an *ex-parte* order which he has obtained in his own favour without giving the person interested an opportunity of showing cause. ing clause of the decree is, in effect, a direc- f opinion, that Loudon should be allowed his n passing his accounts—an expression of which would, under ordinary circumstances, ght with a person taking the account, but iclusive against the person interested in dis- ght entitled to an opportunity of being heard. suit for the administration of the estate t to take partnership accounts against third hich those interested in the estate of Hunsráj be proper parties.

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WILLIAM LOUDON *v.* KHATÁO ROWJI.

Summons dismissed with costs.

laintiff :—Messrs. *Little, Smith, Frere and*

hordáss Hunsráj :—*R. S. Brown & Co.*

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should be substituted for pages 225
ebruary number of the Reports.

)RIGINAL CIVIL.

Before Mr. Justice Farran.

D. D. TORREGROSA VASQUEZ, PLAINTIFF, *v.* PRA'GJI HURJI AND OTHERS, DEFENDANTS.*

1892. *July* 2.

Practice—Parties—Death of plaintiff—Suit continued by legal representative before representation taken out—Proceedings not stayed—Succession Certificate Act VII of 1889, Sec. 4—Civil Procedure Code, Act XIV of 1882, Sec. 50.

Where the original plaintiff dies, the suit, since the passing of Act VII of 1889, if not under section 50 of the Civil Procedure Code, may be continued by his legal representative, although the latter has not taken out administration to the original plaintiff's estate. All that the defendant can insist on in such a case is that representation shall be complete before decree.

SUMMONS in Chambers.

This was an action for infringement of a trade-mark. The original plaintiff in this suit was one José Torregrosa Vasquez, who sued by his constituted attorney. The plaintiff died before the case came on for hearing on the 25th February, 1892. On the case being called on for hearing on that day, an order was

* Suit No. 377 of 1889.

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made postponing the hearing, and giving the plaintiff liberty to amend the plaint and proceedings as he might be advised.

The plaint was accordingly amended by substituting Dona Dolores Escalano Torregrosa, "widow and administratrix of the estate and effects of José Torregrosa Vasquez, deceased," for the original plaintiff on the record. The amended plaint stated that "the plaintiff's husband departed this life on the 9th day of November, 1891, leaving the plaintiff, his widow, him surviving, and having previously made and published his last will and testament, dated the 9th November, 1891, whereby he appointed the plaintiff his executrix. The said will has been duly registered according to the laws of Spain, and the plaintiff is the recognized legal representative of the deceased."

The defendants objected to the widow placing herself on the record as plaintiff until she had taken out administration to her husband in this country; and accordingly they took out this summons calling on the plaintiff to show cause why all proceedings in the suit should not be stayed until letters of administration, with or without the will annexed, to the estate of José Torregrosa Vasquez, the deceased plaintiff in this suit, have been obtained, and staying all further proceedings in the meanwhile.

Inverarity, for the plaintiff, now showed cause:—Sections 365 and 367 of the Code of Civil Procedure show that a legal representative may be put on the record before having taken out letters, or probate. Section 50 doubtless will be relied on by the defendants; but that section is limited to the institution of suits, as the heading of the chapter shows, and does not apply to their revival. Act VII of 1889, the Indian Succession Certificate Act, is in my favour. Section 4 of that Act* virtually establishes

* Section 4.—No Court shall—

(*a*) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of a deceased person or to any part thereof, or

(*b*) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

(i) A probate, or letters of administration, evidencing the grant to him of administration to the estate of the deceased,

the English practice, which requires probate, or letters, only before decree.

Jardine, for respondents, *contra* :—This is not a suit for a debt, but for damages for infringement of a trade-mark. Act VII of 1889 is confined to debtors.

[FARRAN, J. :—That word must, I think, be read there as used in its widest sense, and as inclusive of the case of a suit for damages.]

The person who seeks to revive a suit, which is otherwise dead, must show his title to do so. That must not be left in doubt, or we may be sued successively by a number of claimants to the representation of the original plaintiff. Consequently, the Court will not allow a plaintiff to proceed till that right is first established. The construction sought to be given to section 50 of the Code is a very narrow one : there is no reason for such a distinction as is sought to be drawn between the case of original institution of a suit, and its revival.

FARRAN, J. :—This is rather a nice point. I do not think I can stay these proceedings. The allegation made in the amended plaint is that the plaintiff is by the laws of Spain the recognized legal representative of her deceased husband. That is not traversed by the defendant in any affidavit, and while that stands I do not think I can stay the proceedings. Section 50 of the Code contains the only provision which, it can be urged, prevents a legal representative from continuing a suit until administration is taken out. That applies to the institution of a suit. Illustration (*a*), which requires probate to be taken out before suit filed, is an advance on the English law. Whether the principle involved in that illustration should have been extended by analogy when it was sought to revive a suit under section 365, may be doubted. Since the passing of Act VII of 1889, however, it has become unnecessary to enquire as to the effect of section 50 where it is sought to revive a suit under section 365 of the Code, for that Act—an Act passed for fiscal purposes—shows that all that can be insisted on is that the representation shall be complete before decree ; thus assimilating our practice with the English practice in similar cases. If the

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plaintiff is not the legal representative, as on her own statement she would appear to be, there should have been an application made to strike her name off, as not filling that capacity. There has been nothing of the sort. The summons must be dismissed.

Attorneys for the plaintiff:—Messrs. *Little, Smith, Frere and Nicholson.*

Attorneys for defendants:—Messrs. *Payne, Gilbert and Sayani.*

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1891. *July* 16.

GOPA'L NA'NA'SHET, (ORIGINAL DEFENDANT), APPELLANT, *v.* JOHA'RI-MAL VALAD JITA'JI, (ORIGINAL APPLICANT), RESPONDENT.*

DA'DA' BA'LSHET, (ORIGINAL DEFENDANT), APPELLANT, *v.* JOHA'RIMAL VALAD JITA'JI, (ORIGINAL APPLICANT), RESPONDENT.†

Attachment—Partition decree—Money decree—Adjustment of partition decree after attachment—Adjustment invalid—"Saleable property"—Civil Procedure Code (Act XIV of 1882), *Secs.* 266 *and* 273.

The particular procedure prescribed by section 273 of the Civil Procedure Code (Act XIV of 1882) is clearly confined to money decrees, and, therefore, such decrees cannot be sold after being attached; all other decrees are both attachable, and saleable, as "saleable property," under section 266 of the Code.

A decree being attached as directed by section 273 of the Civil Procedure Code, its adjustment subsequent to such attachment cannot be recognized by the Court.

THIS was an appeal from an order passed by Khán Sáheb L. G. Fernandez, First Class Subordinate Judge of Násik, in proceedings in execution of a decree.

The facts of the case necessary for the purpose of this report were as follows:—

One Govind Nánáshet Shimpi brought a partition suit (No. 340 of 1880) in the Court of the First Class Subordinate Judge of Násik against Gopál Nánáshet Shimpi, Dádá Bálshet Shimpi and others, and obtained a decree on the 22nd December, 1883. While the said decree was being executed, one Kondáji valad

* Appeal No. 12 of 1891. † Appeal No. 42 of 1891.