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of the law, the regularity of the procedure of former Courts is a matter beyond the cognizance of a subsequent Court of execution. As to the chief objection taken by Mr. *Madho Prasad*, namely, that nearly four years had elapsed between the date of the first and the second applications for execution, I am of opinion that the Judge assigns good reasons for believing that the second application was not time-barred, and, this being so, I have merely expressed my opinion that the lower appellate Court has come to a right conclusion in affirming the decree of the Court of first instance. The appeal is dismissed. Respondent not appearing, no order as to costs.

Appeal dismissed.

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January 31.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Straight.

BHAGWANI AND ANOTHER (PETITIONERS) *v.* MANNI LAL AND ANOTHER (OPPOSITE PARTIES.)*

Act VII of 1889 (*Succession Certificate Act*), ss. 9 *and* 19—*Order granting certificate conditioned on the filing of security—Appeal.*

Where on an application for a certificate of succession under the Succession Certificate Act (Act VII of 1889) an order was made granting the certificate conditionally on the applicants' furnishing security.

Held that this was not an order "granting, refusing or revoking a certificate" within the meaning of s. 19 of the Act, and that therefore no appeal would lie therefrom.

THE question decided in this appeal originally came in first appeal before Mahmood, J., † and was by him decided on grounds similar to those on which the judgment of the Court in the present appeal is based. The facts of the case sufficiently appear from the judgment of Mahmood, J., which is as follows :—

MAHMOOD, J.—Upon this appeal being called on for hearing, Pandit *Sundar Lal*, holding Mr. *Ram Prasad's* brief for the respondent, has taken a preliminary objection, to the effect that the appeal is premature, as no such order as that contemplated by s. 19 of the Succession Certificate Act (VII of 1889) has yet been made in

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* Appeal No. 47 of 1890, under s. 10 of the Letters Patent.

† First Appeal No. 46 of 1890 from an order of H. T. D. Pennington, Esq., District Judge of Ghazipur, dated the 21st March 1890.

the case. In support of this objection the learned pleader relies on the principle of a Division Bench ruling of this Court in the case of *Ali Ahmad Khan*, appellant (1), which, however, related to ss. 22 and 28 of Act XL of 1858. In that case the principle was laid down that no appeal lay from interlocutory orders under that enactment. Mr. *Amir-ud-din* in resisting this contention on the preliminary point has invited my attention to the provisions of cl. (3), of s. 7. cl. (*f*) of s. 6, and ss. 10, 11 and 12 of the Act (VII of 1889), and with reference to these provisions he has argued that the learned District Judge's order of the 21st March 1890, from which this appeal has been preferred, is erroneous in law.

I do not, however, think that it is necessary for me at this stage to adjudicate upon the question whether the opinions expressed by the District Judge and the action which he has taken are in accordance with law. What I have to consider is whether the order of the learned District Judge dated the 21st March 1890, from which this appeal has been preferred, was a final adjudication, that is, such an order as s. 19 of the Succession Certificate Act (VII of 1889) contemplates. That section is the solitary authority under which any appeal from orders under the enactment can lie. The right of appeal is a creation of the statute, and if the order complained of in this appeal does not fall under the section, the appeal is premature and unsustainable at this stage.

Now it seems to me that the order appealed from was only an interlocutory order, and not the final order in the case. The learned District Judge expressed his intention to give the certificate to the appellants on their furnishing security to the amount of Rs. 20,000, and he gave them a month for compliance. He disallowed their plea that security for Rs. 3,000 was sufficient under the circumstances of the case, but whether such rejection of the plea was right or wrong, the order of the 21st March 1890, from which this appeal has been preferred is not an order "granting, refusing or revoking a certificate" within the meaning of s. 19 of the Succession Certificate Act (VII of 1889) which is the only authority for the right of

(1) Weekly Notes, 1884, p. 318.

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appeal. The final order remains yet to be made by the District Judge.

The preliminary objection prevails, and I hold that this appeal has been prematurely preferred and does not lie. I dismiss it with costs.

Against this judgment the present appeal under s. 10 of the Letters Patent was preferred by the petitioners.

Mr. *Amir-ud-din*, for the appellants.

Munshi *Ram Prasad*, for the respondents.

EDGE, C. J., AND STRAIGHT, J.—We entirely concur with the order passed by our brother Mahmood, and with his reasons for it. The appellants applied for a certificate under Act VII of 1889. The Judge, acting under s. 9 of that Act, required security as a condition precedent to his granting the certificate. He was proposing to proceed under s. 7, cl. (3). S. 19, provides for appeals. There was no order granting or refusing a certificate. Our brother Mahmood was right in holding that no appeal lay. We dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

1891 *February* 4.

BHAWANI BAKHSH AND ANOTHER (PLAINTIFFS) *v.* RAM DAI AND OTHERS (DEFENDANTS.)*

Hindu law—Joint Hindu family—Mortgage executed by father on the whole joint family property in respect of his own debts—Liability of sons—Burden of proof.

The father of a joint and undivided Hindu family executed a mortgage over the whole immovable property of the joint family. The mortgagees having obtained a decree on their mortgage and having put an attachment on the joint family property, the minor sons of the mortgagor sued for a declaration that their interest in the attached property was not liable under the mortgagees' decree, inasmuch as the debts in respect of which the mortgage had been executed had been contracted for immoral purposes and were not such as they, by the Hindu law, were under a pious obligation to discharge. *Held* that the burden of proving that the debts in question were contracted for the purposes alleged lay on the plaintiffs.

* First Appeal, No. 144 of 1888, from a decree of Babu Nilmadhub Roy, Subordinate Judge of Gorakhpur, dated the 21st June 1888.