decretal amount which may not be satisfied out of the sale-proceeds of the property.

(5) As against the 1st, 2nd, 3rd and 5th appellant-defendants for the costs of the suit and of this appeal, on the ordinary *ad valorem* scale.

I would make no order as to the costs of the 4th defendant company.

CUNLIFFE, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Otter.

L.P.R. CHETTYAR FIRM
v.
R. K. BANNERJI (O. R.)*

1930

Dec. 15.

Revision—Civil Procedure Code (Act V of 1908) Section 115—'Case' includes interlocutory orders—Injustice and hardship.

The expression "case which has been decided" in S. 115 of the Civil Procedure Code is wide enough to include an interlocutory order and even though there may be an appeal from the final decree, that consideration will not prevent in a proper case interference in revision.

Dhapi v. *Ram Pershad*, I.L.R. 14 Cal. 768 ; *Jupiter Co., Ltd*, v. *Abdul Aziz*, I.L.R. 1 Ran. 231 *Mani Lal* v. *Durga Prasad*, I.L.R. 3 Pat. 930 ; *Sree Krishna Doss* v. *Chandook*, I.L.R. 32 Mad. 334 ; *S.R.M.M. Firm* v. *P.L.N.N. Chetty*, 11 L.B.R. 65—*referred to.*

Buddhu Lal v. *Mewa Ram*, I.L.R. 43 All. 564 ; *Lal Chand* v. *Behari Lal*, I.L.R. 5 Lah. 288—*dissented from.*

The High Court does not interfere in revision unless some grave injustice or hardship would result from a failure so to do.

Amir Hassan Khan v. *Sheo Baksh*, I.L.R. 11 Cal. 6 ; *Ismalji* v. *Macleod*, I.L.R. 31 Bom. 138 ; *Jogunnessa Bibi* v. *S. C. Bhattacharji* I.L.R. 51 Cal. 690 ; *Kristamma* v. *Chapa Naidu*, I.L.R. 17 Mad. 410 ; *Malkar* v. *Narhari*, I.L.R 25 Bom. 337—*referred to.*

Lutter and Sanyal for the applicants.

A. C. Mukerjee for the respondent.

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*Civil Revision No. 116 of 1930 (at Mandalay) from the order of the District Court of Mandalay in Civil Miscellaneous No. 86 of 1930.

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OTTER, J.—The advocates for all parties to these several applications for revision agree that, upon application on behalf of the Official Receiver for annulment of payments made by an insolvent as being fraudulent and void under section 54 of the Provincial Insolvency Act, the District Judge passed an order in each case, the effect of which is to lay upon the applicants here (who were respondents in the Lower Court) the burden of proving that the payments were not fraudulent or void within the provision referred to.

There can be little doubt that, *primâ facie*, the onus of proof would be upon the Official Receiver and not upon the applicants ; *see* section 12, Evidence Act, and cases cited at page 315 *et seq.* of the 7th Edition of Gosh's "Provincial Insolvency Act." I will assume, therefore, that in passing the order he did, the learned District Judge would be held to have made a mistake. That being so, can, and if so, ought this Court to interfere in revision ? The first part of this question raises interesting and difficult considerations, *e.g.*, was this a "case decided" by the District Judge ; if so, did he, in wrongly placing the burden of proof, act with material irregularity in the exercise of his jurisdiction ? There is a quantity of authority upon both these somewhat vexed questions. Upon the first part of the question, so far as this Province is concerned it has been held in *The Jupiter General Insurance Company, Limited, and others* v. *Abdul Aziz* (1),—following *S.R.M.M. Chetty Firm and others* v. *P.L. N.N. Narayanan Chetty* (2),—that a 'case" is wide enough to include an interlocutory order, and that even though there may be an appeal from the final decree, that consideration will not prevent (in a proper case) interference in revision.

(1) (1923) I.L.R. 1 Ran. 231. (2) (1921-22) 11 L.B.R. 65.

I find no reported decision of this High Court in conflict with this decision. Moreover, the view of this High Court agrees with that arrived at in Calcutta, Madras, Patna and Bombay in a number of cases. I need only refer to *Dhapi* v. *Ram Pershad* (1), *Sree Krishna Doss* v. *Chandook Chand* (2) and *Mani Lal* v. *Durga Prasad* (3). A Full Bench of both the Allahabad and the Lahore High Courts has decided otherwise in *Buddhu Lal and another* v. *Mewa Ram* (4) and *Lal Chand Mangal Sen* v. *Behari Lal Mehr Chand* (5). Thus the balance of authority, including that of our own High Court, favours the view that "interlocutory orders" may be revised. Moreover, so far as I am aware, such are, in proper cases, frequently revised.

I would hold here that the order in question was an interlocutory order; for, though such an order may not be easy to define, the present order determined the manner in which the case was to be conducted.

I think, therefore, that the order is subject to revision; and the next matter for consideration is whether the provisions of section 115 of the Civil Procedure Code or any of them apply. It is conceded, I think, that the only part of the section which may be applicable is sub-section (*c*). The question, therefore, is, did the learned Judge in the exercise of his discretion act "illegally" or "with material irregularity?"

Now it seems to me that the order complained of, if wrong, amounted to a mistake of law. It may be that it was also a mistake 'in procedure.' What may have been violated is a rule of evidence, and

(1) (1887) I.L.R. 14 Cal. 768. (2) (1909) I.L.R. 32 Mad. 334.
(3) (1924) I.L.R. 3 Pat. 930. (4) (1921) I.L.R. 43 All. 564.
(5) (1924) I.L.R. 5 Lah. 288.

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such would amount to a mistake of law or of mixed law and fact. But it is elementary that a mere mistake will not justify interference. I need only refer to two decisions of the Privy Council, *viz.*, *Amir Hassan Khan* v. *Shoo Baksh Singh* (1), and *Malkerjun* v. *Narhari and another* (2).

The matter does not rest here, however, for the words of section 115 (*c*) have been the subject of a mass of decisions in all the High Courts. I have examined a number of these, and with one possible exception, I can find no case where the facts were at all approximate to those here present. *Kristamma Naidu and others* v. *Chapa Naidu and others* (3) was relied upon by Mr. Sanyal, who appeared for some of the applicants. The material portion of the headnote is significant.

It is :—

"*Held*, . . . that the case contemplated by the words 'act . . . . illegally or with material irregularity' in section 622 of the Code of Civil Procedure is that of a perverse decision on a question of law or procedure, a decision being perverse where it is a conscious departure, from some rule of law or procedure."

I doubt very much if it could be suggested that in the present case there was any such conscious departure.

It is also to be observed that the irregularity there present was far more grave than anything alleged in the present case, and that notwithstanding this grave mistake, the Court did not interfere. In *Kristamma Naidu's* case a District Judge disposed of some suits on a point taken by himself on appeal, without affording the parties an opportunity of proving what was necessary to meet the point, and admitted other appeals after they had become time-

(1) (1886) I.L.R. 11 Cal. 6. (2) (1901) I.L.R. 25 Bom. 337.
(3) (1894) I.L.R. 17 Mad. 410.

barred. Collins, C.J., at page 414 of the Report said :—

"I am inclined to adopt the words in the judgment of West, J., *Shiva Nathaji* v. *Joma Kashinath* (I.L.R. 7 Bom., 359), and hold that the section applies to an obviously perverse use of jurisdiction or authority which could not be justified even on the premises assumed or found by the Judge.

"The degree of ignorance or bad law which would amount to perverseness must be determined by the facts of each particular case."

In the result as I have indicated the Court held that section 522 of the (old) Code (which corresponds to the section now under consideration of the present Code) did not apply in that case.

There is however a further element which all High Courts have laid stress upon when considering the question which is now for my decision. It has been held over and over again that a Court should not interfere in revision unless some grave injustice or hardship would result from a failure so to do. Upon this point I propose to refer to two cases only, *viz.*, *Ismailji Ibrahimji Nagree* v. *N. C. Macleod* (1) and *Jogunnessa Bibi* v. *Satish Chandra Bhattacharji* (2). In the first of these Beaman, J., expressed what I believe to be the correct view; he said at page 142 of the Report :—

"I think that however ample our powers as a Court of extra-ordinary jurisdiction may be, they will always be considered by the same general principles. One of the most important is that Courts in the exercise of superintending powers will not ordinarily interfere except in cases of grave and otherwise irreparable injustice."

In the second case, Mukerji, J., in delivering the judgment of the Court, said at page 694 of the Report

(1) (1907) I.L.R. 31 Bom. 138. (2)(1924) I.L.R. 51 Cal. 690.

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in referring to the fixed part of clause (*c*) of section 115 :—

"In my opinion this part of the clause was advisedly left in indefinite language in order to empower the High Courts to interfere and correct gross and palpable errors of subordinate Courts, the justification for the interference being determined upon the grossness and palpableness of the error complained of and upon the gravity of the injustice resulting from it."

It is perfectly true that some inconvenience will surely result from the order of the District Judge ; for the applicants who must begin, can only at the outset call evidence in general terms to prove that the transaction was a *bonâ fide* one and not entered into with a view to giving them a preference over other creditors. The case for the Official Receiver must be put to the applicants' witnesses in cross-examination: and a reasonable opportunity must be given to the applicants to call such evidence as they desire, either in chief, or by way of rebuttal, should evidence be forthcoming on behalf of the Official Receiver.

Apart from this inconvenience there appears to me to be no such hardship as would justify this Court in interfering in revision. I do not go so far as to say that in no case ought this Court to revise an order where such an error on a question of evidence had taken place. But I am of opinion that such a case would be rare. It would depend upon the gravity of the result of his mistake.

In the present case the point will, of course, be taken on behalf of the applicants if the final decisions of the District Court are appealed from; but I am clearly of opinion that this Court should not interfere at this stage in the cases now before me.

These applications must therefore all be dismissed with costs. Advocate's fee one gold mohur in cases 116, 122 and 132. No special advocate's fee in the remaining cases.