

1873
January 30.

[ORIGINAL CIVIL JURISDICTION.]

DHURANDHARDA'S SAKHA'RA'M and others *Plaintiffs.*

BHA'U GOVIND and others*Defendants.*

Practice—Order made by Commissioner for taking accounts—Disobedience of order—Attachment.

An attachment will issue to compel a party to a suit to obey an order made by the Commissioner for taking accounts, upon the certificate of the Commissioner that such order has been made and disobeyed, without in the first instance making such order a rule of Court.

B.M. Wagle, on the 25th of November 1872, obtained from BAYLEY, J., a rule directed to the defendants, Bha'u Govind and Nirayan Govind, whereby it was ordered that unless good and sufficient cause should be shown to the contrary, within four days from the personal service of the rule upon them, an attachment should be issued against the said defendants for contempt of court in not obeying a certain order of the Commissioner for taking accounts made on the 20th of January 1872, whereby it was directed that the said defendants should file in the Commissioner's office, within 28 days from the 20th of January 1872, the accounts of all dealings and transactions between them and the plaintiffs subsequent to the 30th of October 1864.

The above rule was issued upon reading the certificate of the Commissioner, dated the 19th of November 1872, which certified that by an order of court, made by consent on the 22nd of November 1871, it had been referred to the Commissioner to take an account of the dealings and transactions between the plaintiffs and defendants subsequent to the 30th of October 1864, and that at the request of the plaintiffs' attorneys, the Commissioner, on the 20th of January

1872, directed the defendants to file in his office, within twenty-eight days from the 20th of January 1872, the account of all dealings and transactions between them and the plaintiffs subsequent to the thirtieth day of October, 1864, and that on the twenty-second day of March 1872 a warrant had been taken out by the attorneys for the plaintiffs, calling upon the defendants to show cause why they should not file the accounts as directed by the Commissioner on the twentieth day of January 1872, which warrant was returnable on the 2nd of April 1872, when the attorneys of the plaintiffs and the attorney for the defendants appeared on the return of the warrant, and the latter requested the Commissioner to grant the defendants further time for filing the accounts on the ground that certain books containing particulars relating to the said accounts were up-country; and that the Commissioner then directed that the defendants should file their accounts in his office within twenty-one days from the 2nd of April 1872, and that on the 3rd of October 1872 a peremptory warrant had been taken out by the plaintiffs' attorneys calling upon the defendants to show cause why they should not file the accounts as directed on the 20th of January 1872, which warrant was returnable on the seventh of October 1872, when the plaintiffs' attorneys appeared before the Commissioner but no one attended on the part of the defendants, although the said warrant had been duly served, and that neither the defendants nor any persons or person on their behalf had filed in the Commissioner's office the accounts directed by the Commissioner to be filed by them on the 20th of January 1872.

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The rule came on for argument before BAYLEY, J., on the 20th of January 1873.

The Hon'ble *A. R. Scoble* (Advocate General), in showing cause, objected that the proceedings taken by the plaintiffs were irregular, inasmuch as an attachment for contempt would not issue for disobedience of an order of the Commis-

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sioner for taking accounts. He contended that the proper course for the plaintiffs to have adopted, was to have, in the first instance, applied to have the order of the Commissioner made an order of court, and if the order of court were not obeyed, then to have moved for an attachment. The course adopted by the plaintiffs in effect precluded the defendants from disputing the justness of the Commissioner's order. The objection was the more important from the fact that in many instances Commissioners appointed to take accounts were not officers of the court, and the parties had no safeguard against orders made improvidently by them. He commented on Secs. 180 and 181 of the Code, and referred to *Vakatchand Lakhmichand v. The Advocate General (a)*.

B. M. Wagle, in support of the rule, said that the procedure adopted in the present case was in accordance with the practice of the court, and that many similar rules had been granted and subsequently made absolute.

BAYLEY, J., said he would make inquiries and consult the other Judges before deciding the point that the Advocate General had raised.

Cur. adv. vult.

January 30, BAYLEY, J.:—With reference to the preliminary question that has been raised by the Advocate General in showing cause against the rule obtained by Mr. Wagle in this case, I may state that I have considered the point and made inquiries, and I am of opinion that the procedure followed by Mr. Wagle's client was quite correct, and in accordance with the practice of this court. (His Lordship then referred to several instances in which the practice adopted in the present case had been followed, and said)

I do not consider that the Advocate General's contention is based on reason, and must hold that the preliminary objec-

(a) 8 Bom. H. C. Rep. O. C. J. 96.

tion has failed and cause must be shown, if any can be shown, on the merits.*

Attorneys for the plaintiffs—*Shapurjee and Thakurdas.*

Attorney for the defendants—*C. Tyebji.*

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[ORIGINAL CIVIL JURISDICTION.]

Suit No. 674 of 1870.

ABDUL GANNE KA'SAM and others*Plaintiffs.*

HUSSEN MIYA' RAHIMTULA' and others ...*Defendants.*

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January 31.

Muhammadan law—Wakf—Settlement on a man and his descendants—Perpetuity—Aulad dar Aulad—Warrasan.

Semle. To constitute a valid *Wakf* according to Muhammadan law, it is not sufficient that the word "*Wakf*" be used in the instrument of endowment. There must be a dedication of the property solely to the worship of God or to religious and charitable purposes. A Muhammadan cannot, therefore, by using the term "*Wakf*," effect a settlement of property upon himself and his descendants, which will keep such property inalienable by himself and his descendants for ever.

Held that the plaintiffs, who were sons of a daughter of one of the original settlers, did not come within the meaning of the term *aulad dar aulad* or the term *warrasan* used in the instrument of settlement.

THIS suit was filed by the plaintiffs to have the trusts of a writing in the Persian language, dated the 25th of October 1820, carried into execution.

II. For a declaration that the plaintiffs were entitled to live in a certain house mentioned in the said writing.

III. That the rights and interests of the plaintiffs and defendants in the said house might be ascertained and declared; and that, if necessary, the house might be sold and the proceeds divided amongst the plaintiffs and the defendants.

**Note.*—Before cause was shown on the merits the defendants lodged their accounts in the Commissioner's office, and on the 6th of March the rule was discharged, the defendants being ordered to pay the costs of and occasioned by it. Leave was granted to the defendants to file in the Commissioner's office the accounts they had lodged there.