ORIGINAL JURISDICTION. (*a*)

In the Goods of GIRDAR DÁS VALLABA DAS deceased.

The bare possibility that the Act of Limitations may ultimately become a bar to the recovery of assets, is not such danger of misappropriation as warrants the granting to the Administrator General of an order under Sec. 12 of Act VIII of 1855.

Semble a debtor to the estate of a deceased person cannot apply for an order under that section.

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THIS was a petition by Mr. John Miller, the Administrator General of Madras, under Section 12 of Act VIII of 1855, that an order might be made directing him to apply for letters of administration to the estate of Girdar Dás Vallaba Dás deceased with his will annexed.

According to the statement in the petition, Girdar Dás Vallaba Dás, a saukár, died at Madras on the 21st of April 1841, having on the same day made his will in Telugu to the following effect:—"After my death my property should go to my brother Dámodara Dás Vallaba Dás and to my son Varjilál Dás. Balakistna Dás Murali should look after all the money-dealings of my *kòthí* (*b*) at Madras, and should collect and keep them. The said Balakistna Dás Murali Dás should conduct himself according to my brother Dámodara Dás Vallaba Dás' order. Thus I have with my consent caused this will to be written while in the possession of my faculties. Besides this, a list containing charity [*sic*]and legacies to others has been caused to be written, and my brother Dámodara Dás Vallaba Das shall perform according thereto. My brother Dámodara Das shall with reference to the practice of the *kóthí* perform that which may meet with his pleasure."

Probate of this will was granted by the late Supreme Court on the 9th of December 1841 to Dámodara Dás as the executor constructively appointed by the testator.

In 1857 Dámodara Dás died at Mysore intestate and leaving Varjilal Dàs, Girdar's son, him surviving.

At the death of Dámodara there were several outstanding debts to Girdar's estate. One of these was a large sum

(*a*) Present: Scotland, C. J. and Bittleston, J.

(*b*) Tam. kótti from Sanskrit koshtha '*vorrathskammer*' Bothlingk and Roth, '*treasury*' Wilson. Here it means a banking-house.

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owing by the late Nawab of the Carnatic. Another was a sum of 180,000 Rupees or thereabouts owing by Aziz-ul-Mulk Bahádur, and secured by pledge of certain jewels, valued at 300,000 Rupees, and deposited with Girdar's *kothi*.

In February 1859 Yarjilál Das, by his attorney Balakistna Dás, preferred his claim under Act XXX of 1858, ("An Act to provide for the administration of the estate and for the payment of the debts of the late Nawáb of the Carnatic") for the recovery of the debts owing by the Nawáb ; and by an order made on the claim, dated 27th February 1860, it was ordered that the Receiver of Carnatic property should, on the production of letters of administration to Girdar's estate with the will annexed, pay to the Administrator named the sum of 73,791-7-8 Rupees.

Varjilál Dás did not apply for the letters of administration with the will annexed. But Balakistna Das in December 1860 petitioned the late Supreme Court that letters of administration of the estate and effects of Girdar Dás with his will annexed limited to the outstandings due and owing to the *kothi* in the will mentioned might be granted to him as the constructive executor. In consequence, however, of an intimation received from Varjilál no proceedings were taken on this petition.

On the 28th of February 1862, Balakistna filed anoher petition in the late Supreme Court praying that probate of Girdar's will, limited to the outstanding debts due to the *kothi*, might be granted to him as constructive executor. This petition came on for hearing and was refused.

No further proceedings were taken in the matter of Girdar's estate. The 73,791-7-8 Rupees remained in the hands of the receiver, yielding no interest to Girdar's representatives, and the present petition alleged that the receiver threatened to return that sum to Government unless letters of administration with the will annexed to Girdar's estate were taken out and produced to him.

The petition further alleged that Aziz-ul-Mulk, being as aforesaid interested as mortgagor in the due administration of Girdar's estate, caused his attornies to write to the Administrator General stating the particulars of his debt to

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Girdar's estate : and that on the 15th of January 1861 such debt amounted to 252,170-9 Rupees; that he had offered to pay off the debt and redeem the jewels; that he had even authorised the present managers of the *kothi* to sell the jewels, and after deducting the amount due, to pay the balance to him : that his attempts to close the accounts were unsuccessful, the *kothi* managers disputing the amount due, and alleging want of authority from Varjilál to return or sell the jewels : that meanwhile interest at a high rate was running against him ; and that dishonest conduct with regard to the jewels might reasonably be apprehended.

The stating-part of the petition concluded by charging that unless administration of Girdar's estate with will annexed were issued, the sum in the possession of the receiver and the pledge-debt of 252,170-9, with subsequent interest, would remain uninvested and unproductive, and the right to recover the same would be endangered, and would be shortly barred under the Indian Limitation Act ; that Aziz-ul-Mulk would be put to unnecessary expense in being obliged to pay interest on his debt ; and that the petitioner was desirous of obtaining an order under Section 12 of Act VIII of 1855.

This section enacts that :

" Whenever any person, whether a Muhammadan or a Hindu or not, shall die leaving assets within the local limits of the jurisdiction of Her Majesty's Supreme Court of Judicature at any of the said Presidencies, it shall be lawful for the Court *upon the application of any person interested in such assets or in the due administration thereof*, either as a creditor, next of kin *or otherwise*, or upon the application of a friend of any infant who may be so interested, *or upon the application of the Administrator General, if the applicant shall satisfy the Court that danger is to be apprehended of the misappropriation of such assets*, unless letters of administration of the effects of such person are granted, to make an order directing the Administrator General to apply for letters of administration of the effects of such person."

Branson for the petitioner.

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SCOTLAND, C. J., after remarking that the words "interested in such assets" clearly meant "having a direct interest or share in them," and that the Act did not appear to contemplate a debtor to the estate becoming an applicant for an order under the section cited, said that the Court was not satisfied that any danger was to be apprehended of the misappropriation of the assets.

BITTLESTON, J. concurred, and the petition was accordingly refused.

On the 30th of January *Branson* again mentioned this case. He referred to *Wms. Exors.* 5th ed. p. 455 in support of his proposition that administration might be granted to a person not beneficially interested in the estate (*a*), and insisted that the risk of the debt due to Varjilàl becoming barred by the statute was such 'danger' as was contemplated by the section. He also said that the money in the hands of the receiver of the Carnatic property was in danger, and referred to Act XIV of 1859, Section 19.

BITTLESTON, J.:—Why should the Administrator General apply? The clause giving him a general power to do so only operates when it is brought to his notice that property of a deceased person is in danger of being misappropriated, and that there are no personn interested in such property or the due administration thereof.

SCOTLAND, C. J.:—We will consider the case, bearing in mind one point that bears materially upon the application —namely, that we cannot compel a native to administer.

Cur. adv. vult.

On the 27th of February 1863, the judgment of the Court was delivered by

SCOTLAND, C. J.:—This is an application by the Administrator General under Section 12 of Act VIII of 1855 for an order directing him to apply for letter of administration of the estate and effects of Girdar Dás deceased, left unadministered by Dámodara Dás deceased, the executor with probate of the will of Girdar Dás.

(*a*) See *In the goods of Fenton* 3 Add. 36 n. (*a*), where the representatives of a trustee in whom a term of years was vested were dead.

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It appears from the petition that Girdar Das died on the 21st of April 1841, leaving an only son, and that Dámodara Dás obtained probate of his will on the 9th December 1841, and died on the 25th October 1857. Girdar Dás at his death was carrying on the business of a *kothi* at Madras, and the petition states that at the death of Dámodara Dás there remained outstanding and due to the estate of the said Girdar Dás, amongst other debts, a sum of 180,000 Rupees or thereabouts, due from Aziz-ul-Mulk to the *kothi* on the security of jewels deposited of the value of Rs. 300,000 or thereabouts, and also another debt due from the estate of the late Nawáb, in respect of which there was now in the hands of the receiver of the Carnatic property the sum of Rupees 73,791-7-8, to be paid, under an order of the late Supreme Court of the 27th February 1860, to the personal representative of Girdar Dás on production of letters of administration. The son of Girdar Dás has been living for the last sixteen years at Mysore, and it is stated that in December 1860 he threatened to enter a caveat against an application for letters of administration by Balakistna Dás, and that in consequence the application was not proceeded with.

It does not appear that the deceased left any other relations. The business of the *kothi* is still being conducted on behalf of the son: the jewels deposited now remain with the *kóthí*: it appears that no notice of this application has been given to the son ; and there is nothing in the will opposed to his representative rights.

The section under which the application is made is applicable to the assets of Muhammadans and Hindus; and requires that the Court shall be satisfied that danger is to be apprehended of the misappropriation of such assets, unless letters of administration of the effects of the deceased are granted. Then what is there in the case to satisfy us of that ? It has been urged that the debtor to the estate, Aziz-ul-Mulk, is paying interest upon his debt, and is anxious to discharge it and receive back the jewls, and is unable to do so, and that, in respect of such jeweels, there is danger of misappropriation. But a sufficient answer to this, we think, is, that as respects the estate of the deceased Girdar Das, the debt is amply secured by the jewels which remain with

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the *kothi*, and that letters of administration are not necessary to enable the debtor to take legal proceedings to discharge himself of the debt, and get back his jewels from the son as the legal successor and representative of the deceased.

Another ground put forward was, that there was danger of misappropriation of the money in the hands of the receiver of the Carnatic property, as it could only be paid upon the production of letters of administration, and that the act of limitations would in time be a bar to its recovery. This also we think is not sufficient to warrant the granting of the order under the section. There is no present danger of the loss or misappropriation of the money; and without saying that a case may not occur in which the likelihood of outstanding debts being barred by the law of limitations, would be considered sufficient danger of misappropriation within the section, we think it cannot be so treated in this case, considering that several years must yet elapse before the law of limitations could even be set up as a bar, and that the deceased's son is aware of the right to receive the money and may, at any time, entitle himself to it, and as sole legal representative may be made responsible if there are any others interested in the assets of the deceased. No more at present appears than the bare possibility of the act of limitation being allowed to become a bar, and that, without any present danger of loss or misappropriation, is clearly not enough. As far as now appears before us, the Administrator General would, if the order were made, have only to hand over the monies received by him to the son of the deceased.

The application, we think, must be refused.

Petition refused.