

English bankruptcy of one James Hamilton Robinson, appeared, and it was ordered that the further hearing of the matter should stand adjourned until the 5th of August with *ad interim* protection; that the insolvents be at liberty to amend their schedule, and that the substance of the order be published twice in the *London Gazette*, and once in the *Calcutta Gazette*. At this hearing Mr. Anstruther had been examined. It now appeared that, subsequent to this order Mr. Anstruther was obliged to leave India on account of ill health, and was on his way to the south of Italy, consequently he was not in Court to verify the schedule. No opposition had been entered and Mr. Mactavish was present in Court.

Mr. *Woodroffe* and Mr. *W. Jackson* for the insolvents.

Mr. *Woodroffe* contended that there was nothing in the Act which declares that the insolvent must personally attest the truth of the schedule; that in this case one partner was in Court, and that his attestation would be sufficient; but that, if necessary, a commission could issue, and Mr. Anstruther be examined.

Mr. *Remfry*, for the trustee, under the English bankruptcy of J. H. Robinson, asked for his costs.

PONTIFEX, J.—Under the circumstances of this case, there being no opposition, and no one desiring to question Mr. Anstruther, who has already been examined once, and has lately been sent away from India dangerously ill I consider that it will be sufficient that the truth of the schedule should be attested by the other insolvent, Mr. Mactavish, who was the partner of Mr. Anstruther; but perhaps it would be as well to have on the record of the case an affidavit from Mr. Anstruther sworn before a notary public, or a British consul, verifying the schedule. Personal discharge is given upon the understanding that such affidavit, will be filed.

Attorney for the insolvents: Mr. J. O. Moscs.

Attorneys for the trustee under the English bankruptcy of Mr. Robinson Messrs. *Rogers* and *Demfry*.

1873
Aug. 18 & 27.

Before Mr. Justice Macpherson.

KISTOKAMINY DOSSEE v. MIRTOONJOY DUTT.

Costs—Hindu Widow—Partition Suit.

In a suit by a childless Hindu widow for partition of her late husband's estate from which she alleged that she had been ejected by the defendant, the reversionary heir, the widow consented to a decree for partition, whereby a moiety of the property was allotted to her for the estate of a Hindu widow, and the parties were ordered to pay their own costs respectively. There was nothing in the decree to show that the defendant had been guilty of any misconduct, or that there was an neces-

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sity for the suit. An application by the widow that her costs of suit might be paid by the sale absolutely of the share allotted to her was refused.

THE plaintiff, a childless Hindu widow, having brought a suit for a partition of her late husband's estate against his reversionary heir the defendant, consented to a decree whereby she was declared entitled to a childless widow's interest in a moiety of the property, the defendant was declared entitled to the remaining moiety absolutely, and it was ordered that the parties respectively should bear their own costs of suit.

Mr. *Bonnerjee*, on behalf of the plaintiff, now moved for an order enabling her to sell her share of the property for the purpose of paying her costs of the suit and of the present application, and of securing her maintenance.

The motion was based on an affidavit, in which the plaintiff stated that about Rs. 1,200 was due to her attorneys for costs; that she was possessed of no property besides that allotted to her in the suit, the value of which did not exceed Rs. 3,000; that unless she could make arrangements to pay the costs due to her attorneys, proceedings would be taken against her which would render her liable to further costs; that she had attempted to sell her share, but that the defendant had warned off intending purchasers; and finally that she had been compelled to bring the suit, in consequence of her having been turned out of the house, which was the subject of partition, by the defendant.

Mr. *Bonnerjee* cited *Cox v. Cox* (1). and 1 Seton on Decrees (3rd edit.) page 578.

Mr. *Wood*, *Contra*.

MACPHERSON, J — I cannot grant this application. The applicant has consented to a decree for partition which directs that the parties should bear their own costs respectively. There is nothing in the decree to show any misconduct on the part of the defendant, or that there was any necessity for the suit at all. The partition has been effected, and the widow now asks that her costs should be paid out of the share allotted to her *i.e.*, not out of the life-interest to which alone she is entitled, but by sale absolutely of what has been allotted to her. As the defendant is the immediate reversioner who, on the plaintiff's death, will succeed to this property as heir of her husband, the plaintiff in effect asks that the defendant should ultimately bear her costs of this suit. If she had any case against the defendant which made it proper that her costs should be thrown on him, she ought to have had the question raised and decided before the decree was passed. It is not in every suit by a childless Hindu widow for partition that it can be taken that the suit is for the benefit of her deceased husband. Partition in itself is in no degree a necessity or a benefit to the deceased husband. And if the widow wishes to pay the costs of a partition suit which she has brought, by sale of the property allotted to her

and not merely by sale of her own limited interest therein, she must make out a distinct case of necessity, and must prove that she was driven to sue in order to protect herself and her husband's estate.

Attorney for the plaintiff: *Baboo Kallynath Mitter.*

Attorneys for the defendant: Messrs. *Rogers and Remfry.*

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KISTORAMINY
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v.
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DUTT.

Before Mr. Justice Markby and Mr. Justice Birch.

RAMNIDHY KOONDOO AND ANOTHER (JUDGMENT-DEBTOBS) v. RAJAH
OJOODHYARAM KHAN (DECREE-HOLDER).*

1873
May 31.

Power of Mofussil Courts to make orders in pōndām against Persons not Parties to a Suit—Order for Payment of Costs on Person not Party to the

Suit, and after Dismissal of Suit.

Baboos Kally Mohun Doss, Romesh Chunder Mitter, and Bhoobany Churn Dutt for the appellants.

The Advocate-General offg. (Mr. Paul), Mr. Woodroffe, and Mr. R. T. Allan for the respondent.

THE facts are stated in the judgment of the Court, which was delivered by MARKBY, J.—In this case it has been established to the satisfaction of the District Judge, upon an inquiry instituted by him, that Ramnidhy Koondoo and Bykantnath Koondoo, being desirous of entering into a transaction for the purpose of assisting certain persons called the Bhooyas in establishing their claim to certain landed property in Midnapore, agreed that they should receive as a consideration for so doing the half of any property that might be recovered in the suit; and in order to carry out this arrangement, purchased from the Bhooyas at a nominal sum one half of their interest in this property: but the Koondos, instead of taking a conveyance in their own names and joining with the Bhooyas as plaintiffs in the suit, took a conveyance in the name of one Shama Soondery, an indigent member of their family, and dependent upon them for support: and they caused the suit to be brought in her name and that of the Bhooyas jointly. The District Judge has found that Shama Soondery was thus put forward by the Koondos in order to save themselves from having to pay the costs of the suits which were to be brought to establish

* Miscellaneous Regular Appeals, Nos. '62 and 63 of 1873, from the orders of the Judge of Midnapore, dated the 14th February 1873.