

I do not think it will be safe to convict the appellant on the sole testimony of this witness, and I would accordingly accept the appeal and set aside the conviction and sentence.<sup>c</sup>

ABDUL RAOOF, J.—I agree.

'N. F. E.

*Appeal accepted.*

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### LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice LeRossignol.*

SHANKAR DAS—Appellant

*versus*

BEHARI LAL AND OTHERS—Respondents.

1925

April 20.

Letters Patent Appeal No 13 of 1925.

*Civil Procedure Code, Act V of 1908, Order XL, rule 1—Receiver—appointed in a suit for partition of the estate of a deceased person consisting partly of agricultural land—not rendered functus officio by preliminary decree for partition—Injunction subsequent to preliminary decree in regard to the receiver's possession of the agricultural land—whether ultra vires.*

The succession to an estate consisting of agricultural land and other property being in dispute, a suit was filed, and under order XL, rule 1 of the Civil Procedure Code a receiver was appointed. The Subordinate Judge then granted a preliminary decree declaring the shares of the parties and directing the partition of the property other than agricultural land, and the taking of accounts. An *ad interim* injunction was subsequently passed by the Subordinate Judge restraining one of the parties from interfering with the Receiver's possession of the agricultural land, but it was set aside (by a Single Judge of the High Court) on the ground that on the passing of the decree the receiver had become *functus officio* so far as the agricultural land was concerned and the subsequent injunction was *ultra vires*.

*Held*, on the Letters Patent Appeal, that even if the circumstances had rendered the appointment of the receiver nugatory, so long as the suit remained *lis pendens*, he could only be discharged by an order of the Court and the preliminary decree, therefore, did not operate as his discharge and the *ad interim* injunction was not open to any legal objection.

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Halsbury's Laws of England, Volume 24, pages 415-416, referred to.

*Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Martineau, dated the 28th November 1924.*

JAGAN NATH, AGGARWAL, for Appellant.

TEK CHAND and MOTI SAGAR, for Respondents.

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—On the 8th January 1919, *Rai Sahib* Mool Chand was appointed a receiver of the estate of the late *Rai Bahadur* Buta Mal, which was the subject-matter of dispute among his heirs. The Subordinate Judge has now passed a preliminary decree, declaring their shares in the estate and directing the partition of the property other than the agricultural land; and the question for determination is whether this decree has the effect of putting an end to the appointment of the receiver and rendering him *functus officio*. This question has been answered in the affirmative, but we are unable to concur in that decision.

It is true that order XX, rule 18 of the Civil Procedure Code provides that, in so far as the agricultural land is concerned, the Court, in passing a preliminary decree for partition of the property, shall merely declare the rights of the parties interested therein, and that the actual partition is to be made by the Collector; but there can be no manner of doubt that a receiver is an officer of the Court, and that, as

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long as the order appointing the receiver remains unreversed, and as long as the suit remains *lis pendens*, his functions continue until he is discharged by order of the Court.

“ A receiver can only be discharged by an order of the Court, even though circumstances have rendered the appointment nugatory. For example, the subsequent bankruptcy of the defendant does not of itself operate as a discharge, nor does the liquidation of a company over the assets of which a receiver has been appointed in a debenture-holder’s action; nor does the fact that the estate for which the property is held, whether for life or years, has determined; or that the receiver has been unable to complete his security; or that the property proves to belong to a stranger; or that the creditors on whose behalf the receiver has been appointed have been fully paid; or that the action has abated by reason of the death of a party, or has been stayed or dismissed. For though it has been said that a receiver appointed in an action must stand or fall with the action, yet there must be an order discharging the receiver ” (Halsbury’s Laws of England, Volume 24, pages 415-416).

It is, therefore, clear that the preliminary decree, referred to above, did not operate as a discharge of the receiver, and that the *ad interim* injunction, issued by the Subordinate Judge restraining *Lala Bihari Lal* from interfering with the receiver’s possession of the agricultural land, is not open to any legal objection. We accordingly accept the appeal, and, setting aside the order of Mr. Justice Martineau, restore that of the Subordinate Judge with costs.

N. F. E.

*Appeal accepted.*