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of the Code of Civil Procedure, and discharge the order of the Court below, and confirm the order of the Subordinate Judge. Parties to pay their own costs in this Court. Plaintiff to pay defendant his costs in the Court below.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

KHUSHROBHA'I NASARVA'NJI, (ORIGINAL APPLICANT), APPELLANT, *v.* HORMAZSHA' PHIROZSHA', (ORIGINAL OPPONENT), RESPONDENT.*

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Civil Procedure Code (Act XIV of 1882), Secs. 232 and 234—Decree—Execution—Transfer of decree—Notice of transfer—Tranferee's rights—Legal representative of a deceased judgment-debtor—His liability to satisfy decree—Extent of such liability.

The transferee of a decree stands in the same position for getting execution as the transferor.

If a decree is transferred by assignment after the death of the judgment-debtor, notice of the transfer, as required by section 232 of the Civil Procedure Code (Act XIV of 1882), may be served on the legal representative of the deceased judgment-debtor. The death of the judgment-debtor does not render the transferred decree incapable of execution.

Under section 234 of the Civil Procedure Code, the legal representative of a deceased judgment-debtor is liable summarily only in respect of property *actually* received by him, or taken into his disposition.

On the 27th March, 1878, one Bái Bhicáiji obtained a decree for Rs. 2,100 against one Phirozshá, who died in July of that year, leaving his son Hormazshá his legal representative. Subsequently one Homjibhái sued Hormazshá as the legal representative of Phirozshá upon a mortgage executed by the latter in his life-time, and obtained a decree, in execution of which he sold the mortgaged property by auction, and bought it in himself for Rs. 810. On appeal, this decree was reversed on the 3rd August, 1883. Instead of, thereupon, recovering the property which had been sold in execution, Hormazshá on the 16th November, 1883, agreed with Homjibhái that the latter should retain it on payment of Rs. 240 as costs of the suit. Shortly before this compromise was effected, Bái Bhicáiji sold her decree to the appellant, Khushrobhái, who in 1884 applied for execution against Hormazshá. The Subordinate Judge made an order for execution against Hormazshá personally to the extent of Rs. 810, holding that Hormazshá had fraudulently adjusted the decree in Homjibhái's suit, and that, even if there was no fraud, he, as administrator of Phirozshá's estate, ought to have recovered back the money realised by the sale, instead of accepting a com-

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promise. On appeal, the order of the Subordinate Judge was reversed by the District Judge.

On appeal to the High Court,

Held, confirming the order of the District Judge, that Hormazshá was not personally liable. Under section 234 of the Civil Procedure Code (Act XIV of 1882) a representative of a deceased judgment-debtor, who has failed purposely or negligently to recover some debt due to the estate of the deceased, or some property belonging to it, is not liable in the same way as for property of the deceased which has come to his hands. In that section, property is not defined as identical with assets, and so to include mere rights of action. Nor is it provided that in an execution proceeding the representative shall be made answerable as well for what with diligence on his part would have come to his hands, as what actually has come to his hands. It may well be that while the Legislature intended to bring the representative under the control of a summary inquiry where he had actually received property, it did not intend to make him answerable in other cases except through the medium of a suit for administration or other regular action.

SECOND appeal from the order of S. Hammick, District Judge of Surat, reversing the order of Khán Bahádur B. E. Modi, First Class Subordinate Judge at Surat, in *darkhást* No. 101 of 1884.

On the 27th March, 1878, one Bái Bhicáiji obtained a decree for Rs. 2,100 against Phirozshá Shápurji. On the 24th July, 1878, Phirozshá died. On the 2nd March, 1881, Bái Bhicáiji applied for execution against Hormazshá, the son of the deceased judgment-debtor; but as she failed to prove that Hormazshá had received any property of the deceased, her application was rejected.

In the meantime, Homjibhái, another creditor of Phirozshá, had sued Hormazshá as the legal representative of his deceased father, Phirozshá, upon a mortgage-bond executed by the latter. He obtained a decree, in execution of which he put up the mortgaged property to sale, and purchased it himself for Rs. 810. This decree was afterwards reversed, on appeal, on the 3rd August, 1883. In spite of this decision in his favour, Hormazshá entered into a compromise with Homjibhái, by which it was agreed that he should retain the mortgaged property, but should pay to Hormazshá the costs of the suit, amounting to Rs. 240. This compromise was effected on the 16th November, 1883.

Shortly before this, *viz.*, on the 4th September, 1883, Bái Bhicáiji had sold her decree against Phirozshá to one Khushrobhái Nasarvánji.

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In 1884, Khushrobhái, as transferee of the decree, made the present application, under section 234 of the Civil Procedure Code (Act XIV of 1882), for execution of the decree against Hormazshá as the legal representative of Phirozshá. Khushrobhái alleged that Hormazshá had received all the property of the deceased, and that he had fraudulently and collusively entered into the compromise of the 6th November, 1883.

Hormazshá opposed this application, contending *(inter alia)*—

(1) That the decree was transferred to the applicant after the death of the judgment-debtor; therefore he could not execute it.

(2) That the deceased judgment-debtor had left no property.

(3) That the compromise with Homjibhái was neither fraudulent nor collusive.

The Subordinate Judge held that the assignment of the decree after the death of the judgment-debtor did not, and could not, render the decree incapable of execution; that Hormazshá had fraudulently adjusted the decree in Homjibhái's suit upon the alleged mortgage; and that, even if there were no fraud, Hormazshá, who had obtained letters of administration to the estate of his deceased father, had no right to release a claim or compound it where an Appellate Court had already decided in favour of the deceased.

He, therefore, passed an order directing execution to issue against Hormazshá personally to the extent of Rs. 810.

This order was reversed in appeal. The District Judge was of opinion that as the decree was transferred after the death of the judgment-debtor, and it being, therefore, impossible to serve on him the notice contemplated by section 232 of Civil Procedure Code (Act XIV of 1882), and there being no provision in the Code authorising service of the notice on the legal representative of the deceased judgment-debtor, execution of the transferred decree had become legally impossible. He further held that, as no property of the deceased judgment-debtor was proved to have come into the possession of Hormazshá, the decree could not be executed against him, even assuming that he entered into the compromise with Homjibhái fraudulently and collusively.

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The District Judge, therefore, rejected the applicant's *darkhást*.

Against this decision the applicant preferred a second appeal to the High Court.

Mánekshâh Jehángirshâh for the appellant:—The respondent has obtained letters of administration to the estate of the deceased judgment-debtor under the Indian Succession Act. He ought not to have entered into a compromise of the decree, which was in favour of the deceased. By that compromise he has given up part of the assets for which he must be held responsible. An executor commits waste by releasing a debt due to the estate with the object of defeating claimants—Williams on Executors, Part IV, Bk. II, Chap. II, pp. 1806, 1811. The death of the judgment-debtor does not prevent execution of the transferred decree. Section 234 of Act XIV of 1882 enables any holder of a decree to execute it against the legal representative of a deceased judgment-debtor.

Ráv Sáheb *V. J. Kirtikar* for the respondent:—It is found by the lower Courts that we have not received any property of the deceased. Under section 234 of the Code of Civil Procedure we are liable only to the extent of the property which has *actually* come into our hands, and not for what with diligence we might have recovered. Assuming that the compromise was collusive, still we are not liable in these execution proceedings. The appellant's proper remedy was an administration suit.

WEST, J.:—We do not agree with the District Judge that a transferred decree cannot be executed against any one but the original judgment-debtor. Section 232 provides, no doubt, that notice must be served on the judgment-debtor, but it equally provides that notice shall be served on the "transferor." There is no express provision that the service may be made on the representative of the one any more than of the other. Still it cannot be supposed that the Legislature intended the transferee's rights under a decree to be annulled by the death of the transferor, and the consequent impossibility of serving him with notice, and it is similarly most unlikely that the death of the judgment-debtor was meant to prevent all execution of a transferred decree, though not of one untransferred. In allowing the rights under

a decree to be transferred, the Legislature must be supposed to have contemplated the transfer to be effectual, and to put the transferee (subject to a precaution against fraud) in the same position for getting execution as the judgment-creditor.

The second question that arises is, in substance, whether, under section 234 of the Code of Civil Procedure, a representative of a judgment-debtor, deceased, who has failed purposely or negligently to recover some debt due to the estate of the deceased or some property belonging to it, is liable in the same way as for "property of the deceased which has come to his hands." The District Judge has, in effect, ruled that he is not, and no case has been cited ruling expressly that he is. It is imputed to the defendant Hormazshá, that, after getting a decree reversed, under which, one Homjibhái had sold property of Hormazshá's father and testator in execution to satisfy a mortgage, Hormazshá, instead of recovering back the money realized by the sale, accepted a compromise by which he was merely paid the amount of certain costs and expenses. The plaintiff, a transferee from the judgment-creditor of the deceased father, now seeks execution against Hormazshá personally, and it is contended that the latter is not less liable than if he had actually received the money which he might have recovered from the defeated mortgagee. If a case of fraud or waste can be made out against Hormazshá, he is, no doubt, answerable to the creditors of his father, to whose estate he has taken out letters of administration. See *In re Marsden, &c.*[1]. But it is another question how the liabilities he has assumed are to be enforced. The section of the Code of Civil Procedure says that the representatives "shall be liable only to the extent of the property that has come to his hands." Property is not defined as identical with assets, and so to include mere rights of action. Nor is it provided that in an execution proceeding the representative shall be made answerable as well for what with diligence on his part would have come to his hands as what actually has come to his hands. It may well be that while the Legislature intended to bring the representative under the control of a summary inquiry where he had actually received property, it did not intend to make him answerable in other cases except

(1) L. R., 26 Ch. Div., 783, 788.

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through the medium of a suit for administration or other regular action. In cases of complicated transactions and of competition amongst several claimants a summary inquiry under section 234 could seldom yield a satisfactory result. In a law of procedure, as in any other law, the language of the Legislature ought not to be extended, except when the intention is clear —Lord Selborne, L. C., in *Pinkerton* v. *Easton*(1). There is, no doubt, a strong analogy between the case before us and the one expressly provided for in section 234 of the Code of Civil Procedure, but "arguments from analogy may arise where a principle of law is involved ; but where the Courts are dealing with the positive enactments of a Statute, reasons founded upon analogies are scarcely applicable"—*Rámchundere Dutt* v. *Jugheschunder Dutt*(2). In another case it was said : "We cannot extend positive law by analogy or parity of reasoning"—Sir J. Colville in *Jumoona Dassya* v. *Bamasoondari Dassaya*(3). Applying these principles of construction to the enactment we have here to deal with, we must hold that it was intended to make a representative liable only in respect of property actually received by him or taken into his disposition. In other cases the judgment-creditor is not without a remedy by means of a suit.

For these reasons, we confirm the decree of the District Court with costs.

Decree confirmed.

(1) L. R., 16 Eq. Ca., at p. 492. (2) 12 Beng. L. R., at p. 232.
(3) I. L. R., 1 Calc., 289 at p. 291.