

remanded to that Court with instructions to that Court to readmit them on the file of pending appeals and dispose them of according to law. We make no order as to the costs of this appeal.

Appeal decreed and cause remanded.

1907

 IMTIAZI
 BEGAM
 v.
 DRUMAN
 BEGAM.

REVISIONAL CIVIL.

1907

January 9.

Before Mr. Justice Sir George Knox and Mr. Justice Richards.

RAM NARAIN DUBE (PLAINTIFF) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT).*

Regulation No. V of 1799, section 7—Escheat—Property taken charge of by District Judge—Period from which title vests in the Secretary of State.

Where property of a person dying intestate is taken charge of by a District Judge acting under section 7 of Regulation No. V of 1799, such property does not vest in the Secretary of State until the period prescribed by the Regulation has expired.

THE facts out of which this application arose are as follows. The District Judge of Benares purporting to act under the provisions of section 7 of Regulation No. V of 1799 took temporary custody of the property of one Musammat Janki, who had died within his jurisdiction, as was alleged, intestate. There was no immediate claimant to the property. Whilst the property of Musammat Janki was in the custody of the District Judge, one Ram Narain Dube instituted in the Court of Small Causes a suit against the Secretary of State seeking to recover certain arrears of house rent which he alleged to have been due to him by Musammat Janki. The Judge of the Court of Small Causes dismissed the suit on the finding that according to the provisions of Regulation V of 1799 the Secretary of State had not at the time the suit was brought become the owner of the property which had been of Musammat Janki in her life-time. The plaintiff then came to the High Court under section 25 of the Provincial Small Cause Courts Act.

Munshi Gokul Prasad, for the applicant.

Mr. A. E. Ryves for the opposite party.

KNOX and RICHARDS, JJ.—Ram Narain Dube, the petitioner in this case, brought a suit against the Secretary of State for India

* Civil Revision No. 27 of 1906.

1907

RAM NARAIN
DUBE
v.
THE
SECRETARY
OF STATE
FOR INDIA IN
COUNCIL.

in Council in the Court of the Judge of Small Causes at Benares. It appears that one Musammat Janki was the tenant of Ram Narain. Janki died intestate, so it is alleged, leaving personal property. No claimant to the property having come forward, the District Judge of Benares, under the authority vested in him by section 7 of Regulation V of 1799, took temporary care of the property. Janki was the tenant of Ram Narain Dube, and at the time she died was, according to Ram Narain Dube, in debt to him for certain arrears of house rent. It is for the recovery of this house rent that a suit was instituted in the Court of Small Causes. The suit was defended on the ground that the Secretary of State was not the owner of the property at the time the suit was brought and was not in possession of the property. The learned Judge held that until the period prescribed by the Regulation expired, the property did not vest in the Secretary of State. He could not be held liable for any debt. He accordingly dismissed the suit. In revision it is here contended that as under the Hindu Law upon the failure of heirs the property of a deceased person immediately escheats to the Crown, the Secretary of State must be taken to be in possession of the property. In our opinion the learned Judge is right, the liability of the Secretary of State does not arise until he has taken possession of the property. This date has not been reached. We do not understand why Ram Narain Dube did not as creditor apply to the District Judge for letters of administration. Had he done so, he could have paid out of the assets the debt due to himself and he would not have been obliged to wait for the expiry of the period prescribed for giving notice to the Secretary of State of his intention to sue. This application is dismissed with costs.