

1911

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their capacity to make a will. The Act was intended to attain uniformity and certainty respecting the age of majority, and we think it governs a case such as the present.

For these reasons the view taken by the learned Subordinate Judge is in our judgement erroneous. We accordingly allow the appeal, set aside the decree of the court below, and decree the plaintiff's claim with costs in both courts.

Appeal decreed.

1911
March, 21.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
NARAIN DAS AND OTHERS (PLAINTIFFS) v. BALGOBIND AND OTHERS
(DEFENDANTS).*

Partition—Appeal—Appeal against preliminary decree—Final decree passed since the appeal—No appeal against final decree.

Held that an appeal against the preliminary decree in a suit for partition cannot be heard if after the filing of such appeal the final decree has been passed and no appeal is preferred against that decree. *Kuriya Mat v. Bishambhar Das*, (1), referred to.

IN this case a preliminary decree for partition had been passed, and the present appeal was against that decree. After the appeal was filed, the final decree in the suit was passed, and by the time this appeal came on for hearing no appeal had been filed against the final decree and the time for appealing had elapsed. A preliminary objection was therefore raised by the respondents that, in the absence of any appeal against the final decree in the suit, this appeal could not be heard.

Dr. *Tej Bahadur Sapru*, for the appellants.

Dr. *Satish Chandra Banerji*, *Munshi Datti Lal* and *Munshi Radha Mohan*, for the respondents.

STANLEY, C. J., and BANERJI, J.—A preliminary objection has been raised to the hearing of this appeal, to the effect that it cannot be entertained, in view of the decision in *Kuriya Mat v. Bishambhar Das* (1). The suit was one for partition. A preliminary decree was passed on the 17th of September, 1909, and it is against this preliminary decree that the appeal has been preferred. A final decree was passed on the 27th of January,

* First Appeal No. 3 of 1910 from a decree of *Shri Chandra Basu*, Subordinate Judge of Allahabad, dated the 17th of September, 1909.

1910, and no appeal has been preferred against this decree, and the time for appealing has elapsed. According to the ruling above referred to, after the passing of a final decree in a suit for partition no appeal will lie, which does not challenge the final as well as the preliminary decree. The only difference in the case before us and the case of *Kuriya Mal v. Bishambhar Das* is that in that case, when the appeal was preferred, the final decree for partition had been passed. In the present case the final decree was not passed at the date of the filing of the appeal. It appears to us, however, that the principle of the decision in *Kuriya Mal v. Bishambhar Das* is applicable to this case, and that the appeal cannot be entertained. We accordingly dismiss it, but under the circumstances without costs. Objections have been filed, but as the appeal has failed they must also fail. We dismiss them without costs.

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Appeal dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.
 COLONEL LECKY (JUDGEMENT-DEBTOR) v. BANK OF UPPER INDIA,
 LIMITED (DEGREE-HOLDER).*

 1911
 March, 22.

Civil Procedure Code (1908), section 60—"Public officer"—Execution of decrees—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 182, clause (5)—Attachment—Pay of officer of regular forces not attachable—Statute 44 and 45 Vict., Cap. LVIII, section 136—Statute 58 and 59 Vict., Cap. V, section 4.

An officer of His Majesty's regular forces serving in India is not a "public officer" within the meaning of section 60 of the Code of Civil Procedure, 1908. The pay of such an officer, therefore, is not liable to be attached in execution of a decree of a court in British India. *Calcutta Trades Association v. Byland* (1) and *Watson v. Lloyd* (2) referred to.

THE facts of this case were as follows:—

The Bank of Upper India, Limited, obtained a decree against Major Kuper, Captain (now Colonel) Lecky and Captain Vizard on the 24th December, 1900. The first application for execution was made on the 18th April, 1910, against Colonel Lecky. Certain payments, however, made from 17th January, 1902, to 18th February, 1910, by a judgement-debtor other than

* First Appeal No. 343 of 1910 from a decree of Soti Raghubansa Lal, Subordinate Judge of Meerut, dated the 6th of June, 1910.

(1) (1896) I. L. R., 24 Cal., 102. (2) (1901) I. L. R., 25 Mad., 402.