money which a further can reasonably be expected to spend on his family, compensation has been given for it; but so far as it is intended to mean more than that, without saying that under very special circumstances it might not be brought within the principle we have laid down, we are of opinion that no such circumstances exist in the present case. On the whole, we are unable to say that the family had a reasonable and well-grounded expectation of pecuniary benefit exceeding the sum assessed by the learned Chief Justice; and the appeal must, therefore, be dismissed, and with costs, unless the company consent to waive them, which as this is the first case in which the application of the Act has been fully discussed, we think they might do with great propriety.

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Appeal dismissed.

Attorneys for the plaintiff: *Macfurlane and Skipsey.*
Attorneys for the defendants: *Hearn, Cleveland, and Peile.*

HARIVALLABHDÁS KALLIÁNDÁS.....*Plaintiff.*
UTAMCHAND MÁNIKCHAND ..... *Defendant.*

July 27.

Practice—Sequestration—Indorsement upon Copy-Order—Limiting Time in Order—"Forthwith"—Supreme Court Rules, Nos. 388 and 389.

The process of sequestration for contempt of a decree or order of court, as it existed in the late Supreme Court, will in a proper case, issue out of the High Court.

The object of Rule 389 of the Supreme Court Rules, which required a party who wished to enforce an order by sequestration to indorse upon the copy of the order served upon his opponent a memorandum to the effect that in default of performance of the order he would be liable to be arrested, that to have his estate sequestered, was to enable the party making such indorsement to apply *ex parte* for the writ. In the absence of such a memorandum indorsed upon the copy order, a party desirous of enforcing an order by sequestration must give proper notice to his opponent of his intention to apply for the writ.

An order commanding an act to be done "forthwith" is inficiently in conformity with the rule that acquires the time within which an act ordered to be done is to be performed to be specified in the order.

A statement of the proceeding in this case will be found in the 7th volume of the Bombay High Court Reports, O. C. J., p. 172.

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As there stated, the defendants, Utamchand Manikchand Ghelábhái Hemchand, and Tulsidás Kisandás, were, on the 10th of February 1871, committed to jail under an attachment for contempt in not obeying the Court's order of the 5th of September 1868.

The said defendants not in the meantime having purged their contampt, notice of the plaintiff's intention to move for a writ of sequestration against them was given to their solicitors on the 22nd of July, and a more formal notice to the same effect was again served upon their solicitories on the 24th of July.

Anstey, on the 27th of July, in pursuance of the above notices, before WESTROPP, C. J., and SARGENT, moved that a writ of sequestration should issue. The application was founded upon affidavits which showed that the above-named defendants were respectively possessed of property within the limits of the ordinary original jurisdiction of the High Court.

Anstey:—The writ for which I move is one that had its original in Courts of Equity in England, not form legislative enactment, but, as it were *ex necessitate rei*. It is said that the first instance of a sequestration after a decree was in Sir Thomas Read's case, in Lord Coventry's time. There appear to have been great struggles between the Courts of Common Law and Equity before the process was established: Daniell's Ch. Pr., pp. 1029, 1030 (2nd ed.); Smith's Ch. Pr., Bk., I, Ch. 4, p, 121 (6th ed.). Its legality has, however, been now long established: *Cavil* v. *Smith* (*a*); *Wharan* v. *Broughton* (*b*); *Mitchell* v. *Draper* (*c*). The late Supreme Court adopted this process from the Courts of Chancery in England: *Doe den. O'Hanlon* v. *Paliologus* (*d*). The above-cited cases show that the goods and chattels of a defendant in contempt may, or order made on motion for that purpose be sold by the sequestrators. This is so in India also: *Fabian* v. *Walter* [*e*]. The rules of the Supreme Court in reference to sequestrations were modified in the year 1843. The

(*a*) 3 Brown's Ch. Ca. 362. (*b*) 1 Ves. Sen 180. (*c*) 9 Ves 208.
(*d*) Mor. Dig. Vol. I., p. 581 (*e*) *Ibid* 374, S. C. Taylor 275.

existing rules upon this subject are Rules 220, 386, 387, and 388 of McKenzie's Compilation. The writ will issue out of the High Court, as nothing inconsistent with its so issuing is contained in the Code of Civil Procedure, and, so far as the same is not inconsistent with the Code Civil Procedure, the practice of the late Supreme Court is the practice of this court; High Court Rules, Ch. II., R. 1. Act VI. of 1855, Sec. 13 (not affected by Act VIII. of 1868); the Letters Patent of the High Court, cl. 11; Seton on Decrees, pp. 1214, 1216; and Maddock's Principles of the Court of Chancery, Vol. II., p. 256, were also referred to. As this writ issues as of course, and is supplementary to the writ of attachment for contempt, it is not neccessary to enter into the merits of the case.

Latham, for the defendants Utamchand Mánikchand and Tulsidás Kisandás:—We do not contend that this court has not the power to issue writs of sequestration, but we contend that the writ ought not to issue in this case, became the provisions of Rule 389 have not been complied with. (I.) There is no time specified in the order of the September 1868 within which the acts therein commanded are to be done: *Cherry* v. *Cherry* (*f*). The order in this case only states that the acts commanded to be done shall be done "forthwith," and we submit that that is not a sufficient compliance with the requirements of the law. (II.) On the copy of the order served upon the defendants there has not been indorsed a memorandum to the effect that if they neglected to perform the order within the time limited, they would be liable to be arrested and to have their estate sequestered, for the purpose of compelling them to obey the order. *Non constat* that if this endorsement had been made, the defendants would not have obeyed the order. Rule 389 must be read in close connection with Rule 388. Under this view the court has no jurisdiction to issue process of sequestration until due service has been effected, and until the time limited in the order has elapsed. Whatever may be the practice at home—under the rules of the Supreme Court, attachment and sequestration are

(*f*) 29 L. J., P. M. & Ad. 141.

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concurrent processes independent of one another. [WESTROPP, C. J. :—In the case of attachments for contempt, the practice has grown up of granting a rule nisi only in the first instance, and hence there is no longer any necessity for the indorsement upon the order. A rule nisi has been substituted for it.] No analogous practice exists as the issue of writs of sequestration.

Macpherson, for Ghelábhái Hemchand, followed.

Anstey, in reply :—Rule 389 applies to and must be read in connection with the subsequent, not the preceding, rule. If that is not so, I contend that Rule 389 only applies when a n *ex-parte* order for sequestration to issue is asked for, not to applications upon notice. Its provisions too are merely directory. Notice of this application has been given to the defendants.

WESTROPP, C. J. :—We think that in this case, it not being denied by the learned counsel for the defendants Utamchand, Tulsidás and Ghelábhái, that the power is resident in this court of issuing writs of sequestration for seizing the property of persons guilty, as these defendants are, of contempt of court (Stat 24 and 25 Vict., c. 104, s. 11; Rule I, Chap. II., High Court Rules), the only questions for us to determine are those which the learned counsel have raised upon the 388th and 389th rules of the late Supreme Court, which regulate the issuing of such writs. Rule 388 says : " If any party who is, by an order of decree, ordered to pay money or do any other act in a limited time, shall, after due service of such order, refuse or neglect to obey the same according to the exigency thereof, the party duly prosecuting such order shall, at the expiration of the time limited for the performance thereof, be entitled to a writ of sequestration, and such other process as he hath hitherto been entitled to, after a commission of rebellion has been returned *non est inventus*." It was said, or rather suggested, that there was no time limited in the order of the 5th of September 1868, for the contempt of which these defendants stand committed, for the performance of the directions contained in that order; but we are of opinion that by the word " forthwith " a limited and that

the most limited, time was appointed for the delivery, to the receiver, of the diamonds and other unsold partnership property, and it cannot be denied that the period of nearly three years which has elapsed since the making of this order, has allowed the defendants the most ample time for complying with it. And so much of the order as prohibited the parties from collecting or receiving the assets or outstandings must be regarded as operating from the moment it was made. That part of the order, as well as the previous part relating to delivery of the diamonds, &c. to the receiver, these three defendants have disobeyed. The language of the order on this point is as follows:—

"And it is further ordered that all parties defendants in these suits do forthwith make over to the said receiver all the diamonds and unsold articles forming part of the property the subject-matter of these suits, and in the plaints thereof respectively mentioned, which is or may be in their custody, power, or control, together with all accounts, books, papers, and documents relating thereto. And it is further ordered that the said receiver do get in and receive all outstandings due to the said partnerships respectively, or forming part of the subject-matter of these suits or of either of them. And it is further ordered that all the said parties, and all persons whatsoever, save and except the said receiver or those acting under him or by his order, be, and they are hereby, prohibited from collecting or receiving any of the assets or outstandings of the said partnerships or either of them, and from in any way intermeddling with the collection thereof."

The objection as to the limitation of time is thus disposed of on reference to the order.

The 389th rule is that upon which the defendants' second objection is founded. That rule is as follows:—

"Every order or decree requiring any party to do an act thereby ordered shall state the time after service of the decree or order within which the act is to be done; and upon the copy of the order which shall be served upon the party required to obey the same, there shall be indorsed a memorandum in the words or to the effect following, viz.: 'If you, the within-named A B., neglect to perform this order by the time therein limited, you will be liable to be arrested by the Sheriff, and also be liable to have your estate sequestered, for the purpose of compelling you to obey the same order.'"

That latter provision has not been complied with here, but assuming that this rule applies to the rule preceding, and not merely to the rule following it, we think that the object of requiring such a memorandum to be indorsed upon the copy

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of the order was to enable the party complaining of a non-compliance with the order to make an *ex-parte* application to the court for a writ of sequestration, and to give the person upon whom the order was served notice that he would be liable to have his estate sequestered forthwith upon his disobedience of or non-compliance with the order. In the case before us there does not appear to have been any such indorsement upon the copy of the order, but the present is not an *ex-parte* application. It is an application made upon notice given by the plaintiffs five days before this motion, namely, on the 22nd, and repeated on the 24th, of the present month. We think that the parties have thus had notice that this writ would issue if they did not obey the order, and that an application of this sort was not what Rule 383 referred to. We hold, therefore, that the writ of sequestration in this case must go. The plaintiff is entitled to his costs of this motion, to be paid by the defendants in contempt who opposed it.

Order accordingly.

Oct. 6.

LÁLCHAND RAMDAYÁL.....*Plaintiff.*

GUMTIBÁI, widow.....*Defendant.*

GHELLÁ PEMÁ and others.....*Plaintiffs.*

GUMTIBÁI, widow.....*Defendant.*

Administrator of the Estate of a deceased Hindu—Letters of administration granted to Administrator General—Relation back—Suits brought before Grant of Letters of Administration against Representatives of a deceased Hindu—Administrator General's Act (XXIV. of 1867).

The legal *status* of the administrator of the estate of a deceased Hindu, as compared with the legal *status* of the administrator of the estate of a deceased person who in his lifetime was governed by English law, pointed out.

When ordinary letters of administration to the estate of a deceased Hindu are granted to the Administrator General under Act XXIV. of 1867 (but not under Sec. of that Act), his title does not relate back to the death of the deceased, nor to the date of the Judge's order directing such letters to be issued, but accrues only as from the date of the grant of such letters.

Quære—whether, if letters are issued to the Administrator General under Sec. 17 of that Act, the case would be otherwise, or his powers greater.

Where a Hindu died leaving a widow and no male issue, and two of creditors of the deceased brought suits against such widow as the legal