APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pargiter.

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April 13, 14, 15, 18; May 4.

SARAT SUNDARI BARMANI
v.
UMA PROSAD ROY CHOWDHRY.*

Probate, revocation of—Probate and Administration Act (V of 1881 as amended by Act VI of 1889) ss. 50, 98—Executor—Inventory—Account—Commission—District Judge, powers of.

A District Judge has no power to institute an audit of the inventory and account submitted by an executor under s. 98 of the Probate and Administration Act, undertaking elaborate and expensive proceedings for that purpose; nor does the section empower him to hold, of his own motion, a judicial inquiry into that matter and make the executor pay the costs of it; nor can such an authority be implied from the provisions of the Civil Procedure Code as to the appointment of a commissioner to examine such accounts.

All that the District Judge has to do under the section is to see that the inventory and account *primâ facie* satisfy its requirements.

In 1899 an executor exhibited in the Court of the District Judge, under s. 98 of the Probate and Administration Act, an account of the estate of the testator, for one year from the grant of probate; and the then District Judge recorded the order—"Accounts checked and reported to be correct"—on it. No further action was taken with regard to it until 1902, when a new District Judge ordered the executor to file a revised account for that year, and also further accounts for the subsequent years:—

Held, that the proceedings of the new District Judge to reopen the matter in 1902 in connection with the accounts were *ultra vires* and illegal.

A District Judge has no power to commence proceedings to revoke a probate under s. 50 of the Probate and Administration Act, on his own motion.

APPEAL by the defendants, Maharani Sarat Sundari Barmani and Ram Krishna Mahata.

This appeal arises out of certain proceedings taken by the District Judge of Rangpore in connection with the administration of the estate left by the late Maharaja Govind Lal Roy of Tajhat

* Appeal from Original Decree, No. 403 of 1903, against the decree of K. N. Roy, District Judge of Rangpore, dated Nov. 20, 1903.

in the District of Rangpore; and the facts material to this appeal are these:—

The Maharaja died on 24th June 1897, leaving a widow Maharani Sarat Sundari Barmani, a minor son named Gopal Lal Roy, and other relatives. He had executed a will in which he appointed her, her father Ram Krisna Barman, and four other persons to be executors and also guardians of his son. They applied for probate on 5th July 1897, and, as the proceedings took time, the District Judge appointed the Maharani and Benimadhab Chatterjee (the engineer of the estate) administrators *pendente lite*. At length probate was granted to her and her father, Ram Krisna, on 3rd March 1898, the other executors having renounced.

The executors were required by s. 98 of Act V of 1881, to file an inventory of the property six months afterwards. An inventory was put in on 3rd February 1899, but was not satisfactory, and was returned several times for amendment. The total value was estimated at about Rs. 21,86,000. Before it was accepted the Collector applied, in September 1899, that the valuation of the property might be inquired into, proceeding apparently under s. 19H of the Court Fees Act as amended by Act XI of 1899; and the inventory was handed back to the executors. That inquiry constituted a separate miscellaneous case and, after some delay, it was made over to the Munsif for inquiry. He made his report to the District Judge on 30th August 1900. Various objections were then made before the District Judge and, after many adjournments the matter was settled by a compromise between the Collector and the executors, in June 1902, whereby the total value was raised to about Rs. 34,66,000 and the net assessable value was fixed at about Rs. 30,49,000. The District Judge recorded his approval of this compromise on 28th June 1902. The additional Court-fees due on the increased valuation were paid and, when the probate could not be found in order to have these additional fees affixed to it, a fresh probate was given on the 30th September 1902.

A new Judge, Mr. Kedar Nath Roy, then came to the District and he took up the matter. As no proper inventory had yet been put in, according to s. 98, the executors were then called upon to

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file an inventory revised in accordance with the compromise on 11th November 1902. They put in an inventory on 6th January 1903, but declined to do more than what the District Judge wanted them to do. What happened after that will be noticed further on in connection with the District Judge's proceedings upon the accounts.

The executors were also required by s. 98 of Act V of 1881 to render an account of their administration within one year from the grant of the probate (3rd March 1898). On 3rd June 1899, they produced an account for the year beginning from that date. This account was returned for certain amendments and was refiled in December 1899; and on 19th December the then District Judge recorded the order—"Accounts checked and reported to be correct."

Nothing more was done with regard to the accounts, until the new District Judge, Mr. K. N. Roy, took up the matter of this estate after the valuation had been settled according to the compromise. Being of opinion that the great increase in the valuation of the estate necessitated a revision of the account, which had been filed in December 1899, and that no further accounts had been put in, he passed an order on the executors, on 14th November 1902, to file

(*i*) a revised account for the year mentioned; and

(*ii*) further accounts for the subsequent years.

The executors complied with that order on 31st January 1903, except that they left out the loan transactions. The estate is a very large one, the accounts were very voluminous, and the District Judge found that the expenditure had been far in excess of the income; hence he considered that a searching inquiry was necessary and, on 9th February 1903, he appointed commissioners to audit the accounts and to scrutinize the inventory, with power also to examine witnesses, if necessary. The executors deposited the costs according to his order and put in the accounts of the loan transactions.

The commissioners went very thoroughly into the accounts and submitted their first report on 24th July 1903 declaring that there had been concealment and false valuation in the inventory, and serious malpractices and mismanagement in the accounts.

The executors then put forward various objections on 31st July; and, when the commissioners' final report was received on 14th August, the District Judge heard the objections on 22nd August and reserved judgment. Those objections impugned the power of the District Judge to carry on these proceedings of his own motion and raised other questions; and then Uma Prosad Roy Chowdhry put in an application on 24th August asking that the probate might be revoked under s. 50 of the Probate and Administration Act, and praying for other reliefs. He is the son-in-law of the deceased Maharaja. He had been appointed an executor by the will, but had renounced. His wife was entitled to an annuity and he obtained a legacy under the will; hence he continued to interest himself in the way in which the executors were managing the estate. On 2nd September the executors put in further objections.

On 18th September, the District Judge delivered his judgment. He overruled all the objections and held that his proceedings were correct, and he further called on both the executors to show cause, why the probate should not be revoked and on the executor Ram Krisna, to show cause, why he should not be prosecuted under s. 98(4) of the Act. The matter was argued at length from 2nd to 5th November and the Judge reserved judgment. The executors filed further objections and the commissioners put in a supplementary report on 15th November. On 20th November 1903, the Judge delivered judgment. He revoked the probate and ordered certain prosecutions. On 5th December he made over the estate to the Court of Wards.

On 30th November both the executors preferred this appeal against the two orders of 18th September and 20th November 1903.

The Advocate-General (Mr. J. T. Woodroffe), (Mr. Hill, Dr. Rash Behary Ghose, Babus Dwarka Nath Chakravarti, Tarini Das Banerjee, Hemendra Nath Sen, Tarak Chandra Chakravarti, and Surendra Nath Ghosal with him) for the appellants. The executors filed, under s. 98 of the Probate and Administration Act, an inventory of all the properties in their possession, but the Collector objecting to it on the ground of undervaluation the matter was

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settled by a compromise which was approved of by the then District Judge, Mr. Harward; they also rendered an account for one year beginning from the grant of the probate as required by that section, and Mr. Harward as District Judge passed that account on the 19th December 1899, noting—"accounts checked and reported to be correct." Then in November 1902, the new District Judge, Mr. Kedar Nath Roy, of his own motion, passed an order on the executors to file (*i*) a revised inventory, (*ii*) a revised account for the year mentioned above, and (*iii*) an additional account for the subsequent years. I submit the inventory as accepted by Mr. Harward, was final and could not be reopened, and the accounts having already been passed by him, the action of Mr. K. N. Roy in ordering revised accounts to be filed was without jurisdiction. The executors, however, complied with that order and Mr. K. N. Roy thereupon ordered that commissioners be appointed to examine and check those accounts (though nobody applied for a commission). Mr. S. N. Dutt was appointed Commissioner to examine and check the inventory and the accounts filed by the executors, on Rs. 500 a month besides travelling allowance, with an establishment at an additional cost of Rs. 110 a month; and after Mr. Dutt other commissioners were appointed for that purpose. The commissioners were authorised to examine witnesses, if necessary.

Under s. 98 of the Probate and Administration Act the executors are to exhibit an account for a year only from the grant of the probate; and that account having been passed by the then District Judge, the present District Judge, Mr. K. N. Roy had no jurisdiction to order a revisal of those accounts, nor had he any power to order accounts for the subsequent years. And neither the Probate Act nor the Civil Procedure Code give him any power to appoint commissioners to check those accounts, there being no judicial proceeding instituted before him. The report of the commissioners so appointed was not a legal one. In matters like these, the Judge cannot proceed *ex-officio*: see Williams on Executors and Administrators, (9th Edn.) Vol. II, p. 1950. Uma Prosad can proceed against the executors in a separate judicial proceeding, assuming that he has sufficient interest in the testator's estate. It is submitted that the aforesaid

proceedings taken by the District Judge, Mr. K. N. Roy, and the revocation of the probate on those proceedings were without jurisdiction and illegal.

Mr. Garth (*Babus Ram Charan Mitter*, *Lal Mohan Das* and *Charu Chandra Ghose* with him) for the respondent. No effective inventory was ever filed; it was returned for amendment and when received back it was referred to a Munsif to hold an inquiry as to the valuation. The Munsif submitted his report to the District Judge, but the Collector objected to it and then there was a settlement by a compromise between the Collector and the executors. Then Mr. K. N. Roy by an order directed the executors to revise the inventory according to the last valuation, and resubmit it. In any case, if an inventory is challenged by the Collector, under the Court-fees Act (XI of 1899), it cannot be said it is effectively filed, until the Collector's objections have been heard.

The Judge called also for a revised account. The accounts filed by the executors show that there have been defalcations to an appalling extent. If the Judge finds any thing in the account which is palpably false, it would be a most dangerous doctrine to say that he has no jurisdiction to call upon the executors to shew cause, why the probate should not be revoked. If the Court be satisfied that there has been defalcation and waste by the executors, the Judge has jurisdiction to revoke the probate even if no one interested in the estate moves in the matter: I rely on *Annopurna Dasi* v. *Kallayani Dasi*(1). The Judge has authority to revoke a probate after giving the executors an opportunity to explain matters,—and in this case they had ample opportunity to do so.

[*The Advocate-General.* The Judge refused to allow the executors to go into evidence,—see pp. 152, and 154 of the Paper-book.]

If it was the duty of the Judge to see that the accounts submitted by the executors were true (see s. 76 of the Probate and Administration Act) accounts of the property and credits, he was justified in appointing a commissioner to examine them.

(1) (1893) I. L. R. 21 Calc. 164, 168.

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And the executors are bound to submit an account, not for one year only, but for the period from the grant of the probate up to the time they submit the account. And, further, since s. 98 of the Act empowers the Judge to extend the period of one year by the words "within such further time as the Court may from time to time appoint," it authorizes him to demand an account for any extended period which may elapse before the account required by the section is filed. The first account for one year could not be passed, until the inventory was finally passed, and until then the account must remain in suspense; and I contend it could not be passed until the inquiry about the valuation of the inventory was completed.

[GHOSE J. After the first year's account had been passed by Mr. Harward, could Mr. Roy reopen that matter?]

Mr. Harward did not actually pass the accounts. He only assumed the account to be correct, if the inventory were correct. The Collector objected to the inventory, and if the inventory was in suspension, necessarily the account also was not finally passed. The valuation of the immoveable property would depend upon the amount of rents and profits of the property; and if the inventory was wrong, the accounts must also be wrong.

Following the decision in the case of *Mohesh Chandra Bhuttacharjee* v. *Biswa Nath Bhuttacharjee* (1), *one* account is to be exhibited under s. 98 of the Act within one year of the grant of the probate, but it cannot be said that accounts for any subsequent years could not be taken. The Act contemplates that the administration should be wound up in one year. But it is nowhere said that, if the executors take more than one year in administering the estate, no account can be called for from them for more than one year. And it is the duty of the Judge to see that the accounts submitted are true.

Uma Prosad did come forward, in August 1903, and applied for the revocation of the probate objecting to the accounts filed by the executors.

The Advocate-General, in reply. Although Uma Prosad made the application for revocation of the probate in August 1903, no reference was made by the District Judge to Uma Prosad

(1) (1897) I. L. R. 25 Calc. 250.

in connection with the proceedings that were going on before him. The whole proceedings went on *ex-officio*, and we protested against them. Before any one can ask under s. 50 of the Act to have a probate revoked, he must show that he has sufficient interest in the estate of the testator. The Court cannot *ex-officio* take any such steps nor can it delegate its powers to commissioners to examine accounts filed by executors: Pearson's Law of Agency, p. 301.

The inventory accepted by the District Judge, Mr. Harward, was final and could not be reopened. The question of account could not depend upon the inventory, which is an inventory of assets, the accounts being those of receipts and disbursements.

As regards the practice of the Probate Courts in England in these matters, see *Henderson* v. *French*(1), and *Griffiths* v. *Anthony*(2).

Cur. adv. vult.

GHOSE AND PARGITER JJ. (After stating the facts as set forth above their Lordships continued:) The main grounds urged in this appeal may be summarized thus:—

(i) That the inventory and account filed during the early stage of the proceedings had been accepted and were final under s. 98 of Act V, and that the District Judge had no power to call for a revised inventory and account.

(ii) That he had no power to call for accounts for the subsequent period.

(iii) That he had no power to appoint commissioners to audit the accounts.

(iv) That he had no power to commence proceedings to revoke the probate under s. 50 of Act V of 1881 on his own motion.

(v) That he had no power to admit under s. 50 an application of a person, who had no sufficient interest.

(1) (1816) 5 M. & S. 406. (2) (1830) 5 A. & E. 623.

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There are many other grounds which deal with particular incidents in the proceedings or with questions of fact and it is unnecessary for us to go into them.

The consideration of the first ground depends on the question, what is the duty of the District Court in taking the inventory and account under s. 98 of Act V. On one side it has been contended by the appellants that the District Judge has no power to examine any inventory or account that may be put in under s. 98, and that his duty practically ends with receiving them, when they are put in. On the other hand, it is maintained that the District Judge has full power to check and scrutinize them in order to see whether they are full and true, and to institute an inquiry for that purpose.

We are of opinion that his duty lies in the mean between these two contentions. The section does not mean that an executor or adminstrator may tender any papers he pleases and that by simply styling them a full and true inventory or an account of the estate he complies with the requirements of the section. On the other hand, the section nowhere imposes on the District Judge the duty of scrutinizing and auditing the papers and of undertaking for that purpose elaborate and expensive proceedings. Such a scrutiny would be an onerous charge, which we cannot hold to have been laid on him, unless the section clearly says so; and we find no such words. Nor again does the section give the District Judge power to hold a judicial inquiry into the inventory and account of his own motion; and to make the executor or administrator pay the costs of it.

All that the District Judge has to do under the section is to see that the inventory and account *primâ facie* satisfy the requirements of the section, that is, that the inventory appears on inspection to be a full and true estimate of all the property, credits and debts, and that the account on inspection appears really to be a true one showing the assets and their disposal (*vide* s. 76). To ascertain this it would be necessary that the inventory and account should be passed under some examinations by the Judge's staff so as to detect manifest mistakes or omissions. If such were discussed, the papers would not satisfy the section; and the Judge would have power to require the executor or administrator to

amend the account in order to comply with the section; and for this purpose the section empowers him to extend the time.

This, in our opinion, is the scope of the Judge's duties under s. 98. He has no power to institute an audit of the inventory and account at the expense of the executor or administrator. The section vests him with no such power, nor can such an authority be implied from the provisions of the Code of Civil Procedure as to the appointment of a commissioner to examine accounts, to which provisions the District Judge has referred.

The learned Judge in support of his orders upon this matter has discussed very largely the position of the executors in this case, the provisions of the Mitakshara law as regards the joint interest of the minor son of the late Maharaja, in the estate left by the Maharaja and certain other questions; but in the view, which we have already expressed, and such as we shall presently express, this discussion may be left out of consideration. We may, however, remark that the Judge has, in discussing the questions, mixed up the position of the executors—as executors acting under the probate granted by the Court, and their position as guardians of the minor under the Guardians and Wards Act. He was concerned in this case only with the position and duties and obligations of the executors under the Probate Act.

Reference has been made to the 11th clause of the will, in which the testator enjoined on his executors to prepare accounts annually and submit one copy to the District Judge. But that did not enlarge the Judge's power; it was a duty laid on the executors, similar to the other duties laid on them. It would authorize a person interested in the will to take action against them, if they disregarded it, but it did not empower the Judge to exact an account annually.

We must, however, deal with the inventory and account in this case separately. The foregoing statement of facts shows that the inventory was never accepted as satisfying s. 98, for, when it was refiled after amendment in September 1899, the Collector objected to the valuation and a miscellaneous case was begun, which lasted, until it was compromised in June 1902. The acceptance was deferred pending the hearing of that case. It appeared therefrom that the inventory was not a full and true one, and

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did not satisfy the section. We hold, therefore, that the District Judge had power to require that it should be amended in order to secure compliance with the section.

With regard to the account, the proceedings were different. It was amended as directed by the Judge and was refiled in December 1899. It was then checked and he recorded the note "Accounts checked and reported to be correct." That is he accepted the account as being correct, and treated it as satisfying s. 98, for no further action was taken with regard to it. There was no adjournment nor any allowance of time. There is nothing in any of the orders recorded at that time to suggest that the account was kept in suspense or as awaiting further enquiry. That being so, the District Judge in 1902 had no power to reopen the matter judicially under the first clause of s. 98. He had, of course, liberty to look into the account, just as he might institute a research into any other papers preserved in his Court. Whatever steps he might take after such an examination would depend on the law. Section 98 would give a Judge no power to call for a revised account, if an account had already been exhibited as required by the section and such account had been accepted as *primâ facie* true; but if it appeared that the account filed was materially untrue, the section clearly indicates the procedure which he could have adopted, namely, to take action under its fourth sub-section. That, however, the Judge did not do; and the proceedings, which he actually took in connection with the accounts after the compromise, were *ultra vires* and illegal.

The second ground urged is that the District Judge had no power to call for accounts of the subsequent period, namely, from 21st Falgoon 1305 to the end of 1308 (March 1899 to April 1902). The account required by s. 98 is one that should show "the assets which have come to his (the executor's or administrator's) hands and the manner in which they have been applied or disposed of." It is contended by the appellants that, since the account is to be rendered within one year ordinarily, it is intended to comprise only the transactions of the first year after the grant of the probate, and hence that the District Judge has no power under the section to call for the accounts of any subsequent period.

On the other hand, there is the argument that, since the account is to show the assets that have been collected and the manner in which they have been applied or disposed of, it cannot be complete, until all the assets have been collected and have been applied or disposed of; and, therefore, that the account must comprise the whole of the time which the executor or administrator spends *as such* in collecting and disposing of the assets, consequently, that any account filed before that full account is rendered is only an instalment of the account required by the section; and that it is for this purpose the District Judge is authorized to extend the period prescribed for rendering the account. Further, it has been argued that, since the section authorizes the Judge to extend the period of one year by the words "within such further time as the Court may from time to time appoint," it also authorizes him to extend his demand so as to have an account for any further time allowed; and that consequently he may demand accounts for the entire extended period, which may elapse, before the account required by the section is filed.

Reference has been made to the English Practice in these matters, but it is hardly a guide here, because the provisions of Act V of 1881 differ very materially from the law in England. It is not necessary, however, for us to decide this question, namely, for what period altogether the District Judge has authority to demand an account under s. 98; for, on the facts as they occurred in this case, it is clear that the District Judge in 1899 accepted the account which the executors filed shortly after the expiry of a year from the grant of the probate, as being true and as satisfying (as it did *primâ facie* satisfy) the requirements of that section. Certainly, (to use the words of the section) he appointed no further time whatever for any purpose contemplated by the section. That acceptance was evidently considered as a final one for the requirements of the section. Hence it was not open to the new District Judge in 1902 to treat the matter as still incomplete or to order further accounts for subsequent years, on the strength of the words "within such further time as the Court may from time to time appoint."

It is indeed true that in accordance with the order of the Judge, the executors did produce the accounts of the subsequent

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years; but they evidently thought that his order must be loyally obeyed, and we do not think that that circumstance affects the true position of things here.

The learned Judge with reference to the question whether he had authority to call for accounts of the subsequent years and whenever he thought proper, refers to the case of *Mohesh Chandra Bhuttacharjee* v. *Bisica Nath Bhuttacharjee*(1), decided by a Divisional Bench of this Court consisting of MACLEAN C.J. and BANERJEE J. In one portion of his judgment he expresses the opinion that the view he has adopted is not in conflict with that case; but, in another place, he expressly dissents from it and prefers to abide by the report of the Select Committee and the speech of a member of the Legislative Council in connection with Act VI of 1889, by which the Probate and Administration Act was amended. And later on he states that "English lawyers are prone to make mistakes in considering the jurisdiction of the Probate Courts in this country and that it should be remembered that a Probate Court in India is also an Equity Court."

We entirely deprecate these observations of Mr. Roy, the District Judge. He was bound to have loyally followed the decision of this Court, and he ought to have known that, in determining what the Act means, he could not refer to the proceedings in the Legislative Council. We should add that his remark to the effect that "English lawyers are prone to make mistakes as regards the jurisdiction of the Probate Courts in this country" was wholly unwarranted and should never have been made.

The decision regarding the third ground follows necessarily from the foregoing conclusions. As the District Judge had no authority under section 98 to order a judicial enquiry into the account at the expense of the executors, he had no power to appoint commissioners under the Civil Procedure Code to audit the accounts rendered.

The fourth ground is that the District Judge had no power to commence proceedings to revoke the probate under section 50 of the Act on his own motion, and this contention in our opinion, is valid; for, in doing so, he is at once both plaintiff and

(1) (1897) I. L. R. 25 Calc. 250.

Judge in the matter—a position which is entirely contrary to all recognised procedure. The proceedings taken under that section must be taken upon the petition of some plaintiff, and the District Judge must deal therewith judicially in the regular way. Chapter V of the Act lays down the practice to be followed both in granting and in revoking probates and letters of administration; and section 83 in that Chapter directs that, in any case in which there is contention, the proceeding shall take the form of a suit and be tried according to the Civil Procedure Code.

To permit the District Judge to take action under section 50 of his own motion would also lead in many cases to unjust consequences, for instance, even if the action fails, the cost must fall on the executor or administrator—that is on the estate, there being no ordinary plaintiff, who can be condemned in costs, if his case fails.

The fifth ground relates to the petition made by Uma Prosad Roy Chowdhry, and strictly speaking, it does not come into question in this appeal, for, though he has been made the respondent in this appeal, we do not find that the District Judge passed any order making him a party to the proceedings which were going on when he made his petition under section 50, and much less any order making him the plaintiff in those proceedings. He is not described as such in either of the two judgments now under appeal. All that we find is that he is mentioned incidentally therein, and that he is described as plaintiff in the decree now under appeal. All that happened appears to have been that Uma Prosad's petition was filed in the proceedings and they went on the same as before, that is on the District Judge's own motion. If Uma Prosad's petition is regularly made the foundation of a future case under section 50 (and our judgment in this appeal will be no bar to proceedings being taken thereon), the question may then be considered, whether he has such an interest as entitles him to apply for revocation of the probate.

For these reasons we hold that, with the exception of the demand for the revised inventory, all the proceedings taken by the District Judge were contrary to law. Those taken under section 50 for the revocation of the probate were *ultra vires* from the commencement. It does not appear clear that the District

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Judge admitted Uma Prosad into them as the nominal plaintiff, but, even if he did so admit him, the proceedings could not be validated by joining Uma Prosad as plaintiff during their last stage. When Uma Prosad made his petition it might and should have constituted a distinct case under section 50 and should have been conducted separately and regularly.

We, therefore, set aside all the proceedings taken by the District Judge on the 14th November 1902 and afterwards, as already mentioned with regard to the inventory and accounts. It is however still open to the District Judge to proceed with and take fresh proceedings upon Uma Prosad's petition, on which, as far as we can see at present, no regular orders have yet been passed.

Appeal allowed.

B. D. B.