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 GANESH DAS
 ?
 COMMISSIONER
 OF INCOME-TAX.

an income derived during the accounting period of 1921-22. After all, the Income-tax department itself is responsible for this result. The income escaped assessment so far as the person who received it was concerned.

We therefore answer the second question in the negative.

N. F. E.

LETTERS PATENT APPEAL.

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

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 Feb. 4.

NIADAR MAL (JUDGMENT-DEBTOR) Appellant

versus

RATTAN LAL (DECREE-HOLDER) Respondent.

Letters Patent Appeal No. 300 of 1925.

*Civil Procedure Code, Act V of 1908, section 144—
 Restitution—of payment made—not, in execution of any de-
 cree or in consequence of any decree—applicability of the
 section.*

One R. L. obtained a final decree against N. M. in respect of one of two businesses in which they were partners. That decree also declared that N. M. alone was responsible for the claim of one Gustav Spielmann. During the pendency of an appeal against that decree in the High Court the Custodian of Enemy Property took proceedings against both R. L. and N. M. in connection with Gustav Spielmann's claim and obtained payment of a half of the claim from each. Subsequently R. L. succeeded in persuading the Custodian to refund to him the amount thus paid on his giving security for its repayment if repayment should become necessary and N. M. was made to pay to the Custodian the entire amount due to Gustav Spielmann. The High Court set aside that portion of the decree which declared that N. M. alone was responsible to Gustav Spielmann. N. M. then applied under

section 144 of the Code of Civil Procedure for restitution of half the amount he had paid to the Custodian.

Held, that the word "restitution" implies restoration to a party of what has been lost to him in execution of a decree or directly in consequence of that decree. The payment by N. M. to the Custodian was not in execution of any decree or in consequence of any decree; and again, R. L. was not in possession of any property or money that had been taken out of N. M.'s possession by any decree or order of a Court; and therefore N. M. was not entitled to claim restitution under section 144 of the Code.

Baikuntha Nath Chatteraj v. Prosannamoji Debi (1), followed.

Appeal under clause 10 of the Letters Patent from the Judgment of Mr. Justice Addison, dated the 24th October 1925.

MEHR CHAND, MAHAJAN, for Appellant.

SARDHA RAM, for Respondent.

JUDGMENT.

BROADWAY J.—The circumstances giving rise to this Letters Patent appeal are briefly these:—

Rattan Lal and Niadar Mal were partners in two separate businesses. In respect of one of these businesses Rattan Lal filed a suit for dissolution and rendition of accounts against Niadar Mal and was given a final decree for a sum of Rs. 2,281 payable by Niadar Mal. In the decree it was also declared that Niadar Mal alone was responsible for the claim of one Gustav Spielmann. Soon after the passing of this decree and while an appeal against it was pending in the High Court the Custodian of Enemy Property (the District Judge of Delhi) took proceedings against both Rattan Lal and Niadar Mal in connection with Gustav Spielmann's claim against them, with the result that

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they each paid a half of the claim to the said Custodian of Enemy Property. Subsequent to this Rattan Lal approached the said Custodian and induced him to refund to him the amount paid by him (Rattan Lal) on his giving security for its repayment if repayment should become necessary, and Niadar Mal was made to pay to the Custodian the entire amount due to Gustav Spielmann. In February 1925, the High Court set aside that portion of the decree which related to the declaration that Niadar Mal alone was responsible to Gustav Spielmann, Rattan Lal having admitted that that matter related to the second partnership.

After this order of the High Court Niadar Mal applied to the Senior Subordinate Judge, Delhi, under section 144 of the Civil Procedure Code for restitution of half of the sum paid by him to the Custodian as stated above. He urged that the payment had been made by him because of the decree of the Court of first instance. This application having been dismissed, he preferred an appeal to this Court which was dismissed by Mr. Justice Addison.

The point for determination in this appeal is whether section 144 of the Civil Procedure Code is applicable in the circumstances detailed above. Section 144 (1) is as follows:—

“ Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed;

As stated by Mr. Justice Addison, the word 'restitution' implies restoration to a party of what has been lost to him in execution of a decree or directly in consequence of that decree. Rattan Lal had made a certain payment to the Custodian of Enemy Property which he induced him to refund on a certain condition. After the refund had been made the Custodian insisted on Niadar Mal paying up the full amount of Gustav Spielmann's claim. This payment by Niadar Mal was certainly not made in execution of any decree or in consequence of any decree. Again, Rattan Lal is not in possession of any property or money that had been taken out of Niadar Mal's possession by any decree or order of a Court, and, therefore, Niadar Mal is not entitled to claim restitution. In this view I am supported by *Baikuntha Nath Chatteraj v. Prosannamoyi Debi* (1).

In my judgment, section 144 of the Civil Procedure Code is not applicable and the view taken by the learned single Judge is correct.

I would, therefore, dismiss this appeal with costs.

SUR SHADI LAL C. J.—I concur.

A. N. C.

SHADI LAL C. J.

Appeal dismissed.

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