

as it awarded costs against him as waste paper. He, however, was clearly entitled to get rid of the attachment against his property, and I accordingly think that the order of the lower appellate Court was correct. I suggested in the course of the argument that the plaintiff should consent to his suit being dismissed without costs and that the defendant should undertake to take no steps against his property. The case was then adjourned by consent. The plaintiff was willing to adopt my suggestion, but unfortunately so far as the defendant was concerned it came to nothing. I accordingly dismiss the appeal with costs.

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Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Richards.

GULRAJI KUNWARI (APPLICANT) v. JUGDEO PRASAD AND ANOTHER
(OPPOSITE PARTIES).*

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*Act No. VII of 1889 (Succession Certificate Act), sections 3(2), 8 and 9—
Grant of certificate—Order to file security—Practice.*

Where a Judge, acting under section 9 of the Succession Certificate Act requires security to be furnished by a person to whom a certificate of succession is granted, the amount of the security should be specified in the order and a time should be prescribed within which the security must be furnished.

Semble that section 8 of the Act cannot be applied to the case of a fixed deposit in a bank, such not being a "security" within the meaning of section 3(2).

THE facts of this case sufficiently appear from the judgment of the Court.

Hon'ble Pandit *Sundar Lal*, Hon'ble Pandit *Madan Mohan Malaviya* and Babu *Iswar Saran* for the appellant.

Mr. *W. K. Porter* and Munshi *Gobind Prasad*, for the respondents.

BANERJI and RICHARDS, JJ.—This appeal arises out of an application made by the appellant, Musammam, Gulraji Kunwari, for a certificate under the Succession Certificate Act, in respect of debts due to her deceased husband. The debts comprised (i) a sum of Rs. 10,580 now in fixed deposit in the Gorakhpur Bank, (ii) Rs. 482-10-9 due upon decrees, and (iii) Rs. 1,560-13-0 due to the estate as debts not secured by decrees. As regards

* First Appeal No. 136 of 1905, from an order of Mr. W. Tudball, District Judge of Gorakhpur, dated the 25th of August, 1905.

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the first item the learned Judge has made an order for the granting of a certificate authorizing the appellant to collect and realize only the interest on the amount of the deposit. The learned vakil for the appellant withdraws that part of the appeal which relates to this order of the learned Judge. Had he pressed his appeal, we would have found it difficult to sustain the order, inasmuch as the amount in deposit in the Bank is not "security" within the meaning of the Act, and consequently section 8 of the Act is inapplicable to it. However, as the appeal has been abandoned in regard to that part of the Judge's order, we are not called upon to interfere with it. As regards the remainder of the debts, there can be no doubt that the applicant has only a life interest therein. The Court below was therefore justified in requiring as a condition precedent to the granting of the certificate that the applicant should furnish security. We think that the amount of the security should have been specified in the order, and a time ought to have been prescribed within which the security was to be furnished. We accordingly vary the order of the Court below by directing that the applicant be granted a certificate on her furnishing security to the extent of Rs. 2,000 within six months from this date. The security may take the shape of a bond for the amount aforesaid with one or more surety or sureties, or such other sufficient security as to the learned Judge may appear to be proper. We are informed that the applicant has inherited immovable property which yields a good income. The learned Judge may accept the security of the interest of the applicant in such property if he thinks fit and deems the same to be sufficient. Having regard to the circumstances of the case we direct the parties to bear their own costs of this appeal.