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instead of compelling the appellant to wait until the accounts are taken, and the final decree is passed. Taking the accounts, as ordered by this Court, will involve much delay and expense. The Privy Council may possibly reverse or modify the decree, and render the taking of these long and heavy accounts wholly unnecessary. That fact and the fact that there are very important points of law in the case, justify the granting of the certificate we ask for.

JUDGMENT.

SARGENT, C. J.—We think we ought not to grant the certificate. The decree is clearly not a final decree, and there is nothing so special in the case as to bring it under cl. (c) of [431] s. 595 of the Civil Procedure Code (Act XIV of 1882). It is true that accounts have to be taken, but they ought not to involve very much delay or expense. They are not very heavy or complicated, or of such a nature as to make the case an exceptional one.

Certificate refused.

Attorneys for appellant :—Messrs. *Jefferson, Bhaishankar Dinsha and Kanga.*

Attorneys for respondent :—Messrs. *Payne, Gilbert and Sayani.*

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Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

JAIKISSONDAS GANGADAS (*Plaintiff*) v. ZENABAI AND
KAZI MAHOMED MIYA DADA MIYA (*Defendants*).^{*}
[9th April and 18th July, 1890.]

*Receiver—Mortgage—Receiver of mortgaged property appointed at instance of mortgagee
—Receiver appointed by appeal Court—Practice.*

In a suit by a mortgagee for foreclosure or sale in default of payment of his mortgage-debt the Court of first instance when passing a decree for the plaintiff refused, on the plaintiff's application, to appoint a receiver of the rents and profits of the mortgaged property. The plaintiff appealed against the latter part of the decree, and after filing a memorandum of appeal obtained a rule for the appointment of a receiver until the hearing of the appeal.

The Court of appeal, after argument, made the rule absolute, and appointed a receiver until the hearing of the appeal, and subsequently, when the appeal came on for hearing, varied the decree of the Court below by appointing a receiver of the mortgaged property.

The High Court possesses the same powers with regard to the appointment of a receiver as are possessed and exercised by the Courts in England under the Judicature Act.

[R., (1914) M.W.N. 771.]

THE first defendant was the sister-in-law of the second defendant, and they were the owners, in certain shares, of property situate in Bombay. By several indentures of mortgage and further charge they mortgaged the said property to the plaintiff Jaikissondas Gangadas.

* Suit No. 717 of 1889 ; Appeal No. 682.

The first deed of mortgage was dated the 6th May, 1885, and the last one was dated the 24th August, 1888.

[432] Disputes subsequently arose between the defendants, the result of which was that by an agreement, in writing, dated the 22nd December, 1888, it was agreed that Zenabai, (the first defendant), should sell her interest in the property to Kazi Mahomed Miya, (the second defendant), for Rs. 55,000. The second defendant, however, failed to carry out this agreement, and in April, 1889, Zenabai filed a suit against him for specific performance of this agreement. She also prayed that, pending the completion of the said agreement, a receiver should be appointed to take possession of the said property and to collect the rents thereof, and that the second defendant should be restrained by injunction from receiving the same. On the 15th May, 1889, Mr. C. A. Turner was appointed receiver by the Court, and an injunction was granted, restraining the second defendant from receiving the rents of the said properties until the hearing of the suit.

On the 6th July, 1889, Zenabai obtained a decree for specific performance of the agreement of 22nd December, 1888, whereby the second defendant was directed to pay her the said sum of Rs. 55,000 and interest on or before the 6th September, 1889, &c., and the decree further directed that the order, dated the 15th May, 1889, for injunction and receiver, should be continued until the said payment was made.

On the 20th December, 1889, the plaintiff Jaikissondas Gangadas, as mortgagee, filed this suit against the defendants to recover the sum of Rs. 1,50,392-8-6 due upon the said indentures of mortgage and further charge. The plaint prayed for payment, or, in default, for foreclosure or sale. It also prayed that the defendants should be restrained from receiving the rents and profits of the mortgaged property then in the hands of Mr. C. A. Turner, the receiver appointed in suit No. 203 of 1889, and further prayed for the appointment of a receiver in this suit to take possession of the mortgaged property and of the rents and profits thereof.

On the same day that the plaint was filed, *viz.*, 20th December, 1889, the plaintiff obtained a rule, calling on the defendants to show cause why they should not be restrained from receiving [433] the rents of the property from the receiver in suit No. 203 of 1889, and also why Mr. C.A. Turner or some other person should not be appointed receiver in this suit.

On the 8th March, 1890, the present suit came on for hearing before Parsons, J., and the plaintiff obtained a decree for the amount claimed. The learned Judge, however, refused to appoint a receiver, or to grant an injunction, and the decree ordered "that the *rule nisi* herein dated the 20th day of December, 1889, be discharged, and the *interim* injunction thereby granted be dissolved."

On the 21st March the plaintiff filed an appeal against so much of the decree as refused to grant a receiver.

On the 27th March the plaintiff obtained a rule from the appeal Court, calling on the defendants to show cause why they should not be restrained from receiving from Mr. Turner, the receiver in suit No. 203 of 1889, the rents of the mortgaged premises, and also why the said Mr. C. A. Turner or some other person should not be appointed receiver in this suit.

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The rule now came on for hearing.

Jardine, for the first defendant showed cause.—The plaintiff is the legal mortgagee of the property, and can himself obtain possession. He is not entitled to a receiver: Kerr on Injunction, p. 29 (2nd ed.).

Lang, for the plaintiff, in support of the rule. He cited *Anglo Italian Bank v. Davies* (1); *Mason v. Westoby* (2); *In re Pope* (3).

JUDGMENT.

SARGENT, C. J.—We think this rule must be made absolute. The question is, whether a receiver can be appointed upon an interlocutory application in a suit for foreclosure or sale of mortgaged property. No doubt under the old practice of the Court of Chancery it was not usual to do so, except under very special circumstances. But in England it appears that the practice has been altered since the passing of the Judicature Acts. In the *Anglo Italian Bank v. Davies* (1), Jessel, M. R. says (p. 286): "Now, what has the Judicature Act done? In the first place I think that [434] the Act of 1873, s. 25, sub-s. 8, has enlarged very much the powers which Courts of Equity formerly possessed of granting injunctions or receivers. The words are: 'A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just.' Then it goes on: 'If an injunction is asked either before or at or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass,' it may be granted whether or not certain things have occurred which prior to the passing of the Act would in one alternative have prevented the Court from granting an injunction or receiver."

Cotton, L. J. says (p. 293): "There is nothing whatever to prevent the Court from interposing on interlocutory motion. If there were any formal difficulty, in my opinion the Judicature Act, 1873, s. 25, sub-s. 8, removes it. Under that sub-section the Court may and does grant receivers when it never could have done so before. Thus, for instance, it has power to grant a receiver under that section where a plaintiff has himself the power of obtaining possession at law."

We are of opinion that this Court possesses the same powers with regard to the appointment of a receiver as are possessed and exercised by the Courts in England under the Judicature Act, and we can see no reason why the practice in respect of these matters should not be the same. In the case of *In re Pope* (3), Cotton, L.J., says: "The practice of the Court as regards granting receivers was greatly altered by the 8th sub-division of the 25th section of the Act of 1873: * * * Since the passing of that Act it has been a usual practice for the Chancery Division to grant a receiver at the instance of a legal mortgagee just as it formerly did at the instance of an equitable mortgagee. Because although a legal mortgagee has power to take possession, and can do so without the assistance of a Court of Equity, yet there are obvious conveniences in

(1) L.R. 9 Ch. D. 275 (286).

(2) L.R. 32 Ch. D. 206.

(3) L.R. 17 Q.B.D. 743 (749 and 750).

granting a receiver, so as to prevent [436] a mortgagee from being in the very unpleasant position of a mortgagee in possession; and that has been constantly done. What the Court of Chancery did up to the time of the Judicature Act was that, when there was difficulty in the way of a judgment creditor getting possession by process of law, and, after he had tried to get possession by legal process, if he failed, then the Court interposed by granting a receiver, which was then considered and was in fact the proper course to adopt. But in my opinion, as this section enables the Court of Equity to depart from its former practice and to grant a receiver, not only where there is no power to take possession at law, but where there is power to interfere, if it is just or convenient that an order for a receiver shall be made, then, in my opinion, if it was just or convenient, the Court in this case had power to grant a receiver, though undoubtedly the judgment creditor could by *elegit* have got possession."

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Now in the present case, we think, it is "just and convenient" that a receiver should be appointed. There are exceptional circumstances here. The mortgage-debt is for a very large amount. The value of the property is said to be insufficient to cover the debt, and there is a large sum owing for arrears of interest. It is, therefore, a case in which a receiver is desirable, and we think he ought to have been appointed by the decree made by the Court below.

Rule absolute with costs.

18th July.—The appeal filed by the plaintiff, as above mentioned, against so much of the decree as refused to appoint a receiver, came on for hearing before Sargent, C.J., and Farran, J. The following were the points taken in the memorandum of appeal:—

"1. That the learned Judge was in error in refusing to appoint a receiver of the mortgaged properties on behalf of the plaintiff.

"2. That the said learned Judge, having regard to the evidence given as to the value of the said properties, should have appointed a receiver thereof on behalf of the plaintiff, or have continued Mr. Turner as the receiver on behalf of the plaintiff.

[436]"3. That the said learned Judge should not have discharged the *rule nisi*, dated the 20th December, 1889, or dissolved the *interim* injunction thereby granted, but on the contrary should have made the said rule absolute, and continued the injunction."

Scott (with *Lang*), for appellant.—The points raised by this appeal have already been decided. We ask to have the decree varied, in accordance with the decision of this Court, after the argument of the rule.

The respondent did not appear.

ORDER.

SARGENT, C.J.—By our judgment of the 9th April we granted a receiver until the hearing of this appeal, and now of course, upon the same grounds, we must decide this appeal. The decree of the Court below must be varied by appointing Mr. C. A. Turner receiver of the rents and profits of the mortgaged property as from the date of the filing of this suit (20th December, 1889), and by granting an injunction restraining the defendants from receiving from Mr. C. A. Turner, as the receiver in suit No. 203 of 1889, the rents and profits now in his hands which have been

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recovered by him since 20th December, 1889. The appellant's costs of this appeal to be added to the mortgage-debt.

Decree varied.

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Attorneys for appellants :—Messrs. *Jefferson, Bhaishankar and Dinsha.*

Attorneys for the respondent :—Messrs. *Wadia and Ghandy.*

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CRIMINAL JURISDICTION.

Before Mr. Justice Farran.

QUEEN-EMPRESS v. KRISHNAJI BABURAV BULELL.

[10th July, 1890.]

Practice—Procedure—Criminal prosecution—Right of reply—Documents put in evidence on behalf of accused during cross-examination of witnesses for prosecution—No witnesses called for defence—Criminal Procedure Code (Act X of 1882), s. 292.

The fact that during the cross-examination of witnesses for the prosecution, documents are put in evidence on behalf of the accused, does not give the prosecution the right of reply if no witnesses are called for the defence.

[Diss., 14 A. 212.]

[437] THE accused was tried for defamation and abetment of defamation at the prosecution of Burjorji Byramji.

Macpherson, (Acting Advocate-General), and *P. M. Mehta*, for the prosecution.

Russell, for the defence.

During the cross-examination of the complainant Burjorji Byramji, the counsel for the accused put in evidence a certificate of character of the accused signed by the complainant.

In the cross-examination of a subsequent witness (Muncheerji M. Bhowmagri), counsel for the defence put in two letters written by one Khan Saheb to the witness for the purpose of showing that Khan Saheb had been improperly endeavouring to obtain money from the witness. This was done, in order to affect the credit of Khan Saheb, who was an important witness for the prosecution. Before tendering these letters in evidence, counsel for the defence asked the Court to rule whether, if he put them in, his doing so would give counsel for the prosecution the right to reply. The Court, however, declined to give any ruling upon a hypothetical case. Counsel for the defence then put in the letters.

Khan Saheb was called as a witness for the prosecution, and during his cross-examination, counsel for the defence put in a letter written by the witness to the Presidency Magistrate, before whom the charge against the accused was originally brought, asking for an adjournment of the case.

At the close of the case for the prosecution, counsel for the defence stated that he did not intend to call witnesses.

Macpherson (Acting Advocate-General), thereupon claimed that as evidence had been put in on behalf of the accused, the counsel for the