1895

MAHOMED AKRAM SHAHA v. ANARBI CHOWDHRANI.

But a special custom of this kind, being entirely opposed and unknown to Mahomedan law, must be alleged and proved before it can be held to be applicable to any particular case. In the present case no such custom is alleged or even alluded to in the plaint or in the issues, and it is also noticeable that the suit as framed is to recover possession of a specific share of the property left by Panchu Shaha and not for restoration to joint possession and enjoyment of that share with the defendants, which, as pointed out by some of the learned Judges of the Allahabad High Court, is the object of the suit contemplated by Article 127. On this ground alone, therefore, we think we should be justified in holding that Article 127 does not apply to the present case, but we are also of opinion that in the absence of any allegation or proof of any special custom the parties in the present suit are governed by the principles of Mahomedan and not of Hindu law relating to joint family property. In this view, and the suit on the findings of fact arrived at by the learned District Judge being admittedly barred under Articles 142 and 144 of the second schedule of the Limitation Act, we think the appeal fails, and that it is unnecessary to consider the other matters which were pressed on our attention by Mr. Hill.

The appeal is dismissed with costs.

F. K. D. *Appeal dismissed.*

ORIGINAL CIVIL.

Before Mr. Justice Sale.

1895 *July* 17.

PREMLALL MULLICK, AN INFANT, BY HIS NEXT FRIEND TRIGOONA SUNDERY DASSEE (PLAINTIFF) *v.* SUMBHOONATH ROY AND OTHERS (DEFENDANTS.)*

Appeal to Privy Council—Erroneous order—Civil Procedure Code, section 610, Function of Court under—Receiver, Lien of, on estate.

On receiving and filing under section 610 of the Civil Procedure Code an order of Her Majesty in Council made on appeal from an order or decree of the Court of original instance, the latter Court performs a function which is purely ministerial. *Pitts* v. *La Fontaine* (1) referred to.

* Original Civil Suit No. 596 of 1893.

(1) L. R., 6 App. Cas., 482.

The effect of the order, however erroneous, on the suit itself cannot be discussed on an application of this nature.

A Receiver, however, who is divested by such order, has a lien on the estate for his claims and allowances.

Bertrand v. *Davies* (1), *Fraser* v. *Burgess* (2), and *Batten* v. *Wedgewood Coal and Iron Company* (3) followed.

Semble.—The proper course for the party aggrieved by the order is to apply to Her Majesty in Council to make the necessary alteration or modification in such order.

ON the 6th September 1893 the plaintiff instituted this suit against Sumbhoonath Roy, Kallydass Bhunjo, Debendronath Bhunjo, Upendronath Bhunjo, Hem Chunder Bhunjo, the heirs and legal representatives of Dwarkanath Bhunjo, deceased, and the Administrator-General of Bengal, praying (*a*) for an administration of the estate of Nundo Lall Mullick deceased, (*b*) for the appointment of a Receiver, (*c*) for an injunction restraining the Administrator-General from taking possession of the estate, (*d*) for the removal of the executor-defendants from their position as trustees of the will of the testator, and for the appointment of new trustees in their places, and for a scheme to be framed for the purpose of carrying out the religious trusts of the will, (*e*) for an injunction restraining the executor-defendants from intermeddling with the estate of the deceased as trustees or otherwise, (*f*) that the executor-defendants should be ordered to render an account of the estate of the deceased testator in their hands, (*g*), and that all necessary accounts might be taken, enquiries made and directions given for the purposes aforesaid. The plaintiff also asked for maintenance for himself and his mother pending the final determination of the suit.

On the 21st December 1893 during the progress of the suit the plaintiff obtained an order in the suit to the effect that a transfer of the estate made by the other defendants on the 14th August 1893 to the Administrator-General under section 31 of the Administrator-General's Act 1874 was invalid; that the Administrator-General should be restrained from selling or disposing of any of the furniture or effects of the estate of the deceased testator, and that a Receiver should be appointed

(1) 31 Beav., 429. (2) 13 Moo. P. C. 314 (346.)
(3) L. R., 28 Ch. Div., 317.

1895

PREMLALL MULLICK v. SUMBHOO-NATH ROY.

to the said estate; that this application by the plaintiff should be treated as a hearing and that the costs of the application should be taxed on scale No. 2.

On the 21st December 1893 the Administrator-General appealed against this order, and on the 16th of March the appeal was dismissed by Mr. Justice Prinsep and Mr. Justice Trevelyan, the Chief Justice dissenting.

The Administrator-General thereupon, in accordance with the original order, handed over the estate to the Receiver appointed by the Court; but on the 2nd of April 1894 he obtained leave to appeal from the original order to the Privy Council. Before the hearing of this appeal to the Privy Council, the suit itself came on for hearing on the 7th May 1894, and a decree was made *ex parte* adjourning the further hearing of the suit and ordering a reference to the Registrar of the High Court to take the accounts, make certain enquiries, and frame a scheme for the religious trusts of the estate. After the decree of the 7th May 1894 various proceedings pursuant to the decree were taken by the plaintiff. On 28th August 1894 the defendant Dwarkanath Bhunjo died, and leave was obtained by the plaintiff to amend the register of the suit by substituting the names of Kallydass Bhunjo, Debendronath Bhunjo, Upendronath Bhunjo, and Hem Chunder Bhunjo, the heirs and legal representatives of Dwarkanath Bhunjo.

On 11th of May 1895 an order was made by the Privy Council that the decree of the High Court in its Appellate and Original Civil Jurisdiction of the 16th March 1894 and the 21st December 1893 be reversed and the suit be dismissed, and that the taxed costs of both parties in the said Courts as between solicitor and client and the costs of the appeal be paid and retained by the appellant out of the estate of the testator.

On the 24th June 1895 the Administrator-General made the present application in the High Court, asking that the order of the Privy Council, dated the 18th of May 1895, be received and filed in this Court, and that all the proceedings held in this suit since the 16th March 1894, including the decree of the High Court, dated the 17th May 1894, be set aside; that the Receiver appointed

in the suit be discharged from further acting as Receiver and be ordered to deliver up the estates and file his accounts.

The *Officiating Advocate General* (Sir *Griffith Evans*) and Mr. *Donogh* for the Administrator-General of Bengal.

Mr. *C. P. Hill* for Prem Lall Mullick.

Mr. *Jackson* and Mr. *Graham* for the Receiver.

Mr. *J. G. Woodroffe* for the surviving executor.

Sir *G. Evans*.—It is undoubtedly remarkable that the order should have taken the form it has, but the Privy Council had before them the whole of the points raised in the case by the pleadings. Having the plaint before them, their Lordships must have come to the conclusion that the plaint shewed no cause of action, though there might be a cause of action against the executors. It is not open to any one in this country, whatever might be the case in England, to suggest that when the Privy Council has ordered a suit to be dismissed that order is erroneous, or that it is possible for the Judges in this country to stay the execution of that order, or to delay or avoid carrying into effect the decree made by the Privy Council, on the ground that it was possibly erroneous, and that Her Majesty would probably be pleased to come to the conclusion that it was erroneous; that is not capable of discussion. It is true the application was for an injunction and an injunction order was made; still, although it might be irregular for the Privy Council to dismiss the suit itself altogether, instead of reversing the order and decree of this Court, it is not open to any one here, when the Privy Council had once made that order, to dispute that order. Somebody must be in charge of the estate; this Court cannot retain the Receiver, because the suit has been dismissed. All that the Court can do is to allow the Administrator-General to take charge for the purpose of administering the estate. Their Lordships in the Privy Council knew the nature of the whole suit and stated it in their judgment. However irregular their action may have been, no one can question their right to dismiss the suit.

Mr. *C. P. Hill contra*.—This application ought not to be granted; at any rate not to the full extent prayed for. It cannot be granted to the full extent prayed for. The original application was for an injunction and a Receiver. It had nothing to do with the nature of the suit or with the suit itself. It was purely for the

1895

PREMLALL MULLICK v. SUMBHOO-NATH ROY.

protection of the estate and was made in the suit. In order to avoid having to render their accounts, the executors, who were the trustees, transferred the estate to the Administrator-General.

At the time of this application the suit was not heard. The Privy Council must have misunderstood the state of affairs, and thought the entire suit was before them. We wish to be put in a position now to go to the Privy Council and ask them to rectify the mistake. Macpherson on Privy Council Practice, pp. 129, 144. I wish to raise the following points: (1), in asking the Court to allow this decree to be filed, is not the Administrator-General advised to do something which is a breach of faith, namely to carry out an agreement by virtue of a mistake further than is intended by the parties? (2) Has not the Court a discretion in the matter to give us time to apply to the Privy Council to rectify the order. The notice of the order is not a notice to the High Court as a Court until it is filed; it still leaves, until filed, a discretionary power to this Court to give us time to apply. (3) If this Court cannot give us time, what further steps can it take in the matter? The moment the order is filed, the suit is at an end and is dismissed by virtue of this decree.

The decree is complete in itself. It states that the suit is to be dismissed from May 15th. This Court will then be asked to make some order in a suit which does not exist. The Receiver is told in this order to pass his accounts and get his discharge. The Court is therefore told to do something which it cannot do, namely, to discharge the Receiver in a suit which does not exist. The Receiver cannot be discharged, and would remain liable, and his children and representatives after him. I would therefore ask for time to apply to the Privy Council, as the orders already made in favor of either party are infructuous.

Mr. *Jackson* for the Receiver.—I would ask the Court to let this matter stand over until the parties have time to apply. One effect of this order will be that the suit against the executors will be barred for ever. The suit was never intended to be dismissed, except as regards the Administrator-General. I, as Receiver, am entitled to be indemnified and to be paid all my costs. The position of the other side will not be injured by time being given for an application to the Privy Council. The only person

affected by the delay is the Administrator-General, but he runs no risk, he is only kept out of his costs for a time.

If the suit is dismissed in this way, the mother and child will be deprived of their maintenance. *Tuffuzool Hossein Khan* v. *Rughoonath Pershad* (1), *In re Ramessure Dassee* (2), *Bertrand* v. *Davies* (3), *Batten* v. *Wedgwood Coal and Iron Co.* (4), *Courand* v. *Hanmer* (5), *Makepeace* v. *Rogers* (6), Walker and Elwood on Administration Suits, p. 15.

Sir *G. Evans* in reply.—The Privy Council may have thought the remedy sought for was not properly sought for ; that this, as as an administration suit, must be dismissed and the remedy left against the executors. If fresh matter is brought before them, they will make a fresh order. That this Court cannot do anything, when a suit is dismissed, I will shew is erroneous. *Rodger* v. *The Comptoir d' Escompte de Paris* (7). The order of the Privy Council makes it necessary to restore the *status quo ante.* It is evident that the Privy Council did not then know about these things ; that is shewn by the fact that the executors have never appeared in Court until to-day. *Barlow* v. *Orde* (8), *In re Vassareddy Lutchmeputty Naidoo* (9), *In re Kally Soondery Dabia* (10), *Hurrish Chunder Chowdhry* v. *Kalisunderi Debi* (11). When the Privy Council has laid a duty on a person, it is suggested that, owing to its being erroneous, the proper course is to say, "we don't wish to fill it, we will not carry it out." To give as a reason for refusing to obey the peremptory order that there is a necessity for a further order, cannot be allowed. The Privy Council have given their final orders ; the proper course is to carry them out. The order must be filed.

SALE, J.—This is a suit which was instituted for the administration of the estate of one Nundo Lall Mullick. The circumstances under which administration was sought were as follows:—

Nundo Lall Mullick died on the 22nd of February 1891,

(1) 14 Moo. I. A., 48.
(2) I. L. R., 6 Calc., 106.
(3) 31 Beav., 429 (436.)
(4) L. R., 28 Ch. D., 317 (324.)
(5) 9 Beav., 3.
(6) L. R., 34 L. J. Ch, 398.
(7) L. R., 3 P. C., 465.
(8) 18 W. R., 175.
(9) 5 Moo., I. A., 300.
(10) I. L. R., 6 Calc., 594.
(11) I. L. R., 9 Calc., 482.

1895

PREMLALL MULLICK v. SUMBHOO-NATH ROY.

leaving a very considerable estate. By his will dated 5th August 1889 he appointed one Sumbhoonath Roy and one Dwarkanath Bhunjo as his executors, and he created various trusts in favour of the plaintiff, who was his adopted son, and in favour of his widow Sreemutty Trigoona Sundery Dassee, and he also created various religious trusts.

It is not necessary for my present purpose that I should refer more particularly to these various trusts. On the 17th March 1891 the executors appointed by the will took out probate and entered into immediate possession of the estate and administered it, and they continued in possession of the estate till the 14th August 1893, when, by a deed purporting to be made under section 31 of the Administrator-General's Act, they transferred the estate to the Administrator-General. Immediately afterwards, that is to say on the 6th September 1893, this suit was instituted by the plaintiff as the adopted son and heir of Nundo Lall Mullick through his next friend Sreemutty Trigoona Sundery Dassee, his adoptive mother and guardian. The defendants are the executors appointed by the will and the Administrator-General. The plaintiff made various charges of misconduct and waste as against the executors, and alleges that for the purpose of avoiding accountabilty in respect of their acts they executed the deed of transfer in favour of the Administrator-General. The plaint prayed (*a*) that the estate of the testator Nundo Lall Mullick may be administered by and under the direction of this Court; (*b*) that a Receiver may be appointed of the whole of the estate, moveable and immoveable, of the said testator, pending the final determination of this suit; (*c*) that the defendant, the Administrator-General of Bengal, may, if necessary, be restrained by and under an injunction of this Court from taking possession of the said estate of the said testator, moveable and immoveable, or interfering or intermeddling therewith in any way; (*d*) that the said executors may be removed from being trustees of the said will and that new trustees thereof may be appointed, and that a scheme for the purpose of carrying out the religious trusts of the said will may, if necessary, be framed by and under the direction of this Court; (*e*) that the said executors may be restrained by and under the injunction

of this Court from further intermeddling with the said estate as trustees or otherwise ; (*f*) that the said executors may be ordered to render a true and faithful account of the estate of the said testator which have come to, or which, but for their wilful default or neglect, would have come into, their hands by and under the directions of this Court ; (*g*) that all necessary accounts may be taken, enquiries made and directions given for the purposes aforesaid ; (*h*) that pending the final determination of this suit proper maintenance may be fixed by this Court for the plaintiff and his mother, the said Trigoona Sundery Dassee, and be paid to the said Trigoona Sundery Dassee ; (*i*) that the plaintiff may have such further and other relief as the circumstances of the case may require.

It was not questioned in argument, and indeed it is obvious, that the suit is framed with the object mainly of obtaining relief as against the defaulting executors in respect of their acts connected with the administration of the estate, while it was in their hands. The only relief which is sought against the Administrator-General is that mentioned in clauses (*b*) and (*c*) of the prayer of the plaint, that is to say, the appointment of a Receiver and an injunction as against the Administrator-General restraining him from taking possession of the estate of the testator or interfering therewith ; and it appears from the body of the plaint that the claim for this relief against the Administrator-General is based on the sole ground of the alleged invalidity of the transfer executed in his favour by the executors.

It is important also to mention that at the time the suit was instituted the Administrator-General had obtained possession of only a small portion of the estate, and shortly after the institution of the suit, that is to say on the 15th November 1893, an arrangement was come to on the part of the plaintiff and the defendants, whereby it was agreed that the issue relating to the validity or otherwise of the deed of transfer should be dealt with as a preliminary issue in this suit, and that it should be tried in the form of a motion for an injunction restraining the Administrator-General from selling certain moveable property appertaining to the premises known as the Seven Tanks Garden House. Accordingly the application for the injunction and also for the appointment

1895

PREMLALL MULLICK v. SUMBHOO-NATH ROY.

of a Receiver was made on the 18th December 1893 on the part of the plaintiff, and the only question argued or dealt with on that application was the question relating to the validity of the transfer.

On the 21st December this Court made an order declaring that the deed of transfer was invalid and appointing a Receiver of the estate, who was authorized forthwith to take over possession of the estate. The order of 21st December 1893 was appealed, the only ground of appeal being that the Court was wrong in holding that the deed of transfer was invalid. On the 16th March the Appeal Bench of this Court, who heard the appeal, by a majority upheld the order of this Court and dismissed the appeal. There was then a further appeal to the Privy Council in respect of those orders of this Court.

Pending the appeal to the Privy Council various proceedings were had in the suit. The Administrator-General was called upon by the plaintiff to file his written statement, which he declined to do. Messrs. Carruthers & Co., the attorneys who had acted for all the defendants at or about that time, intimated to the attorney for the plaintiff that they had been discharged from acting for the executor-defendants, and subsequently on notice to the Administrator-General and the executors, application was made to this Court for transfer of this suit, from the General List of Causes to the Undefended List. The defendants not appearing on that application, the order for transfer was made, and on the 7th May 1894 the case came on for hearing as an undefended suit, and the Court taking the view that the plaintiff's cause of action for administration of the estate was wholly independent of and unconnected with the question of the legality of the deed of transfer in favour of the Administrator-General, made a decree for the administration of the estate, directing the usual accounts and enquiries, and directing also the framing of a scheme for the purpose of carrying out the religious trusts of the will. Subsequent to that decree the suit proceeded as an ordinary administration suit. At the instance of the plaintiff orders were made from time to time authorising the Receiver to enter into engagements respecting the repairs necessary to be executed, to the various properties belonging to the estate. The Receiver was also directed

1895

PREMLALL MULLICK v. SUMBHOONATH ROY.

to pay a monthly sum for maintenance to Trigoona Sundery Dassee for the support of herself and her infant son. Proceedings have also been taken with the object of carrying out the administration of the estate. The executors have now brought in their accounts and filed their statement of facts. Advertisements to creditors to come in and prove their claims have been issued and published.

On the 11th May 1895 their Lordships of the Privy Council made an order reversing the orders of this Court of 21st December 1893 and 16th March 1894, and have dismissed the suit, directing that the taxed costs of both parties between solicitor and client be respectively paid and retained by the appellant, the Administrator-General, out of the estate of the testator, and that the costs of the appeal be respectively paid and retained by the appellant out of the estate of the testator. The order is as follows: "The Lords of the Committee, in obedience to your Majesty's said General Order of Reference, have taken the said humble petition and appeal into consideration, and having heard Counsel for the appellant and for the respondent Prem Lall Mullick, no appearance having been entered on behalf of the remaining respondents, their Lordships do this day agree humbly to report to your Majesty as their opinion that the decree of the High Court of Judicature at Fort William in Bengal in its Appellate Jurisdiction of the 16th March 1894 and the decree of the said Court in its Ordinary Original Civil Jurisdiction of the 28th December 1893, ought to be reversed, and that the suit ought to be dismissed."

It is said that the order in Council dismissing the suit was made under a misapprehension and mistake, both as to the scope of the suit which the order purported to dismiss and also in respect of the scope of the appeal which had been presented to the Privy Council in respect of the two orders made by this Court, and reference is made to a paragraph in the judgment of their Lordships of the Privy Council, which runs as follows:—

"Mr. Justice Sale, who tried the suit, found by decree, dated the 21st December 1893, that the transfer purporting to be made by the executors and trustees to the defendants, the Administrator-General on the 14th August 1893 was invalid."

1895

PREMLALL MULLICK v. SUMBHOO-NATH ROY.

It is obvious from what has been already stated that the order of the 21st December 1893 does not deal at all with the matters which form the main cause of action in the suit, and that it affects only one of the questions raised in the suit, which by arrangement between the parties and for the sake of convenience was brought on and dealt with by way of motion as a preliminary issue, and I think I may venture to say that if there has been any mistake or misapprehension on the part of their Lordships of the Privy Council as to the circumstances under which the question involved in the appeal came before them, the explanation of such mistake is not far to seek.

In the *Case for the Appellant* presented to the Privy Council, there is, I observe, a statement made as to the nature of the suit, which is inaccurate, and which certainly suggests the inference that the principal object of the suit was to obtain an order declaring the invalidity of the deed of transfer executed in favour of the Administrator-General, and that the cause of action in respect of which administration was sought was confined to that alleged illegal transfer. Further in the closing paragraph of the case there is this submission: "It is submitted by the appellant that the judgment of the High Court should be reversed and *the suit* and injunction *dismissed* with costs."

There can be no doubt that if the legal advisers of the appellant, who are responsible for the *case* as drawn, had been aware of the arrangement between the parties under which the issue relating to the invalidity of the transfer had been dealt with by this Court, the *Case for the Appellant* would have been framed differently. I may add that the *Case for the Respondent* correctly represents the nature of the suit and the subject-matter of the appeal before their Lordships of the Privy Council.

But whatever the circumstances may be under which the order in Council was made, the present application on behalf of the Administrator-General is for an order—(1) that the order of 11th May 1895 of Her Most Gracious Majesty in Her Privy Council be received and filed; (2) that all proceedings had in this suit since the said 16th day of March 1894, including the decree of the 7th May 1894, be set aside; (3) that Mr. Osmond Beeby, the Receiver appointed in this suit under and by virtue of the said

order of the 21st December 1893, be discharged from further acting as such Receiver, and that he do forthwith deliver over possession of the said estate in his hands to the petitioner, the Administrator-General.

On behalf of the executors, who appeared at the hearing of this application, it was contended that, if the order in Council dismissing the suit was filed, some special steps should be taken with the object of providing for the costs incurred by the executors subsequent to the administration decree in bringing in their accounts. The plaintiff objects to the order sought by the Administrator-General mainly upon this ground: that the order of the Privy Council dismissing the suit was obviously made under a misapprehension, and that an application is about to be made to the Privy Council for a review of the order, and it was contended that, pending that application, it would be right and proper for this Court to stay its hand and decline to file the order, until the result of the application for review was known. Two reasons were urged for the adoption of this course. In the first place, it was said that the order, if filed, would have the effect, not only of restoring the Administrator-General to the possession of the estate, which admittedly was the result contemplated by the order, but it would introduce a new state of things, namely, it would deprive the plaintiff of his right to relief against the defaulting executors and for administration of the estate, which right was independent of the question of the legality of the transfer to the Administrator-General.

In the next place it is said that the order, if filed, would produce as its necessary result the dismissal of the suit and the discharge of the Receiver, and, the suit being once dismissed, it would be impossible for the Court to make further orders or to take the necessary steps for the protection of the estate or of the Receiver.

These arguments I shall deal with in turn, but I feel bound to say that as regards that part of the application which asks that the order in Council may be filed, I have arrived at the conclusion that I am bound to accede to it as a matter of course.

In receiving and filing for the purpose of execution an order of Her Majesty in Council made on appeal from an order or decree of this Court, it seems to me that this Court does not exercise a

1895

PREMLALL MULLICK v. SUMBHOO-NATH ROY.

discretionary power, but performs a function of a purely ministerial character. Section 610 of the Civil Procedure Code provides that the Court, to which an order of Her Majesty in Council is transmitted for execution, shall enforce or execute it in the manner and according to the rules applicable to the execution of its original decrees. Now the filing of an original decree of this Court is according to its rules, although a necessary preliminary to execution, a ministerial act. *Execution* of a decree or order once filed may no doubt be stayed on various grounds, but no question of stay of execution, strictly speaking, arises on the present application, and I may perhaps on the point as to what the duty of this Court is in respect of an order of Her Majesty in Council transmitted to this Court refer to the observations of the Privy Council reported in the case of *Pitts* v. *La Fontaine* (1). On page 483 Sir James Colville says: "When a decision of this Board has been reported to Her Majesty and has been sanctioned and embodied in an order of Council, it becomes the decree or order of the final Court of Appeal, and it is the duty of every subordinate tribunal to whom the order is addressed to carry it into execution."

It is said however that in filing the order dismissing the suit I should be doing an injustice to the plaintiff, which their Lordships of the Privy Council never could have intended or contemplated. The answer is that either the order in Council was made with a full knowledge and accurate apprehension of the scope and object of the suit and the limited character of the question involved in the appeal, or it was made under a mistake or misapprehension as to these matters.

In the former case the effect of the order, whatever it may be, must be taken to have been intended, and this Court would be powerless to interfere. In the latter case it must be taken that on a proper representation being made to their Lordships of the Privy Council they will make the necessary alteration or modification in their order, which the justice of the case would seem to require.

Neither hypothesis can form a good ground for declining to file the order or to give effect to the intention and directions of the final Court of appeal, so far as they have been clearly expressed.

The question as to the effect of the order on the suit generally is

(1) L. R., 6 App. Cas., 482 (483).

not one which can be conveniently discussed upon the present application, and I think it is right I should decline to express an opinion upon it at present. It is however beyond all doubt that the order of this Court declaring the invalidity of the transfer to the Administrator-General and appointing a Receiver has been reversed by the order in Council, and a clear indication is given in the order that the Administrator-General should be restored to the possession of the estate. The order of dismissal of the suit which follows on the reversal of the order appointing the Receiver clearly operates as a discharge of the Receiver and was intended so to operate. It therefore remains for this Court, in whose possession the estate is, to take the necessary steps for the protection and preservation of the estate consequent on the discharge of the Receiver. Nor do I think the filing of the order dismissing the suit can in any respect operate prejudicially as against the Receiver. I should be sorry to think that there is any real doubt or misapprehension as to the position of the Receiver in this case. A Receiver, though discharged by the dismissal of the suit in which he was appointed, is entitled to a lien on the estate for all his just claims and allowances. In the case of *Bertrand* v. *Davies* (1) the M. R. at p. 436 says as follows: "Where a Receiver or manager is appointed by the Court in a suit properly constituted, such manager is to be considered as appointed on behalf of all persons interested in the property, and he is entitled to his ordinary commission and allowance and also to a lien on the estate, as against all persons interested in it for the balance, whatever it may be, that shall be found to be due to him on taking his accounts.

And on the same point the cases *Fraser* v. *Burgess* (2) and *Batten* v. *Wedgwood Coal and Iron Co.* (3) may be referred to.

On this principle it follows that the Court will not compel a Receiver, who has been discharged, to make over the property in his possession, until his lien has been satisfied or provided for by a sufficient indemnity.

The order I make on this application is:—

1. That the order of Her Majesty in Council of 11th May 1895 be received and filed.

(1) 31 Beav. 429. (2) 13 Moo. P. C., 314 (340.)
(3) 28 Ch. Div., 317 (324.)

1895

PREMLALL MULLICK v. SUMBHOO-NATH ROY.

2. That the Receiver do proceed to pass his final accounts and on satisfaction of what may be due to him, and, on being sufficiently indemnified as to any engagements properly entered into by him during his management of the estate, he do make over possession to the Administrator-General.

3. That the costs of the Administrator-General, of the Receiver and of the plaintiff in the present application be paid out of the estate by the Receiver, and that such costs be taxed as between attorney and client. If however possession of the estate is made over to the Administrator-General before the costs are paid, then the Administrator-General will pay the costs. I can make no order at present on Mr. Woodroffe's application on behalf of the executor-defendants. They may however have liberty to make such application on a future occasion as they may be advised.

Attorneys for the Administrator-General of Bengal: Messrs. *Carruthers & Co.*

Attorney for Prem Lall Mullick: Babu *Gonesh Chunder Chunder.*

Attorney for the Receiver: Babu *Lakshmi Narain Khettry.*

Attorney for the Executors: Babu *Kedarnath Mitter.*

APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Gordon.

1895
July 10.

BARODA KANTA CHATTAPADHYA (PLAINTIFF) *v.* JATINDRA NARAIN ROY AND ANOTHER, MINORS, BY THEIR CERTIFICATED GUARDIAN GURU PADO MUKHOPADHYA (DEFENDANTS.) *

Hindu law—Widow—Mesne profits payable under a decree against a Hindu widow and other defendants—Subsequent suit for contribution against the widow by one of the defendants from whom the whole amount of mesne profits had been realized—Sale in execution of decree—Rights of the auction-purchaser.

M, widow of *N*, a Hindu, and *K* (brother of *N*) jointly brought a suit against *C*, her sons and others, for recovery of possession of certain property which had devolved upon *N* and *K*, by inheritance, obtained a decree and were put into possession. *G*, one of the sons of *C*, subsequently brought a suit against *M* and the legal representatives of *K* then deceased, and

* Appeal from Appellate Decree No. 1810 of 1893, against the decree of R. H. Anderson, Esq., Officiating District Judge of Moorshedabad, dated the 14th June 1893, reversing the decree of Babu Debendra Chundra Mookerjee, Munsif of Berhampore, dated the 9th of January 1893.