

## MISCELLANEOUS CIVIL.

Before Mr. Justice Piggott and Mr. Justice Kanhaiya Lal.

NASIB-ULLAH (PETITIONER) v. KUNWAR ANAND SINGH (OPPOSITE PARTY)\*.

*Kumaun Rules* (1894), rule 17—"Final decrees"—*Civil Procedure Code* (1908), section 2 (2)—*Promissory note, liability of maker of, not disclosing name of his principal.*

Held that the definition of "decrees" as given in section 2, clause (2), of the Code of Civil Procedure, 1908, cannot be applied strictly in interpreting the term "final decrees" as it occurs in the Kumaun Rules, which were framed in 1894.

Held also, that where a person executes a promissory note without either before or at the time of execution thereof disclosing the fact that he does so merely as an agent, the executant is personally liable on the note. *Sadasuk Janki Das v. Sir Kishan Pershad* (1) referred to.

THIS was a reference made by the Local Government under rule 17 of the Kumaun Rules (1894). The facts out of which the reference arose are fully stated in the order of the High Court.

Mr. Hameed-ullah and Babu Piari Lal Banerji, for the petitioner.

Pandit Shyam Krishan Dar, for the opposite party.

PIGGOTT and KANHAIYA LAL, JJ.:—This is a reference by the Local Government under section 17 of the Kumaun Rules. It appears that one Kunwar Anand Singh was adjudicated an insolvent on the 5th of February, 1917. In his schedule of creditors he specified a debt of Rs. 5,800 as due to one Nasib-ullah. When notice went to the latter, Nasib-ullah came before the insolvency court with a promissory note for Rs. 5,900, dated the 24th of February, 1913, and executed in his favour by Kunwar Anand Singh. There is nothing in the terms of the document itself, or in the description of the executant, to indicate that he was incurring this liability otherwise than in his personal capacity. On account of this promissory note, with interest, Nasib-ullah claimed a sum of Rs. 10,400.

At a later stage an objection was taken on behalf of the receiver, to the effect that the debt evidenced by the promissory note of the 24th of February, 1913, was not really due

\*Civil Miscellaneous No. 4 of 1920.

(1) (1918) I. L. R., 43 Cal., 668.

from Kunwar Anand Singh at all but from his brother, Raja Udai Raj Singh of Kashipur. In fact the case set up was that Anand Singh had borrowed this money on behalf of his brother and, in signing the promissory note and receiving the money, had merely acted as his brother's agent. The insolvency court went into the matter, came to a finding of fact in favour of the receiver's contention and ordered the name of Nasib-ullah to be struck off the list of creditors. An appeal lay against this order from the District Court to the High Court under the provisions of the Insolvency Act itself, and from the Deputy Commissioner of Naini Tal acting as District Judge to the Commissioner of Kumaun, as the High Court of that province, under the Kumaun Rules. An appeal was preferred accordingly by Nasib-ullah, and the High Court of Kumaun, after remitting issues and causing further inquiry to be made, affirmed the decision of the District Court and dismissed Nasib-ullah's appeal. The Local Government acting under rule 17 has now referred the case to this Court for our report and opinion on a point stated in the order of reference. This point is whether, assuming as found by the Kumaun court that Anand Singh was acting in this transaction as the agent of his brother, Raja Udai Raj Singh, he would not nevertheless be personally liable to Nasib-ullah on the promissory note of the 24th of February, 1913, if he did not disclose the name of his principal.

The matter coming before us to day and having been argued by counsel on both sides, we have to note in the first instance that an objection has been taken on behalf of Kunwar Anand Singh to the effect that the Local Government's reference is *ultra vires*, not being warranted by the provisions of rule 17 of the Kumaun Rules. The first point taken is that the order of the Commissioner of Kumaun dismissing the appeal of Nasib-ullah against the order of the District Court, by which his name was removed from the schedule of creditors, does not amount to a decree within the meaning of rule 17 aforesaid. Reference is made to the definition of the word "decree" contained in section 2, clause (2), of the Code of Civil Procedure (Act No. V of 1908), and we are asked to hold that proceedings in the insolvency

1920

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NASIB-ULLAH  
v.  
KUNWAR  
ANAND  
SINGH.

1920

NARIB-ULLAH

v.

KUNWAR  
ANAND  
SINGH,

court cannot be regarded as a "suit" within the meaning of that definition. The Kumaun Regulation in question was passed long before the present definition of the word "decree" in the Code of Civil Procedure, and apart from any controversy as to the meaning of the word "suit" in that definition, it does not seem logical to apply the definition at all to the word "decree" as used in rule 17 of the Kumaun Rules. It may be that, in view of the changes effected in the present Code of Civil Procedure and the use of the expression "decree" or "final order" in sections 109 and 110 of that Code, the Local Government would be well advised to make their meaning clear by a corresponding amendment of rule 17. Nevertheless, on any reasonable consideration of the rules as a whole, there seems no reason to doubt that the final decree of the Commissioner spoken of in rule 17 includes any order or decree by which he dismisses an appeal brought before him as the High Court of Kumaun from a decision of the Deputy Commissioner acting as a District Court. This is sufficient to dispose of this objection. It has also been pointed out to us that under the Provincial Insolvency Act, after a decision on a point of this sort by the District Court and an appeal to the High Court, no further appeal would lie anywhere. This, however, does not touch the provisions of the Kumaun Rules, the intention of which is to enable the Local Government, subject to the advice of this Court, to control the proceedings of the High Court of that province. We frequently have cases referred to us by the Local Government in which objection is taken on a point of law to a decision passed by the Commissioner of Kumaun in second appeal. The requirements of rule 17 are sufficiently complied with if the point referred to this Court is one which falls within any of the grounds specified in section 584 of the former Code of Civil Procedure, or section 100 of the Code of Civil Procedure (Act No. V of 1908.)

Coming to the question referred to us, it seems sufficient to say that this must be answered in the light of the principles laid down by their Lordships of the Privy Council in the recent case of *Sadasuk Janki Das v. Sir Kishan Pershad* (1).

(1) (1918) I. L. R., 45 Cal., 663.

We may refer particularly to the rule laid down by their Lordships on page 409 of that report.

In the course of argument before us our attention has been drawn to certain facts not apparent from the order of reference. It would seem that, before this order was made, and even before Nasib-ullah petitioned the Local Government for a reference to this Court, he had instituted a suit on his promissory note, impleading both Raja Udai Raj Singh and Kunwar Anand Singh. It is also apparent that the proceedings in insolvency against the latter have come to an end. He has satisfied all his creditors, with the exception of Nasib-ullah whose name had been removed from the list of creditors, and the District Court has accordingly granted him his discharge. As we have already pointed out he is now one of two defendants in a regular civil suit on the basis of this promissory note, in the course of which, presumably, all the questions of law and of fact in issue between the parties will require to be tried out. It does not appear that we are called upon to advise the Local Government as to what action it ought to take in view of these circumstances. Rule 17 of the Kumaun Rules only says that, after receiving the report or expression of opinion from this Court, the Local Government may thereafter pass such orders as may appear proper. It does not seem to be our duty even to suggest what orders would be proper under the circumstances now existing. On the point referred to us by the Local Government we reply that Kunwar Anand Singh would be liable on the promissory note in suit if he did not disclose, at or before the execution of the promissory note, the name of his principal to Nasib-ullah. As regards the costs of this reference we think that these costs ought to abide the result of the litigation between the parties.

1920

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NASIB-ULLA  
v.  
KUNWAR  
ANAND  
SINGH.

*Reference answered.*