

arising out of, a process enforced on account of an arrear of revenue. The sale which it is claimed to set aside was a sale for arrears of revenue, and the claim was one within section 181 of Act No. XIX of 1873. The claim in this case consequently falls within either cl. (i) or cl. (j) of section 241 of Act No. XIX of 1873. There is nothing in either of those clauses to suggest that the exclusion of jurisdiction is limited to claims made by the person who is actually in default in payment of his land revenue. It appears to have been the intention of the Legislature to reserve to the jurisdiction of Courts of Revenue all such claims. We find on referring to Act No. XII of 1881, in the somewhat analogous case of an illegal distress for rent, that the suit of the person injured, although the distrainer may have acted fraudulently and without title, is by the operation of sections 87 and 93 of that Act reserved exclusively for the jurisdiction of Courts of Revenue.

For these reasons we are of opinion that the decree of the first Court was right. We set aside the order of the lower appellate Court remanding the suit, and we restore the decree of the first Court. The suit will stand dismissed with costs in all Courts.

Appeal decreed.

Before Sir Jan Edge, Kt., Chief Justice and Mr. Justice Burkill.

MUHAMMAD ALI KHAN (PETITIONER) v. PUTTAN IMBI AND OTHERS

(OPPOSITE PARTIES).*

Act No. VII of 1889 (Succession Certificate Act), section 4 - Certificate not to be given for collection of part only of a debt—Debt in part satisfied.

A certificate for collection of debts under Act No. VII of 1889 may be given for the collection of any one or more separate debts of the deceased; but not for the collection of part only of a debt. Where, however, a portion of a debt in respect of which a certificate is sought has been discharged it is not necessary for the applicant to pay duty on more than the unsatisfied portion of the debt.

ONE Muhammad Ali Khan applied for a certificate under Act No. VII of 1889 for the collection of his share, amounting to Rs. 1,50,000, of the dower debt of Rs. 11,00,000 of his deceased daughter. The debt was to be collected from Aijaz Wali Khan, the

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* First Appeal No. 76 of 1896, from an order of E. J. Kitts, Esq., District Judge of Bareilly, dated the 12th June 1896.

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husband of the deceased lady. The application was resisted on behalf of the minor children of the lady in respect of whose dower the claim was made on the ground that a certificate for collection of part only of the debt could not be given, and that the applicant ought to apply for a certificate to collect the whole of the dower debt, giving security for the due application of the shares of the other persons entitled. The lower Court (District Judge of Barilly) dismissed the application, holding that the Court could not grant a certificate for partial collection of a debt. From this order the applicant appealed to the High Court.

Mr. Conlan and Pandit Moti Lal, for the appellant.

Mr. D. N. Banerji and Sundar Lal, for the respondents.

EDGE, C.J., and BURKITT J.—A Muhammadan lady, who was entitled to something more than eleven lakhs of rupees as her dower, died. Her husband appears to have discharged that portion of the dower debt which was inherited by his son by the transfer of some property. The husband also inherited a portion of the dower debt. The father of the deceased lady has brought a suit against the husband of the deceased lady to recover his share, *i.e.*, the father's share, which he took by inheritance to his daughter in the dower debt. He had applied for a certificate entitling him to collect debts to the amount of Rs. 1,50,000. It was necessary under section 4 of Act No. VII of 1889 that he should have a certificate. The Judge declined to grant such certificate unless the applicant paid the 2 per cent. duty on the whole debt, *i.e.*, the debt of eleven lakhs odd, which was due to the Muhammadan lady. There has been a uniform series of decisions in this Court according to which a certificate cannot be granted to collect a part only of a debt. There is no decision of this Court, or, so far as we know, of any other Court, which says that an applicant for a certificate, either under the present Act or under the former Acts, must apply for a certificate to collect all the debts due to the deceased. We think it would be against public policy that a certificate to collect part only of a debt should be granted, as it would tend to multiplication possibly of suits in respect of one

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).⁵

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

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⁵ First Appeal No. 89 of 1896, from an order of J. W. Muir, Esq., District Judge of Saharanpur, dated the 4th June 1896.