APPELLATE CIVIL.

1915
March 27.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.

PARMAN (PETITIONER) *v.* BOHRA NEK RAM (OPPOSITE PARTY).*

Act No. V of 1881 (*Probate and Administration Act*), *section* 50—*Civil Procedure Code* (1908), *sections* 114 *and* 151—*Letters of Administration—Cancellation of order—Procedure.*

A court which has once granted letters of administration cannot revoke them without notice to the person in whose favour they have been granted.

Where letters of administration have been granted *ex parte* and an application is made to revoke them it is open to the court concerned to proceed either under section 114 or section 151 of the Code of Civil Procedure or under section 50 of the Probate and Administration Act (1881).

THE facts of this case were as follows :—

The petitioner applied for letters of administration to the estate of one Sanwalia alleging that Sanwalia had died intestate leaving as his only property a house in a village. The court made an order on the 18th September, 1914, granting letters of administration to the petitioner. On the same day one Nek Ram, the zamindar, came into court with a petition of objection against the order granting administration to the petitioner Parman. The court then and there cancelled its original order and passed a second order, framing the issue—"Is Parman the uncle and heir of the deceased Sanwalia." The petitioner appealed to the High Court.

Mr. *Nehal Chand,* for the appellant.

Pandit *Shiam Krishna Dar,* for the respondent.

RICHARDS, C. J.—The facts connected with this appeal are as follows :—It is alleged that one Sanwalia died intestate. The property left by him is said to be only a house in a village. One Parman applied for letters of administration to the estate of the deceased and obtained an order on the 18th of September, 1914. The order was in the following terms :—

"Read application from the abovenamed petitioner, dated the 18th of August, 1914, requesting that letters of administration to the estate of Sanwalia, deceased, may be granted to him under Act V of 1881. Valued at Rs. 400. Order.—This case has been uncontested. I grant letters of administration to Parman applicant for the estate of his deceased nephew, Sanwalia ; provided

* First Appeal from order No. 164 of 1914 from an order of O. F. Jenkin, District Judge of Agra, dated the 18th September, 1914.

that if the valuation of the house made by the Collector exceeds the amount stated in the application the deficiency in fees shall be recovered."

1915

PARMAN
v.
BOHRA NEK RAM.

It appears that later on the same day one Nek Ram came into court, with the result that the learned judge passed the following order:—

"After passing the above *ex parte* order a petition has this day been filed. I cancel the above order and frame the following issue. "Is Parman the uncle and heir of the deceased Sanwalia."

Parman has come in appeal to this Court contending that the order granting him Letters of Administration should not have been cancelled by the learned Judge without giving him notice. Nek Ram's contention admittedly is, that Sanwalia died intestate and without heirs and that according to custom the house reverts to him as zamindar. It seems to me that Parman having obtained an order granting him letters of administration, that order ought not to have been cancelled without giving him notice. This in itself is sufficient to dispose of the present appeal. I think, however, that it is right to point out a few matters to the learned Judge. It does not appear upon what evidence, the order in favour of Parman was made. In my opinion a court ought never to grant letters of administration to the estate of a deceased person without having good *primâ facie* evidence that the applicant has such an interest in the estate of the deceased as would entitle him to a grant of letters of administration. A person who satisfies the court that he is the heir, or one of the heirs of the deceased, has such an interest. A creditor also has an interest. In an insolvent's estate the creditor's interest is even greater than that of the heirs. I think even assuming that Parman had satisfied the court that he had an interest as one of the heirs of the deceased, it ought to have ordered him to give security for the due administration of the estate of the deceased. I think, also, that it is a wise precaution for the court to have clear evidence as to who are the other persons interested in the estate and as a general rule to direct that such persons should get notice either that the application has been made or at least that the application for letters of administration has been allowed. The question whether or not the zamindar Nek Ram has such an "interest" as will entitle him to oppose the grant of letters of administration will probably arise. It seems to me that

1915

PARMAN
v.
BOHRA NEK
RAM.

Nek Ram has no "interest" in the estate of the deceased. His contention is that the moment Sanwalia died without heirs the house reverted to him. It is contended on behalf of Nek Ram that if letters of administration are once granted to Parman the result would be that under the provisions of section 14 and section 59 the zamindar will never afterwards be allowed to say that Sanwalia died without heirs. If this is really the result of the provisions of the sections I have mentioned, it certainly would seem only just to allow Nek Ram an opportunity of contesting that Parman is the heir of the deceased. I, however, do not think that we are called upon to decide this question in the present appeal. I would set aside the order of the learned District Judge cancelling the grant of letters of administration and send the case back to him directing him to send notice of the objection of Nek Ram to Parman and then to proceed to consider the matter according to law.

BANERJI, J.—I concur in what the learned Chief Justice has said and in the order proposed by him. It is only in regard to one matter that I wish to add a few words. In the arguments addressed to us in support of this appeal it seemed to me that in the background of the appellant's case there lay the contention that he was in the position of a person holding letters of administration which could not be revoked at all, except under the provisions of section 50 of the Probate and Administration Act, No. V of 1881. Now no doubt the court which has granted letters of administration has jurisdiction to take action under that section. But in the circumstances of the present case it is clear that other points would have to be considered before the case could be tied down to the provisions of that particular section. In the matter of an application for probate or letters of administration it is often impossible to apply strictly those rules of the Code of Civil Procedure which govern *ex parte* proceedings in cases where there is a defendant named at the very outset, on whom notice is required to be served. Nevertheless the court possesses, as is recognised by section 151 of the Code of Civil Procedure, inherent powers to make such orders as may be necessary for the ends of justice, or to prevent the abuse of the process of the court. When Nek Ram laid his petition before the court,

what he desired to contend was that he was entitled to be heard before any letters of administration were granted to Parman at all. He still desires to raise this point, in spite of the fact that an *ex parte* order, allowing Parman's application, had been passed, before he was able to lay his petition before the court. I only wish to say that it will be open to the learned District Judge when the matter comes back to him, to consider whether under the provisions of section 114, or under the inherent powers of the court recognised by section 151 of the Code of Civil Procedure, he can or ought to reconsider his *ex parte* order, in favour of Parman, apart altogether from the provisions of section 50 of the Probate and Administration Act itself.

RICHARDS, C. J.—I agree with what my learned colleague has said.

BY THE COURT.—The order is that we allow the appeal, set aside the order of the court below and remand the case to that court for trial according to law. Cost will be costs in the cause.

Appeal decreed, cause remanded.

Before Mr. Justice Chamier and Mr. Justice Piggott.

1915 *April 6.*

ALLAHABAD TRADING AND BANKING CORPORATION, LIMITED. (PETITIONER) v. GHULAM MUHAMMAD AND OTHERS (OPPOSITE PARTIES).*

Act No. III of 1907 *(Provincial Insolvency Act), section* 31—*"Secured creditor"—Insolvency—Agreement appointing creditor agent for sale of debtor's goods—Proceeds to be paid to creditor.*

The owners of a printing and publishing business who owed money to a bank entered into an agreement with the bank the substance of which was that all books then in stock and all books to be published thereafter were to be made over at once to the bank; that a commission at a certain rate was to be allowed to the bank on the sale of the books, and that the sale proceeds of the books were to be credited to the debtors' loan account every month after deducting the commission due to the bank. There were also other clauses, and finally one Ram Charan Shukul agreed to act on behalf of the bank as sole agent for the sale of the debtors' books.

Held that the bank was, on this agreement, entitled to rank as a secured creditor of the owners of the printing and publishing business in the insolvency of the latter.

THE facts of this case were as follows:—

One Ghulam Muhammad and his wife, Musammat Shahzadi, carried on the business of printers and publishers under the names

* First Appeal No. 49 of 1914, from an order of S. R. Daniels, District Judge of Allahabad, dated the 11th of March, 1914.