P. M. Richardson, deceased, to have the decree of the Township Court of Toungoo in Civil Suit No. 179 of 1925 set aside in revision.

The late Richardson was a Christian by religion and he died on the 20th February 1925 leaving a will. He left a widow among other next-of-kin surviving him. There were executors appointed under the will, but they subsequently renounced their executorship, and the Administrator-General on the 10th July 1926 applied for and obtained on the 12th July 1926 a grant of letters of administration with the will annexed. About a year before that and on the 7th May 1925 the respondent Chettyar firm of C.R.V.V.S. of Toungoo filed a suit (Civil Suit No. 179 of 1925) in the Township Court of Toungoo for Rs. 326 due on a promissory-note alleged to have been executed by Richardson on the 12th August 1924, making Richardson's widow residing at Maymyo defendant in her capacity as legal representative of her deceased husband, and obtained an *ex parte* decree on the 7th September 1925. On the 14th September 1925 the respondent Chettyar firm applied for execution of the decree in Civil Execution No. 345 of 1925 of the same Court, and obtained an order for attachment of money due to the estate by the Oriental Government Security Life Insurance Company, Limited. On account of this attachment the Administrator-General was unable to collect the money from the Insurance Company.

It has been urged that the deceased not being an Indian Christian, the respondents' suit against the widow was barred by section 212 of the Indian Succession Act. Sub-section (1) of this section provides : "No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration

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have first been granted by a Court of competent jurisdiction." I do not think that the case is governed by this section at all inasmuch as the deceased died testate. In my opinion what really rendered the suit bad was the fact that the widow, who was not one of the executors appointed under the will, was sued as a legal representative of the deceased when she did not occupy that position at all, for under section 211 (1) of the Succession Act the executor or administrator of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such. It can clearly be gathered from the records of Civil Miscellaneous No. 149 of 1926 that the executors appointed under the will were one O. D. Smart of Maymyo and H. M. Lütter of Mandalay. Thus the suit was prosecuted against the defendant who had not the legal capacity to represent the estate, and the decree passed therein was invalid.

It may be contended that at the time of institution of the suit neither the respondents nor the Court had any reason for believing that the deceased had died testate. This contention will merely confront the respondents with the prohibition under section 212, sub-section (1) of the Act according to which the Court should not have assumed jurisdiction in the case.

The learned advocate for the respondents contended that this Court should not interfere with the decree in revision, as other remedies were open to the petitioner to have the decree set aside. He pointed out that at present there is nothing to show that the deceased was not an Indian Christian. He also mentioned that the attachment on the money in the hands of the Insurance Company had been withdrawn, and that therefore there was no necessity for

proceeding with this application. In *Debi Das* v. *Ejaz Hussain* (1), it was held that the exercise by the High Court of its powers of revision on the civil side will not invariably (though such is ordinarily the case) be confined to matters in respect of which no other remedy is open to the party aggrieved. According to *Mussamut Umatul Mehdi* v. *Mussamut Kulsoom* (2) and *Raghunandan Prasad Misra* v. *Ram Charan Manda* (3), however the ordinary rule is that the High Court will not interfere in revision in any case in which the petitioner has another remedy except in very exceptional circumstances. The High Court of Madras in *Sree Krishna Dass* v. *Chandook Chand* (4), held that the High Court will not, as a general rule, interfere by way of revision, when the party has a remedy elsewhere than in the High Court, and that the High Court will however interfere where the right of the party is clear and where the result of non-interference will be only to multiply proceedings by driving the party to a suit, in which there can be no defence. The mere fact that the petitioner would be able to get the decree set aside by resorting to other remedies is therefore by itself no ground for this High Court to refrain from interfering in revision with the decree, the validity of which cannot obviously be defended in another proceeding. It is to my mind a case where the right of the party is clear and where the result of non-interference will be only to multiply proceedings by driving the Administrator-General to a suit in which there can be no defence. For these reasons I consider that, although under the authority of *Gora Chand Haldar* v. *Prafulla Kumar Roy* (5),

(1) (1905) 28 All. 72.
(2) 12 C.W.N. 16.
(3) 4 P.L.J. 94.
(4) (1908) 32 Mad. 334.
(5) (1925) 53 Cal. 166.

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it may be contended that the validity of the decree in question may even be challenged in the execution proceedings, the case is a fit one for interference in revision.

It is sufficiently clear from the Administrator-General's application for letters of administration that the deceased was not an Indian Christian, and I do not think that any hardship will be caused to the respondents by not requiring the Administrator-General to adopt another proceeding, in which the point may be put in issue.

I am therefore unable to accept the argument on behalf of the respondents that the materials before me were insufficient to furnish ingredients showing the invalidity of the decree which, in another proceeding (if the petitioner is driven to any such) would have to be established.

Another objection taken on behalf of the respondents is that the decree in question could have been appealed from. A first appeal would undoubtedly lie but not to the High Court, the suit being one for less than Rs. 500 on a promissory note. Section 115 of the Civil Procedure Code enables the High Court to interfere in revision in any case which has been decided by a Court subordinate thereto and in which no appeal lies thereto. This is not a case in which an appeal lies to the High Court. There could have been only one appeal to the District Court and after that there could not have been an appeal to the High Court either under the Civil Procedure Code or under the Burma Courts Act.

As I regard the circumstances appearing in this case to be exceptional and the decree clearly invalid, I set it aside; the respondents to pay petitioner's costs, two gold mohurs.