

liability and the harassment of debtors; but it appears to us to be contemplated by the Act that a certificate may be granted for the collection of any one debt, or of more debts than one, without obtaining a certificate for the collection of all the debts due to the deceased. -

It appears to us that the applicant must pay the duty for a certificate entitling him to collect the whole of the dower debt which at the date of the application was due and payable. In calculating what the amount of that debt was, the son's share by inheritance, which has been discharged, and the husband's share which he holds in his own hands in satisfaction of his own share in the inheritance, will be deducted, and the duty will be payable on the balance. To that extent we allow this appeal, but without costs.

*Order modified.*

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

NATHU WILSON (PETITIONER) v. C. H. McAFEE AND ANOTHER  
(OPPOSITE PARTIES).<sup>\*</sup>

*Act No. II of 1882 (Indian Trusts Act), sections 55, 60, 61, 74—Order dismissing application for removal of a trustee—Civil Procedure Code, section 2—Decree—Appeal.*

No appeal will lie from an order dismissing an application for the removal of a trustee, such order not being a "decree" within the meaning of section 2 of the Code of Civil Procedure and not being otherwise appealable.

IN this case one Nathu Wilson, claiming as sole legatee under the will of his mother, applied to the District Judge of Saharanpur for the removal of the trustees appointed for the carrying out of the provisions of his mother's will. The applicant alleged that one of the trustees, by name McAfee, who was an executor under and had proved the will, had, after mismanaging the property for a time, informally renounced his executorship without rendering accounts. Upon this the Court had, on the motion of the applicant, appointed, under section 74 of the Indian Trusts Act, a pleader of Dehra Dún of the name of Morton to carry out the provisions of the will. The applicant went on to allege that the trustee so

\* First Appeal No. 89 of 1896, from an order of J. W. Muir, Esq., District Judge of Saharanpur, dated the 4th June 1896.

1896

MUHAMMAD  
ALI KHAN  
v.  
PUTTAN  
BIBI.

1896

December 3.

1896

NATHU WIL-  
SON  
v.  
C. H.  
MCARRER.

appointed had been guilty of various acts inconsistent with the proper discharge of his duties as trustee, by reason of which the applicant had suffered injury, and he prayed that "the Court may take charge of the property mentioned in the will under section 60 of Act No. II of 1882 and protect it from injury and administer it through some able and reliable person," and that an injunction might issue to the trustee in possession restraining him from interference with the property in question.

On this application the District Judge, after considering the allegations made against the acting trustee, found that no acts amounting to a breach of trust had been proved against him, and that no reason existed for removing him from his office, and accordingly dismissed the application.

The applicant appealed to the High Court.

Mr. *D. N. Banerji* and Babu *Jogindro Nath Charudhri*, for the applicant.

Mr. *A. E. Ryves*, for the respondent Morton.

EDGE, C.J., and BURKITT, J.—This is an appeal from an order under the Indian Trusts Act, 1882 (Act No. II of 1882), refusing to remove a trustee. Mr. *Ryves* has objected that no appeal lay. Mr. *Banerji* contends that the order was a decree, as that word is defined in section 2 of the Code of Civil Procedure. So far as we are aware this point has never been decided. The case of *Mohima Chunder Biswas v. Tarini Sunker Ghose* (1) is not of much assistance, as in that case Act No. VIII of 1890, which was the Act in question, did provide for appeals in certain cases. We think it would be stretching the definition of "decree" in section 2 of the Code of Civil Procedure to hold that it included a refusal to dismiss a trustee. We are of opinion that the appeal did not lie, and we dismiss it with costs.

*Appeal dismissed.*

(1) I. L. R., 19 Cal., 487.