

to their success. It has been agreed between the parties to the appeal that the $3\frac{1}{2}$ days in each month decreed to the plaintiffs shall be counted from the beginning of the terms consisting of 21 days in each month claimed by the plaintiffs by their plaint, and we decree accordingly.

H. W.

Appeal allowed.

1896
SARKUM ABU
TORAB
ABDUL
WAHEB
v.
RAHAMAN
BUKSH.

Before Mr. Justice Ghose and Mr. Justice Gordon.

ANNODA PROSAD CHATTERJEE (DEFENDANT) v. KALIKRISINA CHATTERJEE (PLAINTIFF) AND OTHERS (DEFENDANTS) NOS. 2—5^a

1896
July 31.

Probate—Revocation of Probate—Probate and Administration Act (V of 1881), section 50, Expl. 4—“Just Cause”—Mismanagement by executor.

Mismanagement by the executor of an estate is not, under section 50, Expl. (4) of the Probate and Administration Act, a just cause for revoking the probate. *Held*, therefore, that the order of revocation made by the District Judge for that cause, was made without jurisdiction and must be set aside.

The words “just cause” as explained in section 50 of the Probate and Administration Act are not illustrative merely, but exhaustive.

DURGA DAS CHATTERJEE died in March 1890, having, on the 6th April 1885, made his last will and testament, of which he appointed his eldest son, Annoda Pershad Chatterjee, executor. Probate of the will was granted on the 8th December 1890. In 1891, Kali Krishna Chatterjee, a minor grandson of the testator, applied, through his guardian, for a revocation of the probate; but the application was dismissed on the 25th January 1892. Later in 1892, Thakomoni Debi, the testator’s widow, brought a suit for revocation of the probate and for the removal of the executor from his office. That suit was dismissed on the 24th June 1893. On the 20th February 1894, Kali Krishna Chatterjee, who had meanwhile attained majority, filed a petition under section 50 of the Probate and Administration Act, for the removal of the executor, for revocation of the probate granted to him, and for the appointment of a receiver. The grounds of the petition were the misconduct of the executor and his mismanagement of the estate. On the 27th July 1894, the District Judge of Bankura, by

^a Appeal from Original Decree No. 274 of 1894 against the decree of G. Gordon, Esq., District Judge of Bankura, dated the 19th of July 1894.

1896 an order of that date, ordered that the probate obtained defendant should be revoked.

ANNODA
PROSAD
CHATTERJEE

The defendant appealed to the High Court.

v.
KALIKRISH-
NA CHAT-
TERJEE.

Babu *Dwarka Nath Chuckerbutty* and Babu *Joygop* for the appellant.

Babu *Tarakishore Chowdhry* for the respondents.

The judgment of the Court (GHOSE and GORDON, JJ follows :—

This is an appeal from a decision of the District Judge kura revoking probate of the will of one *Durga Das Chatterjee*. The will bears date the 6th April 1885, and the testator died in March 1890. Thereafter, the testator's eldest son, Annoda Prosad Chatterjee, the appellant before us, obtained probate as executor of that will on the 8th December 1890. Subsequently, Kali Krishna Chatterjee, the grandson of the testator (son of another son, Baroda), a minor, through his guardian applied in the year 1891 for revocation of the probate, and his application was dismissed on the 25th January 1892. Then a suit was brought in 1892 in the Subordinate Judge's Court by *Thakomoni Debi*, the widow of the testator, for the purpose of obtaining revocation of the said probate and removing the present appellant from his post as executor, and that suit also was dismissed on the 24th June 1893. Now, Kali Krishna Chatterjee having come of age, has filed the present petition for revocation of the probate. The application purports to be made under clause 4 of the Explanation to section 50 of the Probate and Administration Act ; and the learned District Judge has revoked the probate under that clause, on the ground that the executor, Annoda Prosad Chatterjee, has been guilty of misconduct and mismanagement as such executor, and that, therefore, he is not a fit and proper person to retain the management of the estate.

On appeal, it is contended that the District Judge had no jurisdiction, under clause 4, section 50 of the Probate and Administration Act, to make the order he has made ; and we think that this contention is sound. Clause (4) runs as follows : "That the grant has become useless and inoperative through circumstances." We think that the District Judge has misunderstood the real meaning

of these words. The meaning of the words "useless and inoperative" through circumstances" are explained in the illustrations attached to the section ; and we are unable to say that mismanagement by an executor comes within the purview of clause 4, section 50 of the Act. No doubt the question may arise whether the words "just cause," as explained in section 50, are exhaustive, or illustrative. If they are illustrative, and not exhaustive, it might be said that the District Judge had jurisdiction to remove the executor on the ground of mismanagement, but certainly not under clause 4. We think, however, that these words are exhaustive ; and this view is supported by the fact that the Legislature thought it necessary to amend section 50 of Act V of 1881 by Act VI of 1889 by adding to the explanation a fifth clause relating to the wilful omission by an executor to exhibit an inventory or account, and to the exhibiting of a false inventory or account. Had the words "just cause," as explained in section 50, been merely illustrative, there would have been no necessity to add to it this fifth clause.

Further, we observe that sections 146 and 147 of the Probate and Administration Act make an executor or administrator liable for devastation or neglect to get in any part of the property, which we think also shews that the Legislature did not intend to include within the purview of section 50 of the Act a case of mismanagement by an executor. In this view of the matter, we think that the order of the learned Judge is based upon a misconception of the law, and that therefore it must be set aside.

We may add that this decision will not debar the respondent from making an application to the District Judge under clause 5, section 50 of the Act, or from making any other application as he may be advised.

The appeal is decreed with costs.

H. W.

Appeal allowed.

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ANNODA
PROSAD
CHATTERJEE
v.
KALIKRISH-
NA CHAT-
TERJEE.