

APPENDIX

Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

BISHONATH SURMA AND OTHERS (DEFENDANTS) v. SREEMUTTY SHOSHI
MOOKHEE (PLAINTIFF).*

1873
April 24

Special Appeal, Point allowed to be raised in—Limitation.

Mr. R. E. Twidale and Baboo Aukhil Chunder Sen for the appellants.

I aboos Sreenath Banerjee and Romesh Chunder Mitter for the respondent.

THE facts sufficiently appear in the judgment of the Court, which was delivered by

JACKSON, J.—This was a suit by the daughter to set aside an act of alienation made by her mother in 1855 and to have the daughter's reversionary right declared, notwithstanding such alienation, the mother being still living and 15 years having elapsed from the date of the alienation at the commencement of the suit. The lapse of this time seems to have escaped the notice of the Subordinate Judge. He went into the question of the necessity, or otherwise, of the alienation, and on that point he found in favor of the defendants. The case went on appeal before the District Judge, Mr. C. D. Field, and he, in discussing the plaintiff's right to recover, appears to have lost sight of the objection which was manifestly raised by the defendants that this suit was barred by limitation. The judgment of the District Judge, who reversed the decree of the Subordinate Judge, is now before us in special appeal, and the point of limitation is now raised. The very facts which would have supported, and which do support this plea of limitation, are raised in the grounds of special appeal, but curiously enough for another reason and in another shape. It is said, "that when the plaintiff admits that a sale was executed in 1855 at which time the purchasers got possession, that in execution of a decree against the purchasers, their rights were purchased by the second set of defendants, and that in execution of a decree against those second set of defendants, the property was purchased by your petitioners, and when there is no allegation of fraud as to these purchases, which are *bond fide* made, then the plaintiff's claim for a declaratory decree ought to have been dismissed on the ground of her long silence and acquiescence for a period of above 16 years." Although this point, therefore, was not directly taken in the grounds of special appeal, it

* Special Appeal, No. 804 of 1872, from a decree of the Officiating Judge of Chittagong, dated the 22nd February 1872, reversing the decree of the Officiating Subordinate Judge of that district, dated the 29th July 1871.

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seems to me from the very nature of the suit that it is one which ought to be allowed to be taken, and which therefore we have allowed to be taken. It appears that the plaintiff, the daughter, was not only in the same position in reversioner which she now holds, but she was actually a party to the legal proceedings ending in a decree, in part satisfaction of which the alienation complained of was made. It has been held in many cases by this Court that a party, desirous as a reversioner to obtain a declaration of his rights affected by a sale or gift made by a Hindu widow, must bring his suit within 12 years of the alienation, and that it is a remedy of a different description which is open to him after the death of the widow. Under these circumstances we have no choice but to reverse the decisions of the Courts below, and dismiss the plaintiff's suit with all costs.

Before Mr. Justice Macpherson.

1873
 May 22 & 29.

GEORGE v. GEORGE.

Alimony, Non-payment of—Attachment of respondent—Insolvency Act (11 & 12th Vict., c. 21), s. 49—Petition in Insolvency.

Mr. Lowe, on behalf of Mrs. G. P. George, applied *ex parte* for the attachment of her husband, J. George, under the following circumstances as set forth in an affidavit by Mrs. George:—That by two orders made in a suit brought by her for the dissolution of her marriage with the respondent, the latter was directed to pay her Rs. 120 a month by way of alimony, and to pay into Court the probable amount of her costs, to be certified by the taxing officer; that the probable costs were subsequently certified at Rs. 2,000; but the respondent having failed to deposit this sum was directed by a further order of the 31st March 1873 to pay into Court to the credit of the suit Rs. 300 monthly, out of which sum Rs. 120 was to be applied in payment of her alimony and the balance in payment of her costs; that the respondent, who continued in receipt of his usual income, wilfully neglected to obey this order, that since February 1873, she had received nothing in respect of alimony, and that, on the 3rd April 1873, the respondent filed his petition of insolvency. In his schedule the respondent entered the Accountant General¹ as a creditor for Rs. 2,000, but made no mention of his liability for alimony, and he had not filed any accounts.

Mr. Lowe contended, on the authority of *Gonsalves v. Gonsalves* (1), that the filing of the petition did not discharge the respondent's liability to pay alimony. In *In re Rawlins* (2) and *Dicknes v. Dickens* (3), it was held that a discharge in bankruptcy operated as a discharge of an order for alimony—see also *The King v. Edwards* (4) and *Lees v. Newton* (5). But here the

(1) Ful. Rep., 392.

(2) 12 L. T., N. S., 57.

(3) 31 L. J. Prob., 183.

(4) 9 B. & C., 652.

(5) L. R., 1 C. P., 568.