

that of the Munsiff but I would under the circumstances allow no costs of this appeal.

NORRIS, J.—I agree with Macpherson, J., in allowing this appeal. I have pointed out to my learned colleague, Mr. Justice Mitter, that in the case of *Jhoti Sahu v. Bhubun Gir* (1) we overlooked the provisions of Art. 175 of the Limitation Act, and I am authorized by him to say he concurs with me in thinking that our decision in that case was erroneous.

J. V. W.

Appeal allowed.

Before Sir W. Conner Pelheram, Knight, Chief Justice, and Mr. Justice Cunningham.

MULLA ADJIM, *In re* (PETITIONER).^{*}

Burmah Courts Act (XVII of 1875), s. 95—Certificate of administration—Act XL of 1858, s. 28—Appeal under Act XL of 1858.

The appeal given by s. 28 of Act XL of 1858 is subject to the ordinary law of appeal laid down in the Burmah Courts Act.

No appeal, therefore, will lie from an order refusing an application for the issue of a certificate of administration under Act XL of 1858, it being impossible to place any specific money valuation on such an application.

THIS was an application made by one Mulla Adjim, in the Court of the Officiating Recorder of Rangoon, for the issue of a certificate of administration, under Act XL of 1858, to the estate of certain minors. The application, for reasons immaterial to the report, was dismissed.

The petitioner appealed to the High Court against this order of dismissal, the appeal being admitted by the Registrar subject to the question as to whether an appeal would lie at all being raised at the hearing.

Mr. *Stokoe* for the appellant.—I contend that an appeal lies from the decision under s. 28 of Act XL of 1858, and that neither the Burmah Courts Act nor the Civil Procedure Code interfere with the power of appeal given under Act XL. The case of *Golam Rahman v. Futima Bibi* (2) is a decision under the Burmah Courts Act, and is therefore inapplicable.

* Appeal from Order No. 440 of 1886, against the order of R. S. T. MacEwen, Esq., Officiating Recorder of Rangoon, dated the 25th of September 1886.

(1) I. L. R., 11 Calc., 143.

(2) I. L. R., 13 Calc., 232.

1886

ABDUL
RAHAMAN
SODAGUR
v.
DULLARAM
MARWARI.

1887

March 14.

1887

In re
MULLA
ADJIM.

No one appeared for the respondent.

The judgment of the Court (PETHERAM, C.J., and CUNNINGHAM, J.) was delivered by

CUNNINGHAM, J.—The first point which arises in this appeal is the question whether we have any right to hear it. We think we have not. The powers of appeal from the Court of the Recorder of Rangoon are of a special character, and are defined in s. 49 of Act XVII of 1875, which lays down certain money limits within which, and within which alone, an appeal lies to the High Court here. Then s. 28 of Act XL of 1858 provides that all orders passed under the Act shall be open to appeal under the rules in force for appeals in miscellaneous cases from the orders of such Courts. We might have felt some doubt as to the effect of these two provisions but for the provisions of s. 95 of the Burmah Courts Act, which expressly refers to Act XL of 1858, and in effect embodies it as one of the enactments of the Act itself.

We think, therefore, that it is perfectly clear that the appeal given in Act XL of 1858 is subject to the ordinary law of appeal as laid down in the Burmah Courts Act; and consequently, as in this case there is no specific money value which enables us to say that an appeal does lie to this Court, we must, following former rulings of this Court on the point, hold that no appeal lies. The present appeal must therefore be dismissed.

T. A. P.

Appeal dismissed.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Cunningham.

RAM GULPO BHATTACHARJI (DECREE-HOLDER) v. RAM CHUNDER SHOME AND OTHERS (JUDGMENT-DEBTORS).*

1887

March 11.

Decree payable by Instalments—Instalment, Failure of whole sum decreed to all due—Right of decree-holder to waive his right to execute the whole decree—Waiver—Limitation Act, XV of 1877, Sec. II, Art. 75.

A proviso, in a decree made payable by instalments, by which the whole amount of the decree is to become due upon default in payment of any instalment, is a proviso enuring for the benefit of the decree-holder

* Appeal from Order No. 406 of 1886, against the order of S. H. C. Tayler, Esq., District Judge of Burdwan, dated the 14th of July, 1886, reversing the order of Baboo Nundo Lal Dey, Munsiff of Bood Bood, dated the 7th of April, 1886.