

## PRIVY COUNCIL.

DEBENDRA NATH DUTT

v.

ADMINISTRATOR-GENERAL OF BENGAL.\*

1908  
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 May 12.  
 June 3.

[On appeal from the High Court at Fort William in Bengal.]

*Administration—Sureties—Administration bond—Letters of administration  
 Fraud—Administrator converting assets to his own use—Transfer of bond  
 to Administrator-General—Succession Act (X of 1865) s. 242—Contract  
 Act (IX of 1872) s. 20—Mistake.*

The appellant was one of two sureties of an administration bond given to the High Court at Calcutta, on the strength of which that Court on 15th August 1902 granted letters of administration to the estate of a person, who it was alleged in the petition had died in England intestate. The administrator, a member of a well-known firm of solicitors in Calcutta, who represented himself to be the attorney of a fictitious person called the next-of-kin of the deceased, got possession of the assets in India, which consisted of bank shares and converted them to his own use.

It was subsequently found that he had obtained the letters of administration by fraudulent misrepresentation to the Court, of which fraud however the sureties were not cognizant. He absconded, but was apprehended, tried, and convicted. The grant of administration in his favour was cancelled and in May 1904, letters of administration, with a will annexed, were granted to the respondent, the Administrator-General of Bengal, to whom the administration bond of 15th August 1902 was transferred, and who brought a suit against the defaulting administrator and the sureties on the bond. The former did not appear.

The first Court made a decree against the defendants for the amount of the proceeds of sale of the bank shares, which was upheld by a majority of the Court of appeal.

*Held*, affirming the decision of the Courts in India, that the sureties were liable. The bond did not become void when the letters of administration were cancelled and, while they remained unrevoked, the grantee was to all intents and purposes administrator of the estate in India of the deceased, and for his acts and defaults as administrator the sureties were and remained responsible.

APPEAL from a decree (March 23rd 1906) of the High Court at Calcutta in its Appellate Jurisdiction, which affirmed a decree

\* *Present*—Lord Macnaghten, Lord James of Hereford, Lord Atkinson, Sir Andrew Scoble, and Sir Arthur Wilson,

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(March 29th, 1905) of the same Court in its Ordinary Original Civil Jurisdiction.

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One of the defendants was the appellant to His Majesty in Council.

The question for decision on this appeal was whether on the malversation of the estate of a deceased person by the administrator duly and properly appointed by the High Court of Bengal, the *prima facie* liability of sureties under an administration bond given to the Court fails to arise or attach because the administrator not only committed the acts of malversation in question, but also obtained the grant of administration to him by means of such a course of fraud that the letters of administration were liable to be, and were afterwards, avoided.

The appeal arose out of a suit brought by the Administrator-General of Bengal against the two sureties, of the above-mentioned administration bond and the facts will be found fully stated in the report of the case on appeal before the High Court (Sir F. MACLEAN C.J. and HARRINGTON, STEPHEN, MITRA and GEIDT J.J. (1) and in the judgment of the first Court (SALE J.).

On this appeal.

*Lord Robert Cecil, K. C.* and *G. Boydell Houghton* for the appellant contended that the administration bond was *ab initio* void. The bond stated that Cowie was the constituted attorney of the next-of-kin of Craster and the administrator to his estate, and the parties to it agreed to and signed it on that basis of fact, and that was the ground for the grant of letters of administration being made to Cowie. When, therefore, the letters of administration were cancelled and became void on account of Cowie's fraud the basis of fact, on which the bond had been entered into, was falsified and the bond was void in its inception. Reference was made to *Ellis v. Ellis*(2); *Kepp v. Wiggett*(3) and *Holland v. Lea*(4). It was also void owing to its having been entered into under a mutual mistake of fact, namely, the authority of Cowie as alleged attorney of the next-of-kin to apply for, and receive a grant of letters of administration. That, it was

(1) (1906) I. L. R. 33 Calc. 713.

(2) (1905) L. R. 1 Ch. 613.

(3) (1850) 10 C. B. 35.

( ) (1854) 2 Exch. 430, 439.

submitted, was a mistake, as to a matter of fact essential to the bond, and the bond was, therefore, void under section 20 of the Contract Act (IX of 1872). What the sureties guaranteed was the due administration of the estate by a person authorized by the next-of-kin, and not due administration by a person not so authorized; and they relied upon the representation by the Court in making the grant of letters of administration to Cowie that he was the duly authorized attorney of the next-of-kin, and the person entitled to have such letters of administration granted to him, and that he was the administrator: they were therefore, it was submitted, not liable under the bond for Cowie's default, when it was found that he was not the person he was represented to be, nor one, to whom such grant should have been made. The reasons given by the Judges, who formed the minority in the Court of Appeal in India were correct and should be upheld, and the judgment of the majority should be reversed.

*Simon, K. C. and C. H. Sargent* for the respondent contended that the bond was not void notwithstanding the letters of administration to Cowie had been cancelled on account of the discovery of his fraud. Cowie's fraud, if by it he induced the sureties to execute the bond, though it might be sufficient to enable them to set aside the transaction as between themselves and Cowie, did not affect the transaction, or entitled them to set it aside, as regarded the Court or the persons entitled to the protection of the bond. The Court was not a party to the bond. The execution of the bond was not induced by any misrepresentation by the Court in the grant of the letters of administration to Cowie, for the issue of such grant was necessarily subject to, and contingent on the execution of the bond, and subsequent thereto. Nor could any mistake made by the sureties as to the real circumstances of the case affect the transaction between them and the Court, so as to make the bond void. Reference was made to *Lester v. Goode*(1). Section 20 of the Contract Act was not applicable to the case; there was no mutual mistake essential to the contract. On the wording of the bond the cases cited for the appellant were distinguished. The bond referred to *de facto*

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(1) (1868) 17 W. R. (Eng) 139.

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administration: and as to the effect of letters of administration sections 242 and 246 of the Succession Act (X of 1865) were cited. Notwithstanding that letters of administration were ultimately proved to have been void *ab initio*, the fact of administration having taken place was not destroyed, nor was every transaction that had taken place by virtue of the letters of administration necessarily avoided, especially in view of the provisions of section 242. No good reason had been shown why the judgment of the Court of Appeal in India should be reversed.

*Lord Robert Cecil K. C.* in reply. Cowie was never administrator at all; his appointment was null and void; he was not as he was represented to be attorney for the next-of-kin of the deceased Craster. Section 262 of the Succession Act was referred to.

The judgment of their Lordships was delivered by:—

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 June 3.

LORD MACNAGHTEN. This is an appeal from the High Court of Judicature at Fort William in Bengal.

The appellant, Debendra Nath Dutt, was one of two sureties in a bond conditioned for the due administration by Ernest Hardwicke Cowie, a solicitor in Calcutta, of the estate of a retired Indian Civil Servant named Craster. Mr. Craster died in England in August 1898, leaving a will, which was duly proved here in the following month of October. Part of the deceased's estate consisted of shares in the Bank of Bengal and other Indian assets. The Indian assets escaped the notice of the executors and remained unclaimed and outstanding. On the 29th of July 1902, Cowie, who is stated in the printed cases to have been one of the solicitors to the Government, and who certainly was then in good credit, obtained an order for the grant of letters of administration to himself as attorney for a fictitious person represented by him to be the only son and sole next-of-kin of the deceased, who had, as he pretended, died intestate. The letters of administration were issued on the 15th of August 1902 on the production of a bond in the usual form executed by Cowie and the two sureties, who received a small payment for their services, but were not themselves parties to the fraud or cognizant of it.

By these means Cowie obtained possession of the bank shares, sold them in the market, and converted the proceeds to his own use. The fraud was not discovered till the end of 1903, or the beginning of 1904. Cowie then absconded. He was apprehended, tried, and convicted. The grant of administration in his favour was cancelled, and in May 1904 letters of administration, with a copy of the will annexed, were granted to the Administrator-General of Bengal. The bond of the 15th of August 1902 was then assigned to the Administrator-General, and he brought this suit against Cowie and Cowie's sureties. Cowie made no defence. The suit was heard by Sale J. That learned Judge pronounced a decree in favour of the Administrator-General, the result of which, so far as regards the sureties, was that they were ordered to pay to the administrator a sum equal to the amount of the proceeds of the bank shares misappropriated by Cowie, together with interest and costs. Both the sureties appealed. But the High Court in its Appellate Jurisdiction by a majority affirmed the order of Sale J. and dismissed the appeal with costs.

The case of the appellant Dutt, who alone has appealed to His Majesty, as presented to this Board, was that the letters of administration granted to Cowie, having been annulled by the Court on the ground of fraud, must be regarded as a mere nullity from the beginning; that Cowie, therefore, never was administrator, and that the bond, so far as the sureties were concerned, was void and of no effect; for the sureties undertook to be responsible for a real administrator, not for a person assuming to act in a capacity, which he never possessed and which the Court could not have conferred upon him. The case was argued very ably by the learned Counsel for the appellant, who said every thing that could be said on his behalf. But there is really no substance in the appellant's contention. So long as the letters of administration granted to Cowie remained unrevoked, Cowie, although a rogue and an impostor, was to all intents and purposes administrator. He, and he alone, represented the deceased in India. His receipts were valid discharges for all moneys received by him as administrator. As administrator he collected the assets belonging to the deceased in India, and he

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misappropriated the assets, which he so collected. For his acts and defaults as administrator the appellant and his co-surety became and must remain responsible.

Their Lordships are therefore of opinion that Maclean C. J. and the learned Judges, who concurred with him, were perfectly right, and they will humbly advise His Majesty that the appeal must be dismissed.

The appellant will pay the costs of the appeal.

*Appeal dismissed.*

Solicitors for the appellant: *Vallance & Vallance.*

Solicitors for the respondent: *Wade & Lyall.*

J. V. W.