1894.

RÁIJI JA'DAV v. BÁI MATHURA.

only son at the time of his adoption, which adoption was, therefore, (if it took place, as to which the Subordinate Court has recorded no finding) invalid. To hold otherwise would be without warrant derived from the texts to graft an anomalous exception upon an established general rule. We must, therefore, confirm the finding of the Subordinate Judge on the first issue. (The rest of the judgment is not material to this report.)

Decree substituted.

APPELLATE CIVIL.

Before Mr. Justice Farran and Mr. Justice Candy.

1894. *August* 22.

BA'LÁJI NA'RA'YAN PATVARDHAN (ORIGINAL DEFENDANT), APPELLANT, *v.* RA'MCHANDRA GOVIND KANADE (ORIGINAL PLAINTIFF), RESPONDENT.*

Receiver—Duties and liability of—Civil Procedure Code (Act XIV of 1882), *Sec.* 503.

A receiver appointed under section 503 of the Civil Procedure Code (Act XIV of 1882) to collect the rents of an estate, is bound to make good a loss caused to it by a breach of his duties.

A receiver is not justified in delegating or entrusting to another a duty entrusted to him by the Court. He should in all important matters apply for and obtain the direction of the Judge who appoints him.

A receiver is entitled to his costs, charges and expenses properly incurred in the discharge of his duties.

APPEAL from the decision of Ráo Bahádur Chuṇilál Maneklál, First Class Subordinate Judge of Poona, in Suit No. 442 of 1891.

The defendant, a kárkún in the First Class Subordinate Judge's Court at Poona, was appointed a receiver under section 503 of the Code of Civil Procedure (Act XIV of 1882) in Suit No. 315 of 1887, to collect the rents of an estate consisting of moveable and immoveable property. He employed three successive kárkúns and left to each of them the absolute and uncontrolled management of the estate and the custody of its funds without obtaining any security from them. One of the kárkúns made use of the whole

* First Appeal, No. 165 of 1892.

of the collected funds for his own purposes and destroyed or manipulated the accounts, and after nearly four years' management the receiver handed over the immoveable property and four pies to the plaintiff, who had been appointed administrator, on the termination of the suit, under section 9 of Regulation VIII of 1827. He produced no accounts.

The District Judge, on the report of the administrator, sanctioned the institution of the present suit. Plaintiff thereupon sued for an account from 8th September, 1887, to 30th September, 1891, and to recover what might be found due to the estate upon taking such account, with interest at 9 per cent. from date of suit, alleging that he found that owing to mismanagement a great deal of damage had been done to the estate. There was no dispute as to the immoveable property, the whole of it having been safely delivered over to the plaintiff.

The defendant pleaded (*inter alia*) that full powers had been conferred on him by his appointment as receiver; that he acted *bonâ fide* in the selection of his kárkúns; that it was impossible to manage the estate, which was situate in three districts, without the assistance of kárkúns, and that he was not responsible for the kárkúns' negligence or fraud.

The Subordinate Judge found that the defendant had no power to delegate his authority as a receiver, and that he was liable for the property misappropriated by his clerks. He, therefore, appointed a commissioner for taking accounts and ordered local investigation according to certain directions. The defendant failed to render an account to the commissioner. The Judge, therefore, accepted the accounts produced by the plaintiff as correct, and passed a decree according to those accounts, awarding to the plaintiff Rs. 5,894-8-9 with costs.

The defendant preferred an appeal.

Ganesh K. Deshmukh, for the appellant (defendant).

Mahádeo C. Apte, for the respondent (plaintiff).

FARRAN, J.:—The defendant in this case, who is a receiver appointed under section 503 of the Code to collect the rents of an estate consisting of house property and land, has entirely mis-

1894.

BA'LA'JI NA'RA'YAN ATVARDHAN v. RA'MCHANDRA GOVIND KANADE.

apprehended his position and duties, and the estate entrusted to his care has thereby suffered considerable loss. His duty, whether he employed a kárkún or not, was himself to receive the rents as they were from time to time collected on his behalf, if he did not himself recover them, and keep them under his own control in a bank to a separate account or in some other secure place of deposit, and to pay out such sums as from time to time might be required for current expenses and repairs, and personally or by a kárkún to keep correct and accurate accounts of the receipts from and expenditure upon the estate, obtaining vouchers for all, other than petty, sums paid. That duty entrusted to him by the Court as its selected and trusted officer, he was not justified in delegating or entrusting to another. Having done so, and thereby caused loss to the estate, he is bound to make it good.

In all important matters, the receiver should apply for and obtain the direction of the Judge who appoints him. On the other hand, a receiver is entitled to his costs, charges and expenses properly incurred in the discharge of his duties. The question whether these include the assistance of a kárkún depends (if the terms of the order appointing him are silent upon the subject) upon the nature of the estate, and must be determined in each case with reference to its own circumstances. No general rule can be laid down; but whether he be allowed a kárkún or not, the receiver must himself perform the proper duties appertaining to his office. These, we repeat, he cannot delegate.

In the case before us the receiver, it appears, employed three successive kárkúns, and left to each of them the absolute and uncontrolled management of the estate and the custody of its funds. He did not even for his own protection or that of the estate obtain any security from them. The consequence is that one of them, Maráthe, made use of the whole of the collected funds for his own purposes, and destroyed or manipulated the accounts, and after nearly four years' management, the receiver has handed over only 4 pies to the administrator. His liability to account for the balance is undoubted.

1894.

BA'LÁJI NÁRÁYAN PAVARDHAN v. RÁMCHANDRA GOVIND KANADE.

As, however, the accounts have not been investigated by the local commissioner, as directed by the Judge, we must now direct the accounts to be taken, and as the pleaders for the parties are agreed that in this case the services of a kárkún at Rs. 12 per mensem were necessary owing to the nature of the estate, we will direct the commissioner in taking the accounts to allow that item.

We accordingly refer it to Mr. Bhicáji Gopál Robade to take the accounts of the defendant's receivership, charging him with all sums actually received by him, or which, but for his wilful default, he ought to have received, on the best basis which under the circumstances he can adopt. In taking such accounts, let him allow the defendant Rs. 12 per month for the services of a kárkún. The terms of this order of reference will supersede the directions given by the Subordinate Judge. The report to be made within six weeks. Costs to be dealt with on receipt of the report as well as the question whether the defendant is to be charged with any and what interest.

APPELLATE CIVIL.

Before Mr. Justice Farran and Mr. Justice Candy.

1894.
August 22.

VENKA'JI BA'BA'JI NA'IK (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHIDRA'MA'PA BA'LA'PA DESA'I AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation—Limitation Act (XV of 1877), Sec. 20—Interest—Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of interest on debt—Mortgage-deed not registered—Deed not admissible to prove rents paid as interest—Evidence—Practice—Registration Act (III of 1877), Secs. 3 and 17.

By a bond dated 15th July, 1872, A assigned to B the "*vahivat* of assessment" of certain lands belonging to him as security for a loan of Rs. 10,000. The bond provided that B should receive the assessment, and after making certain payments should retain the balance in lieu of interest until the principal debt should be repaid. The bond was not registered. The assessment was duly received by B until April, 1887. In February, 1890, B filed this suit to recover the principal sum from A personally, relinquishing his claim against the land, as the bond was not

*Appeal, No. 117 of 1892.