APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, J.J.

GOBIND RAM 1922.

v.

GANESH RAM.* *May*, 2.

Receiver—Appointment of, appeal from order of—Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XL, rule* 1 *and Order XLIII rule* 1(*s*).

An appeal lies from an order declaring that a Receiver shall be appointed even though no Receiver is appointed by name in the order.

Upendra Nath Nag Chowdhry v. *Bhupendra Nath Nag Chowdhry*(1), *Srinivas Prasad Singh* v. *Kesho Prasad Singh*(2) *Narbada Shankar Mugatram Vyas* v. *Kevaldas Raghunathdas*(3) and *Mohammad Askari* v. *Nisar Hussain*(4), not followed.

P. L. S. Palaniappa Chetty v. *P. L. P. P. L. Palaniappa Chetty*(5), followed.

Appeal by the defendants.

The facts of the case material to this report are stated in the judgment of Bucknill, J.

Susil Madhab Mullick and *Hari Bhushan Mukerjee*, for the appellants.

C. C. Das (with him *Abani Bhushan Mukerjee* and *H. P. Sinha*), for the respondents.

BUCKNILL, J.—This is a Miscellaneous Appeal No. 2 of 1922 preferred by certain persons who were defendants in an action brought against them in connection with the proposed partition of certain properties. The properties purported to be situate

* Appeal from Original Order No. 2 of 1922, from an order of Maulavi Wali Muhammad, Subordinate Judge of Bhagalpur, dated the 15th December, 1921.

(1) (1911) 13 Cal. L. J. 157. (3) (1915) 17 Bom. L. R. 510.

(2) (1911) 14 Cal. L. J. 489. (4) (1920) 18 All. L. J. 212.

(5) (1917) I. L. R. 40 Mad. 18 F. B.

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partially in the kingdom of Nepal and partially in the neighbourhoods of Muzaffarpur and Bhagalpur. On the 26th of September, 1921, the plaintiffs filed an application supported, it is said, by an affidavit asking for the appointment of a Receiver for the reaping of certain standing crops and for the raising of future crops. They also asked for the issue of an injunction under the defendants restraining the defendants from reaping or appropriating paddy crops on certain lands. From the actual wording of this application it does not seem clear that any particular portions of the lands, except those which were under cultivation, were referred to. Now, on the 19th of November a further application was made by the plaintiffs. In this application the petitioners applied for the appointment of a Receiver to take charge of the properties and to get the crops cut and gathered, or to depute some officer of the Court to have the paddy crops reaped and gathered. Here again from the actual wording of the petition it is not abundantly clear as to whether the whole or a portion of the properties really were referred to. To these petitions the defendants replied in a counter-petition, and, on the matter coming before the Subordinate Judge on the 15th of December, 1921, that officer dealt with it at considerable length. He says, that, under circumstances to which I shall presently refer, he thought that it was right that a Receiver should be appointed. Now, before I go into the circumstances to which the Subordinate Judge refers, it is necessary that I should deal very shortly with a preliminary point which was raised by the plaintiffs (respondents here) which certainly gives rise to a legal question of procedure which is of some interest.

The Subordinate Judge in what I may call the words of power in his order, says :—

"It is therefore ordered that a Receiver of the properties in suit shall be appointed. A person nominated by both parties should be appointed, failing which a pleader of this Court or any other person will be appointed after hearing both parties."

Now, in Order XL is found that part of the Code of Civil Procedure which deals with the appointment of Receivers by the Court and it is common ground that there is from an order made under the provisions of sub-section (*1*) of rule 1 of Order XL of the Code of Civil Procedure an appeal. So far as is material here the phrasing in the above quoted Order runs as follows :—

"Where it appears to the Court to be just and convenient, the Court may by order (*a*) appoint a Receiver of any property, whether before or after decree."

Now, it is argued for the respondents here that, where an order is made simply declaring that a Receiver *shall* be appointed, such an order is not legally of the same effect as an order appointing a person individually as *the* Receiver, and, that, until some definite person *is* appointed by name and, going even further, that until the conditions upon which he is appointed have been settled (such as, with regard to security and so forth), there is no order from which an appeal can be maintained or is capable of admission or has in fact actually been made within the meaning of Order XL, rule 1 (*1*) (*a*). This proposition, the foundation of which I do not think that I clearly understand, is undoubtedly supported by some authority. In *Upendra Nath Nag Chowdhry* v. *Bhupendra Nath Nag Chowdhry* (1), it was held by Mookerjee and Teunon, J. J., that it was only from a final and not from any interlocutory order appointing a Receiver that an appeal lay under Order XLIII, rule 1, of the Civil Procedure Code. In that case the Subordinate Judge was invited by certain plaintiffs to appoint a Receiver and having upon the materials placed before him come to the conclusion that a Receiver ought to be appointed, he made an order to this effect: "I think the whole of the property in suit will be better managed and the interest of all the parties will be better served if the property in suit be placed in the

(1) (1911) 13 Cal. L. J. 157.

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hands of a competent Receiver". The appellants, (that is to say, the defendants there) appealed but their Lordships came to the conclusion that the appeal would manifestly be incompetent and premature. Again in the case of *Srinivas Prosad Singh* v. *Kesho Prasad Singh* (1), decided by Mookerjee and Carnduff, J. J., it was held that no appeal lay till the final order for the appointment of a Receiver had been made, and it was further laid down there that no effective appointment of a Receiver had been made within the provisions of Order XL, rule 1, until the furnishing of security had been effected. Again it was held by Heaton and Shah, J. J., in the case of *Narbada Shankar Mugatram Vyas* v. *Kevaldas Raghunathdas* (2), that an appeal under Order XLIII, rule 1, clause (*s*), of the Code of Civil Procedure did not lie from an order providing that "a proper person" should be appointed Receiver. In the course of his judgment in that case Heaton, J. states that the Subordinate Judge had given his directions in the following manner: "I therefore hold that a proper person should be appointed a Receiver. The parties will be further heard on the point as to *who should* be appointed a Receiver". Against this order the defendant appealed and in the course of his judgment Heaton, J., remarked: "It seems to me that the Court has not appointed a Receiver. It has only decided that at some future date it will appoint a Receiver..... but the actual order to appoint a Receiver, it seems to me, will be made only when the Judge actually nominates a person or an official and specifically appoints him to be the Receiver in the case." In the case of *Mohammad Askari* v. *Nisar Husain* (3), it was held by Tudball and Ryves, J. J., that no appeal lay from an order by which the Court expresses an intention to appoint a Receiver and calls upon the plaintiff to suggest names with particulars regarding security, remuneration, *etc.* Tudball, J., in his judgment says,

(1) (1911) 14 Cal. L. J. 489. (2) (1915) 17 Bom. L. R. 510.
(3) (1920) 18 All. L. J. 412.

"In the suit in question an application was made by the plaintiffs for the appointment of a Receiver. The defendants objected and, after hearing arguments, the Court passed an order to the following effect, 'I would, therefore, allow the application for appointment of a Receiver. Plaintiffs to suggest names for selection with particulars regarding security, remuneration and property to be taken possession of, within a month.'" This order was not regarded by their Lordships as constituting an appointment of a Receiver within the meaning of the Order of the Code of Civil Procedure.

This is certainly a body of opinion which it is somewhat difficult to reconcile with the Full Bench decision in *P. L. S. Palaniappa Chetty* alias *Shunmugam Chetty* v. *P. L. P. P. L. Palaniappa Chetty* (1). In that case it was held by Abdul Rahim and Srinivasa Ayyangar, J.J. (Spencer, J. dissenting), that an order of a Court that a Receiver should be appointed in a case (without appointing anybody *by name* as Receiver), and adjourning the case to a later date for so appointing one is an order under Order XL, rule 1, and can be appealed from under Order XLIII, rule 1, of the Civil Procedure Code. There is thus a conflict of opinion. I must confess that, so far as I myself am concerned, I am inclined to think that the logic of the matter rests better upon the Madras decision than upon the other decisions. To my mind the objection which has been suggested that there might be a series of appeals is not really very material. One cannot but contemplate the marked distinction which exists between the fact of a necessity for the appointment of *a* Receiver and the circumstances relating to the qualifications and the conditions upon which *the* Receiver is appointed. Why it is necessary that there should be present before an appeal can be preferred a combination of those two factors which in themselves are disconnected, I do not know; and I do not see why there should not be an appeal from the decision that the appointment of a Receiver is necessary nor

(1) (1917) I. L. R. 40 Mad. 18 F. B.

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why there should not be another appeal against the status or personality of any individual who is actually appointed *the* Receiver in a case. For these reasons I think it would be wise here to regard the decision of the Madras Full Bench (in which, I may add, most of the other cases, which I have quoted above and which is also of quite a recent date) as at present a better authority than that as laid down in the earlier cases to which I have referred.

[The remainder of the judgment is not material to this report.]

JWALA PRASAD, J.—I agree.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Coutts and Adami, J.J.

1922.

May, 9.

NIRU BHAGAT

v.

KING-EMPEROR.*

Examination of Accused—nature of—cross examination not permissible—statement elicited by improper question not to be used against accused—Confession—no weight to be attached to, when not reported until late stage of investigation—Leading question—answer to, not to be recorded or used.

The examination of an accused person by the Committing Magistrate should not be in the nature of cross examination.

Reliance should not be placed on a confession alleged to have been made by the accused shortly after he had committed murder but not reported to the police or to any one else until nearly a fortnight after it was said to have been made.

Where a witness, in answer to a leading question put by the Public Prosecutor, stated that the accused had confessed his guilt to him, *held*, that the question and answer should not have been recorded nor used against the accused.

* Death Reference No. 10 of 1922, and Criminal Appeal No. 65 of 1922, from the order of H. Foster, Esq., Judicial Commissioner of Chota Nagpur, dated the 12th April, 1922.