

order so as to extend the period of limitation under section 48 of the Code of Civil Procedure does not arise. But I would add that if it be treated as an order, I agree that the execution court has no power to pass such an order.

There is only one further point to which I need briefly refer, and that is the question whether the proceeding of the 16th of January, 1928, was merely a continuation of the original application of March, 1923, or whether that application had finally terminated on August 29th, 1923, and the application of the 16th of January, 1928, was an entirely new proceeding. I should be disposed to hold that the second was a continuation of the first application, and I would not hold the decree-holder too literally bound by the phraseology of the application of the 16th of January, 1928. But it is unnecessary for me to consider this point further, because while it has been urged before us, it does not appear to have been ever hinted at by the decree-holder at any earlier stage of the proceedings.

I agree with the order proposed by Mr. Justice MUKERJI.

BY THE COURT:—We dismiss the appeal, but in the exercise of our revisional jurisdiction we set aside the order of the Assistant Collector dated the 24th of February, 1928, and dismiss the application for execution. In the circumstances of this case we direct that the parties should bear their own costs throughout.

### TESTAMENTARY JURISDICTION.

*Before Sir Grimwood Mears, Chief Justice, and Mr. Justice Sen.*

IN THE GOODS OF STOCK.\*

*Executor—Duty to invest money in interest-bearing securities  
—Liability to compensate estate for loss of interest.*

If a person accepts the office of an executor he must not fail to act with the ordinary care and the prudence of a reasonable

1932

GOBARDHAN  
DAS  
v.  
DAU DAYAL.

Boys, J.

1932  
February,  
15.

\*Testamentary case No. 32 of 1930.

1932

IN THE  
GOODS OF  
STOCK.

and diligent business man. If he fails to invest money belonging to the estate in interest-bearing securities, he is liable to make good the consequent loss to the estate.

Mr. *O. M. Chiene*, for the applicant.

MEARS, C. J., and SEN, J. :—Mr. R. V. A. Stock died on the 4th of August, 1928. He left a widow and a minor daughter. By his will dated the 14th of October, 1927, he appointed Mr. H. L. Stringer executor. The estate consisted of Rs. 11,741-12-0 in the Provident Fund, about Rs. 700 realised from the sale of furniture and a sum of over Rs. 13,000 odd as Lee Commission dues. There were said to be other assets also; the proceeds derived from the sale of a motor car and some balances outstanding in the Allahabad Bank Ltd., Calcutta, and the Eastern Bank Ltd., Calcutta.

Mr. Stringer took over the duties of executor and made little or no attempt to carry out these duties. On the 2nd of February, 1929, he applied in the Benares court for probate and that application was granted. On the 4th of November, 1929, he came into the possession of Rs. 11,741-12-0, and in breach of his duty as executor he failed to invest it in any interest-bearing security, and it has in fact laid in the Bank unproductive from the 4th of November, 1929, until the date of our order passed on the 4th of January, 1932. On the 30th of August, 1930, the probate granted by the Benares court was revoked but that revocation did not in any way affect the antecedent duty of Mr. Stringer to invest the money that came into his hands. He applied to the High Court for probate which was granted on the 9th of February, 1931. Mr. Stringer in an application of the 8th of December, 1931, disclosed that there were Rs. 14,608-8-0 deposited in the Imperial Bank of India and Rs. 200 in the Post Office Savings Bank, and upon inquiry it transpired that the large sum of Rs. 14,000 odd had been lying, as we have said, uninvested. We therefore passed the order of the 14th of December, requiring Mr. Stringer to

1932

IN THE  
GOODS OF  
STOCK.

explain his position. He appeared before the Court on the 25th of January, 1932, and was perfectly frank about the matter. He said that he had no knowledge of business and that the task of an executor was thankless and that he did not know he had to invest the money. The value of these replies was somewhat lessened by his stating in answer to a question that if he received a legacy of Rs. 11,000 he would at once go to the Bank, obtain advice, and invest the money in interest-bearing securities. He agrees that on the very lowest showing the estate has lost at the least a sum of Rs. 1,000 by his negligence. He says that he has spent Rs. 200 on necessary journeys to Benares and elsewhere, and giving him credit for this, the net result is that the estate, by his negligence, has lost Rs. 800. Logically, we should order him to make good to the estate every penny which has been lost to it through his negligence. No one is bound to become an executor, but if he does accept the position he must act with the ordinary care and the prudence of a reasonable and diligent business man. As is said in Agnew's Law of Trust in British India, 2nd Edition, at page 163, he "must make the fund productive, and in order to do this he must invest it in some form of security". If he fails to do this he will be liable for the consequent loss. The consequent loss here is at least Rs. 800, but as we are of opinion that Mrs. Stock ought to have interested herself in this matter and made inquiries, we limit the amount which Mr. Stringer must pay to the estate to Rs. 500. There is not of course the slightest suggestion that Mr. Stringer has been in any way dishonest, but he has acted with great negligence and must make good his default.

[The rest of the judgment, being immaterial for the purpose of this report, is omitted.]