

The Court seems to have considered that the general words: "no document shall be received in any civil Court" ought not to be read in their widest sense, but only as rendering the document inadmissible in evidence for the purpose of affecting the mortgaged property.

The words of the present Act are different. Section 49 says, that "no document required by s. 17 to be registered shall (without being registered) be received as evidence of any transaction affecting any immovable property comprised therein."

Now, in this case, the document is not divisible. It discloses one transaction only; and that the transaction which the plaintiff must necessarily prove for the purpose of making out his case.

It may be doubtful indeed, whether, having regard to the terms of the loan, the defendant is personally liable for the money; and whether the *only remedy of the plaintiff is not against the mortgaged property. But whether this was so or not, the transaction was single and indivisible, and we think it is impossible to say, having regard to the words of s. 49, that the instrument was admissible in evidence for the purpose of proving that transaction.

Attorney for the plaintiff: Baboo *Troyluchonath Roy*.

Before Mr. Justice Pontifex.

IN THE GOODS OF HURRY DOSS BONERJEE AND SREEMUTTY
GUNGAMONY DABEE.

1878
June 17.

*Infant Hindu Widow — Guardian — Administration of Husband's Estate —
Maintenance — Special Citation — Caveat.*

Upon an application by the father of an infant Hindu widow for the grant of letters of administration to him as her guardian of the estate of her deceased husband and of the estate of the husband's mother, it appeared that the only property of the husband consisted of a sum of money ordered to be paid to him under a certain decree, upon his constituting himself the representative of the mother. This he had not done. It also appeared that there were no unliquidated debts due by the husband. The sum of money in question was in the hands of the Official Trustee.

Held, that letters of administration could not be granted to the father, but that the widow could apply when she came of age, and that until that time the Official Trustee could pay the income to her next friend for her maintenance.

1878

IN THE
GOODS OF
HURRY DOSS
BONERJEE
AND
SREEMUTTY
GUNGAMONY
DABEE.

A special citation had been served on the stepmother of the husband, and she had entered a caveat.

Held, that she had no right to enter a caveat simply because she had received a special citation.

HURRY DOSS BONERJEE, a Hindu inhabitant of Calcutta, died at Hooghly, on the 6th of October 1877, an infant, without leaving any issue, but leaving a widow, Sreemutty Siddessury Dabee, his heiress, and Sreemutty Bindoobasinee Dabee, his maternal grandmother, and his stepmother Sreemutty Dabee Dabee. Hurry Doss Bonerjee left no property beyond a sum of money payable to him under a decree in a suit instituted on his behalf by his guardian and next friend Rajendro Nath Chatterjee, against one Sreemutty Rajmohissy Dabee, in which suit it was declared that Gungamony Dabee, deceased, the mother of Hurry Doss Bonerjee, was entitled to the sum in dispute therein, and that the same should be paid to the plaintiff on his properly constituting himself the representative of Gungamony Dabee. Hurry Doss Bonerjee, however, died before taking any proceedings to get himself constituted the representative of Gungamony Dabee, and the sum ordered by the decree to be paid to him was paid into the hands of the Official Trustee. A petition was now presented by one Denonath Mookerjee, the father of Sreemutty Siddessury Dabee, for the grant of letters of administration to him of the estate of Hurry Doss Bonerjee and Sreemutty Gungamony Dabee. A caveat was entered by Sreemutty Dabee Dabee.

Mr. *Branson* and Mr. *Henderson* for the petitioner.

Mr. *Bonnerjee* for the caveator.

Mr. *Branson* moved for an order that the caveat be set aside with costs, and that letters of administration should issue as prayed.

Mr. *Bonnerjee* contended that the petitioner had no right to letters of administration during the minority of his daughter. [PONTIFEX, J.—You have no *locus standi*.] Special citation has been issued to Sreemutty Dabee Dabee. [PONTIFEX, J.—

You have no right to enter a caveat, simply because you received a special citation.]

Mr. *Branson* in reply.

PONTIFEX, J.—I think Mr. Bonerjee's caveat must be discharged, and he will have no costs of appearance. I do not think administration can be granted to the father, there being no debts, at all events no debts of which the amount is unliquidated. The widow can apply when she comes of age and until then the Official Trustee can pay the income to her next friend for her maintenance.

If there are any debts application must be made to the Court.

Taxed costs of suit may be paid by the Official Trustee out of the fund in his hands. If he is not satisfied to do it on this order, he must come to Court under the Trustee Act.

Order accordingly.

Attorney for the petitioner: Mr. *Gillanders*.

Attorney for the Caveator: Mr. *C. D. Linton*.

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

ANNODA CHURN ROY (SPECIAL RESPONDENT) *v.* KALLY COOMAR ROY AND OTHERS (APPELLANTS).*

1878
June 9.

Landlord and Tenant—Suit for rent of Ijmali Property—Co-Sharers—Form of Suit—Parties.

If ijmal property is let to a tenant at an entire rent, the rent is due in its entirety to all the co-sharers, and all are bound to sue for it; no one co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties or not. But if the land demised ceases to be ijmal, and different portions of it become the property of different owners, any one of the owners may sue for so much of the rent as he considers himself entitled to, making the other owners parties to the suit.

Where co-sharers of ijmal land let to a tenant at an entire rent brought a suit against their tenant to recover their proportionate shares of the rent, and made the other co-sharers defendants, avowedly for the purpose of obtaining an adjudication of their title as between themselves and the defendants other than the tenant:

* Appeal under s. 15 of the Letters Patent against the decree of Mr. Justice Ainslie, dated the 28th of November 1877, made in Special Appeal No 1318 of 1877.

1878
IN THE
GOODS OF
HURRY DOSS
BONERJEE
AND
SREEMUTTY
GUNGAMONY
DABEE.