time the evidence no doubt is meagre, but we are convinced that no case has been made out for interference with the decree of the court below.

We accordingly dismiss this appeal with costs.

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*Before Mr. Justice Sulaiman, Acting Chief Justice, and Mr. Justice Kendall.*

KRISHNA DAS AND OTHERS (DECREE-HOLDERS) *v.* RAM GOPAL SINGH AND OTHERS (OPPOSITE PARTIES.)* 1928 *April*, 18.

*Civil Procedure Code, section* 68; *schedule III, paragraph* 1—*Execution of decree—Execution transferred to Collector —High Court not competent to interfere with Collector's orders, even though erroneous.*

When a decree has been transferred to a Collector for execution under the provisions of section 68 of the Code of Civil Procedure, it is not competent to the High Court to interfere with the orders passed by him even though they may be obviously not warranted by the provisions of schedule III, paragraph 1, of the Code. *Shahzad Singh* v. *Hanuman Rai* (1), and *Girdhari Lal* v. *Jhaman Lal* (2), followed. *Mahadaji Karandikar* v. *Hari D. Chikne* (3), referred to.

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

Pandit *Uma Shankar Bajpai*, for the appellants.

Dr. *N. C. Vaish*, for the respondents.

SULAIMAN, A. C. J. and KENDALL, J. :—This is an appeal by the decree-holders arising out of execution proceedings. A final decree for sale was passed on the 30th of April, 1919, in favour of the appellants against the respondents. The property ordered to be sold was found to be ancestral property, with the consequence

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*First Appeal No. 40 of 1927, from a decree of Hanuman Prasad Verma, Subordinate Judge of Benares, dated the 13th of November, 1926.

(1) (1924) I.L.R., 46 All., 562. (2) (1926) 25 A. L. J., 197.
(3) (1883) I.L.R., 7 Bom., 392.

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that the civil court, under section 68 of the Code of Civil Procedure, transferred the execution of the decree to the Collector. The decree was for about Rs. 11,000, and the Collector accepted payment of Rs. 6,000 and granted a lease of the property for a period of 12 years, directing that the lease money at the rate of Rs. 500 a year should be paid towards the discharge of the decretal amount. He also reduced the rate of interest from 6 per cent. to 5 per cent. The decree-holders sought to get this order revised in appeal by the Commissioner, but failed. An application to the Board of Revenue also was infructuous.

The decree-holders then applied to the execution court praying that all proceedings taken by the Collector may be set aside and the decree-holders may be permitted to take out execution afresh. The learned Subordinate Judge has held that the Collector's procedure was not in accordance with schedule III, paragraph 1, of the Code of Civil Procedure and has allowed the application, so far as the Collector's order related to the reduction of interest, but has declined to do anything further. The decree-holders have appealed, but the respondents have submitted to the order.

There can be no doubt that the order of the Collector was not justified by the provisions of schedule III. His jurisdiction was limited to the powers conferred upon him by that schedule. Paragraph 1 only could apply to a mortgage decree for sale. Paragraph 2 and the provisions of some of the subsequent paragraphs were inapplicable because the decree was not a simple money decree. Under paragraph 1 (*b*) he could raise the amount of the decree by letting any property for a term on payment of a premium, but that implied the raising of the whole of the decretal amount within a reasonable time. It did not permit of payment by instalments, which even

a civil court had no power to direct. It is also clear that the Collector had no jurisdiction whatsoever to reduce the amount of the decree by reducing the rate of interest.

The learned advocate for the respondents has to concede that the order of the Collector was not in compliance with the provisions of paragraph 1. Had the attention of the Collector been drawn to rule 978 of chapter 40 of the Manual of the Revenue Department, he would undoubtedly have not granted a lease for such a long period.

But the first question before us is whether we have any jurisdiction to interfere in the matter. The learned advocate for the appellants contends that the execution court, which had transferred the execution, had power to recall the record and rectify any mistake that might have been committed. In support of his contention he relies on the case of *Mahadaji Karandikar* v. *Hari D. Chikne* (1) and a remark of MUKERJI, J., in the case of *Shahzad Singh* v. *Hanuman Rai* (2), where it was said that the court could recall the papers.

No doubt it is possible to conceive of contingencies when the civil court may order that the papers which had been transmitted to the Collector should be recalled. But what the appellants want is that the papers should be recalled and the proceedings set aside. This would amount to an interference with the procedure adopted by the Collector.

We are of opinion that the civil court has no jurisdiction to interfere with the orders of the Collector in such a case. In special cases an appeal to the Commissioner is provided for under the rules made by the Local Government, but once the execution of the decree has been transferred, the civil court cannot interfere

(1) (1883) I.L.R., 7 Bom., 332. (2) (1924) I.L.R., 46 All., 562.

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with the orders passed by the Collector or rectify mistakes committed by him. Indeed, rule 12 of chapter IV of the General Rules for the subordinate courts clearly provides that a civil court has no power to interfere with the procedure of a Collector in the execution of a decree which has been transferred to him under section 68.

We cannot, therefore, under the guise of calling for the record from the Collectorate, nullify the proceedings taken there. Nor does it appear that the calling for of the record would put an end to all that has been done previously.

Our view finds support from the decisions of this Court in the cases of *Shahzad Singh* v. *Hanuman Rai* (1) and *Girdhari Lal* v. *Jhaman Lal* (2).

In this view of the matter we must dismiss the appeal, which is dismissed accordingly.

*Appeal dismissed.*

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*Before Mr. Justice Mukerji and Mr. Justice Weir.*

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*April*, 19.

NABI-UN-NISSA BIBI (DEFENDANT) *v.* LIAQAT ALI AND ANOTHER (PLAINTIFFS) AND KHAIR-UN-NISSA BIBI AND OTHERS (DEFENDANTS.)*

*Muhammadan law*—Waqf—Waqf *not invalid for the sole reason that the first* mutwalli *is a minor.*

A *waqf*, otherwise valid, will not fail for the sole reason that the *mutwalli* appointed by the *waqif* is a minor. *Piran* v. *Abdool Karim* (3), *Muhammad Nasim* v. *Muhammad Ahmad* (4), *Khatun Begam* v. *Ejaz Ahmad* (5), and *Raza* v. *Ali* (6), referred to..

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*Second Appeal No. 1140 of 1925, from a decree of A. G. P. Pullan, District Judge of Moradabad, dated the 30th of April, 1925, reversing a decree of Girish Prasad, Third Subordinate Judge of Moradabad, dated the 29th of August, 1924.

(1) (1924) I.L.R., 46 All., 562.
(2) (1926) 25 A.L.J., 197.
(3) (1891) I.L.R., 19 Calc., 203,
(4) (1914) 27 Indian Cases, 389.
(5) (1916) 15 A.L.J., 132.
(6) (1916) I.L.R., 40 Mad., 941.