were concerned, than the balance of the estate in the hands of the administrators. To take a case, assume that an administrator having given a bond like that in this case has fully administered the estate and paid all the creditors the utmost farthing owing to them, and has handed over to the legal representatives the balance which remained in his hands after deduction of the debts of the intestate. There would be in that case no creditors interested in the performance of the conditions of the bond. By interested I mean pecuniarily interested, and the only person who could be interested would be the heir; but neither the creditor nor the heir would have suffered loss by breach of the conditions. If under such circumstances the assignee of the bond would be entitled to recover the full amount mentioned in the bond, what was to become of it? It could not be paid to the creditors, who had no longer any interest and had suffered no loss. The plaintiff could not retain it himself, unless he could show that he had been damnified. The heir could not be entitled in justice or common sense to be paid money recovered as compensation for a damage he had not suffered. It appears to me that in an action brought on the breach of a bond of this description the plaintiff

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cannot recover more damage than he has proved to have resulted to himself or those interested in the bond on which he relies. In this case the plaintiff has not, nor has any one else, suffered any damage whatever. The inconvenience which the plaintiff and the others may have suffered was not caused by the breach complained of, but by reason of their having failed to send in their claims and accept the dividends which were offered to them. I am of opinion that the appeal must be dismissed with costs, and I think it is a case that should never have been brought. It is not contended that the inventory when filed was other than true and complete, nor is it contended that the account was not correct. This being so, the delay in exhibiting the inventory in the District Judge's office, though it would be reprehensible if it could have been avoided, would not, I think, by itself entitle the appellant to succeed in a case like the present to recover the penalty of the administration-bond.

TYRRELL, J.—I concur.

*Appeal dismissed.*

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*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Mahmood.*

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*July* 16

THE DELHI AND LONDON BANK (PLAINTIFF) *v.* THE UNCOVENANTED SERVICE BANK, BAREILLY (DEFENDANT).*

*Execution of decree—Sale in execution—Rateable distribution among decree-holders—Civil Procedure Code, s. 295—"Decrees for money"—"Same judgment debtor"—Decree for enforcement of lien and against judgment-debtor personally—Decree-holder entitled to proceed against property or person as he may think fit.*

*U* held a money-decree against *B*, *P*, and *R*, in execution whereof he caused to be attached and sold certain property belonging to *B*. *D* held a decree against *B*, *P*, *R*, and *S*, which so far as *P*, *R*, and *S* were concerned, was a decree for enforcement of hypothecation by sale of the judgment-debtor's property, but which did not direct the sale of specific property belonging to *B*. An application by *D*, under s. 295 of the Civil Procedure Code, for an order enabling him to share rateably in the proceeds of *U's* execution was rejected.

*Held* that there being no question of fraud in the case, *D* was entitled to enforce his decree in the first instance against the property of *B*; that his decree against *B* did not lose the character of a decree for money under s. 295 of the Code because it directed a sale of the property of the other judgment-debtors; and that

* Second Appeal No. 617 of 1886, from a decree of J. Sladen, Esq., District Judge of Bareilly, dated the 31st March, 1886, reversing a decree of Maulvi Muhammad Abdul Qayum, Subordinate Judge of Bareilly, dated the 27th November, 1885.