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pending the treatment which he desired the lunatic should be put under at the Patna lunatic asylum. For aught we know, the lunatic might have to be detained for the purpose of treatment for some years together; and we do not understand whether the learned Judge seriously meant that all this while the estate of the lunatic should be left uncared for, and without a manager.

We observe that the learned District Judge, although some evidence was produced before him as to the unsoundness of mind of Rajendra Prosad, has not determined whether that person is a lunatic, as he was bound to do under Act XXXV of 1858 (see section 7), and it is necessary that this should now be done.

Turning then to the question whether Rajendra Prosad should be sent to the lunatic asylum, we observe that there is apparently no provision in Act XXXV of 1858 authorizing a District Judge to send a person adjudged to be a lunatic to the lunatic asylum; but it is not necessary in the view that we take of the matter to express any decisive opinion upon the point at the present stage. Rajendra Prosad is evidently a man of means. According to the statements made by his mother, he has been residing at Patna with his family, and been under medical treatment there; and, if he is not absolutely violent, and may be well taken care of by his own people at Dumraon and can get proper medical treatment at that place, there is no reason why he should be forced to go to the lunatic asylum. We think that the District Judge should reconsider this matter before he makes up his mind to take the step which he intended to take by his order of the 18th April 1902.

We need hardly add that, in any event, it would be incumbent upon the District Judge, in view of the provisions of section 9 of Act XXXV of 1858, to appoint a manager to take charge of the estate of Rajendra Sahu, and he will now be required to appoint a person as manager. If the mother be a fit and proper person, we do not see why she should not be so appointed.

With these remarks the orders of the District Judge of the 18th April 1902 and 15th May 1902 will be set aside and the case sent back to him for reconsideration with reference to the [977] remarks which we have already made. The learned Judge is requested to take up this matter, if possible, out of turn.

Appeal allowed. Case remanded.

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30 C. 977 (=7 C. W. N. 878.)

APPELLATE CIVIL.

AMIRUDDI BEPARI *v.* BAHADOOR KHAN.*

[19th April, 1903.]

Notice of dishonour—Negotiable Instruments Act (XXVI of 1881), ss. 30, 93, 98—Hundi—Liability of drawer.

In order to make the drawer of a *hundi* liable in case of dishonour by the drawer or acceptor thereof, it is necessary for the plaintiff to show that due notice of dishonour was given to the drawer, or that he (the drawer) did not suffer any damage for want of such a notice.

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* Appeal from Appellate Decree No. 2155 of 1900 against the decree of Mohim Chunder Ghose, Subordinate Judge of Dacca, dated June 21, 1900, affirming the decree of Upendra Nath Dutt, Munsif of that District, dated January 26, 1900.

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Krishnashet Bin Ganshet Shetye v. *Hari Valji Bhatye* (1) and *Moti Lal* v. *Moti Lal* (2) referred to

[Ref. 14 I. C. 51.]

SECOND APPEAL by the plaintiffs, Amiruddi Bepari and others.

This appeal arose out of an action for a certain sum of money based on a *hundi*. The allegation of the plaintiffs was that the *hundi* was executed in favour of one Yanus Bepari by defendant No. 2, and which was accepted by defendant No. 1; that the said Yanus Bepari had an eight-anna share of the *hundi*, and the plaintiffs Nos. 1 and 2 had the remaining eight annas; that the said Yanus Bepari died, leaving him surviving two sons, plaintiffs Nos. 4 and 5, the *pro forma* defendants Abdul Rahman and others, and a daughter named Nurbanu Bibi, as heirs; that the *pro forma* defendants and the said Nurbanu Bibi sold their share in the *hundi* to the plaintiff No. 3; that the said *hundi* was presented to the defendant No. 1 for acceptance, who accepted it promising to pay the amount; but he did not do so, and hence the suit. The defendant No. 2, alleged that he had no notice of the transfer, [978] nor any demand was made from him of the amount under claim; and that he was not liable inasmuch as the defendant No. 1 had accepted the *hundi*.

The Court of First Instance decreed the plaintiff's suit as against the defendant No. 1, but dismissed it as against the defendant No. 2 the drawer of the *hundi*. Against this decision the plaintiffs appealed to the Subordinate Judge of Dacca who dismissed the appeal, holding that in order to make the defendant No. 2 liable, it was necessary to serve him with a notice of dishonour.

Moulvi *Shamsul Huda*, for the appellants, contended that no notice was necessary. If any notice was necessary at all, it was for the defendant No. 2 to show that no notice was served upon him, and that he suffered damage for want of such notice.

Babu *Sarat Chandra Basak*, for the respondents, was not called upon.

RAMPINI AND MITRA, JJ. This is an appeal against the decision of the Subordinate Judge of Dacca dated the 21st of June 1900. The suit was one brought upon a *hundi*; and the Subordinate Judge has given the plaintiff a decree against the defendant No. 1, the acceptor of the *hundi*, and dismissed the suit as against the defendant No. 2, the drawer of the *hundi*, on the ground that the plaintiff did not give him any notice of dishonour. Plaintiff now appeals against the decision.

The learned pleader for the appellant argues that it was not necessary to give notice, because the defendant has not shown that he had suffered any damage for want of notice. We think, however, that it is plain from the terms of sections 30 and 93 of the Negotiable Instruments Act that notice was absolutely necessary to give the plaintiff a cause of action, and notice can only be dispensed with under the circumstances mentioned in section 98 of that Act. The plaintiff has not shown that any of the circumstances mentioned in section 93 exists. Therefore, we think that the suit was rightly dismissed.

We are supported in this conclusion by the rulings in the cases of *Krishnashet* v. *Hari Valji Bhatye* (1) and *Moti Lal* v. *Moti* [979] *Lal* (2). It is for the plaintiff to show that notice was given, or that the defendant could not suffer damage for want of it. It was not for

(1) (1895) I. L. R. 20 Bom. 488. (2) (1883) I. L. R. 6 All. 78.

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the defendant to show that he had suffered damage for want of notice. As a matter of fact, the defendant raised in his written statement the plea that he had received no notice, so it lay upon the plaintiff to show that the defendant could not suffer any damage for want of notice. But he has not done so.

The appeal is dismissed with costs.

Appeal dismissed.

30 C. 979 (=7 C. W. N. 783.)

ORIGINAL CIVIL.

MONOHAR DAS v. FUTTEH CHAND.*

[13th July, 1903.]

Revivor—Execution of Decree—Limitation Act (XV of 1877), Sch. II, Art. 180—Notice—Civil Procedure Code (Act XIV of 1882), ss. 232, 248.

Where a notice was issued under ss. 232 and 248 of the Civil Procedure Code for the execution of a decree and further proceedings were dropped until after the period allowed by limitation computed from the date of such decree :—

Held, that there being no order made by the Court such notice alone did not operate as a revivor of the decree within the meaning of Art. 180, Sch. II of the Limitation Act.

Ashootosh Dutt v. *Doorga Churn Chatterjee* (1) and *Suja Hossein* v. *Monohar Das* (2) discussed.

[**Ref.** 26 All. 361=1904 A. W. N 51=1 A. L. J. 80 ; 11 I. C. 216; **Dist.** 9 C. L. J. 271 =36 Cal. 543 ; 11 C. L. J. 91=14 C. W. N. 357 ; 2 I. C. 675.]

THIS was an application for the execution of a decree made on the 12th of December 1889.

It appeared that the plaintiff who obtained the decree died in March 1896 without ever having applied for execution. His executrix, Dhundaye Bibi, died in March 1901, also without having applied for execution.

[980] On the 12th of December 1901, precisely 12 years after the date of the decree, Jamna Daye Bibi, sole heiress of the said Dhundaye Bibi, obtained an order for Letters of Administration to the estate of Dhundaye Bibi, and at the same time applied for execution of the decree of the 12th of December 1889.

Notice was ordered to issue in respect of her application for execution under ss. 232 and 248 of the Code of Civil Procedure.

After the notice had issued Jamna Daye Bibi died, and further proceedings were dropped.

Mr. *Dunne* (Mr. *Sinha* with him), in support of the application contended that the order for notice to issue under ss. 232 and 248 of the Code of Civil Procedure constituted a sufficient revivor within the meaning of Article 180 of the second Schedule of the Limitation Act (XV of 1877).

Mr. *Chakravarti* (Mr. *B. C. Mitter* with him) *contra*. A notice for an order to issue is not a revivor. When followed by an order then it is a revivor, and the date of the order gives a fresh starting point from which

* Application in Original Civil Suit No. 474 of 1889.

(1) (1880) I. L. R. 6 Cal. 504. (2) (1896) I. L. R. 24 Cal. 244.