APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1902.
December 1.

THE COLLECTOR OF AHMEDABAD (ORIGINAL OPPONENT), APPELLANT—APPLICANT, *v.* SAVCHAND LADUKCHAND (ORIGINAL APPLICANT), RESPONDENT—OPPONENT.*

Probate duty—Letters of administration, duty on—Letters of administration granted in respect of joint property passing by survivorship—Application for refund of duty—Court Fees Act (VII of 1870), section 19 D, and article XI of schedule I.

A Hindu died intestate leaving two sons who were joint with him. Part of the deceased's estate consisted of two sums of Rs. 5,000, one of which was deposited with the Bank of Bombay and the other with a Commercial Company. Both the Bank and the Company refused to pay these sums unless letters of administration were obtained. Letters of administration were accordingly obtained in respect of these portions of the estate of the deceased and a sum of Rs. 207-2-0 was paid as duty thereon under article XI, schedule I of the Court Fees Act (VII of 1870). Subsequently an application was made for a refund of this amount on the ground that the property in respect of which it had been paid was the joint property of the deceased and his sons and had passed to the latter by survivorship, and that, therefore, under section 19 D of the Court Fees Act (VII of 1870) no duty was chargeable.

Held, that the refund could not be allowed. The section only applies where probate or letters of administration have already been granted on which the Court-fee has been paid. In such case no further duty is payable in respect of property held by the deceased as trustee. But where no duty has been paid the section does not apply. Here no letters of administration had been granted other than those in respect of which the refund was applied for. Therefore, there were no letters on which the Court-fee had been paid so as to bring the case within the section and to entitle the present letters of administration to exemption.

Held, also, that in the present case no letters of administration were necessary. The family property vested in the sons at once by survivorship (section 4 of Act V of 1881). But when the letters of administration were applied for, the applicant must be taken to have adopted the case of the Bank of Bombay, that so far as the sons were concerned the deposit was made by the deceased, and that it was his estate. Having invoked the jurisdiction of the

* First Appeal No. 88 of 1902 (under Act V of 1881).

Court by means of that statement the applicant could not be allowed to say that the statement was incorrect and that no letters of administration were necessary.

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APPEAL from an order treated as an application under section 622 of the Civil Procedure Code (Act XIV of 1882) to set aside the order for the refund of the Court-fee paid on letters of administration passed by S. L. Batchelor, District Judge of Ahmedabad.

One Maganlal Ladukchand died intestate leaving him surviving two minor sons, who were joint with him.

Part of Maganlal's estate consisted of a sum of Rs. 5,000 which he had deposited in the Bank of Bombay and another sum of Rs. 5,000 which he had deposited with a Commercial Company.

After his death payment of these two sums was demanded on behalf of the minor sons, but both the Bank and the Company refused to pay unless letters of administration were obtained.

The respondent Savchand thereupon applied to the District Court at Ahmedabad for letters of administration to the estate of the deceased and he paid Rs. 207-2-0 as duty payable under article XI, schedule I of the Court Fees Act (VII of 1870) on the value of the estate in respect of which the letters of administration were applied for. His application was granted and letters of administration issued to him.

Subsequently he applied for a refund of the duty paid (Rs. 207-2-0), on the ground that, inasmuch as the above two sums, in respect of which the letters of administration had been granted, were undivided family property and had passed to the sons by survivorship, no probate duty was chargeable under section 19 D of the Court Fees Act (VII of 1870).

The District Judge of Ahmedabad granted the application and ordered the money to be refunded.

The Collector of Ahmedabad appealed to the High Court against this order.

As, however, it appeared that the Collector had not been a party to the proceedings in the District Court and therefore had no right of appeal, their Lordships allowed this case to be argued as an application for the exercise of the Extraordinary

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Jurisdiction of the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882).

The Government Pleader for the applicant.

G. S. Rao for the opponent.

CHANDAVARKAR, J. :— This is an appeal from an order passed by the District Judge of Ahmedabad, granting the application made by the respondent, Savchand Ladukchand, for the refund of Rs. 207-2-0 deposited by him in Court with his petition for letters of administration to the estate of Maganlal Ladukchand.

The application for refund was made under the following circumstances: Maganlal Ladukchand had deposited a sum of Rs. 5,000 with the Bank of Bombay and another sum of Rs. 5,000 with a Commercial Company. He died leaving two minor sons. A demand was made on behalf of the minor sons from the Bank and the Company for the respective deposits, but they declined to pay the sums unless letters of administration were taken out for the estate of the deceased. Accordingly the respondent, Savchand Ladukchand, made an application to the District Court of Ahmedabad for letters of administration and he deposited Rs. 207-2-0 to cover the probate duty chargeable under article XI, schedule I to the Court Fees Act, on the value of the estate in respect of which the grant of letters was applied for.

The letters having been granted, the respondent applied for a refund of the deposit of Rs. 207-2-0 on the ground that, as the estate in respect of which letters of administration were granted had belonged to the deceased as the undivided family property of himself and his sons, and as on his death it had passed to the sons by survivorship, no probate duty was chargeable under section 19 D of the Court Fees Act.

The District Judge has allowed the application for refund, holding, on the authority of the ruling of the Calcutta High Court in *In the goods of Pokurmull Augurwallah*,[1] that as the deceased Maganlal Ladukchand was joint with his sons, he held the estate as a trustee for them within the meaning of section 19 D of the Court Fees Act.

(1) (1896) 23 Cal. 980.

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The Collector of Ahmedabad now appeals against the order of the District Judge. As the ground of the appeal is that the case does not fall within the class contemplated by section 19 D of the Court Fees Act, it raises the question whether the application for letters of administration was one admitting of valuation by the Judge. As such, his order would have been appealable had the Collector been a party to the application : *Dada* v. *Nagesh.*[1] But as he was not a party he cannot appeal. We can, however, interfere under our Extraordinary Jurisdiction, if the order of the District Judge allowing a refund to the respondent was passed by him without jurisdiction, on the principle of the ruling of this Court in *The Collector of Kanara* v. *Rambhatt*[2] and *The Collector of Ratnagiri* v. *Janardan.*[3]

The question, therefore, is whether the District Judge had jurisdiction to pass the order. That jurisdiction he has exercised under section 19 D of the Court Fees Act, which runs thus:

The probate of the will, or the letters of administration of the effects, of any person deceased, heretofore or hereafter granted, shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a Court-fee was paid on such probate or letters of administration.

It is clear upon the plain grammatical construction of this section, that where probate has or letters of administration of the effects of any person deceased have been granted, and where a Court-fee has been paid on them, such probate or letters and such payment operate on and apply to any other effects or estate held by the deceased, wholly or partially, as a trustee, without the payment of any additional Court-fee. In other words, for the operation of this section it is an essential condition that there must be a previous probate or letters of administration on which a Court-fee has been paid. That is the basis of the exemption from the payment of Court-fee allowed by the section. But

(1) (1898) 23 Bom. 486. (2) (1893) 18 Bom. 454.
(3) (1882) 6 Bom. 590

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where no such duty has been paid, there is no case for the section to apply. Had the Legislature intended to exempt without exception probate or letters of administration in respect of estates held by deceased persons as trustees, apt language would have been used to cover that meaning. That such was not their intention appears very clearly not only from the language of section 19 D, but also from section 4 and article XI of schedule I to the Court Fees Act. According to section 4, all documents of the kind mentioned in schedule I are chargeable with Court-fees. Article XI of that schedule fixes an *ad valorem* fee on "probate of a will or letters of administration with or without will annexed." These words are large enough to include probate or letters of administration in respect of all kinds of property, whether held by a deceased person in his own right or as a trustee. The general rule, therefore, according to the Act, is that probate or letters of administration for an estate, whatever be the character in which the deceased held them, shall be chargeable with a Court-fee. But the Legislature has provided certain exceptions to that rule, and one of them is the class of cases falling within the terms of section 19 D. The present case does not belong to that class. No letters of administration have been granted of the effects of the deceased Maganlal Ladukchand other than those now in dispute. Therefore there are no letters on which any Court-fee was paid that can bring the case within section 19 D and entitle the present letters to exemption.

Mr. Rao for the respondent has, however, pressed us with the hardship of the case. He has urged that as Maganlal died a member of a joint family in respect of the estate to which the letters of administration granted relate, his sons became its owners, not as heirs or as the legal representatives of Maganlal, but by survivorship, and letters of administration were taken out simply because the Bank of Bombay would not return the deposit without them. We do not see, however, where the hardship lies. It is, no doubt, the law that in an undivided Hindu family, when a coparcener dies, there are no effects or property of his to which the surviving coparceners can succeed as his heirs, but they take the whole of the family property by right of survivorship. Maganlal's sons were not, therefore,

bound to take letters of administration for any estate or effects of Maganlal, because there was no such estate that could be called his. On his death the family property vested in the sons at once by survivorship (see section 4 of the Probate and Administration Act). But when, nevertheless, the respondent applied for letters, he must be taken to have adopted the case of the Bank that, so far as they were concerned, the deposit was made by Maganlal and that it was his estate, whatever rights others might have to it. And that was substantially what the respondent alleged and made the foundation of his claim in his petition for letters of administration. It is true that in that petition he stated that the deceased Maganlal and his sons had been joint and that the sons had become owners of the deposits by survivorship. But to prevent that statement operating as a bar to the Court's jurisdiction to grant the letters, he went on to state in paragraphs 3 to 5 that the property belonged to the deceased. It is by means of this latter statement that he invoked the jurisdiction of the Court, and as the Court granted the letters, it must be taken to have granted it on the basis that the property belonged to Maganlal irrespective of the question as to the rights of any other persons to it. The respondent, having availed himself of the Court's jurisdiction on that allegation, cannot now be allowed to turn round and say that the allegation is incorrect and that no letters of administration were, strictly speaking, necessary. It is not contended before us that the District Court had no jurisdiction to grant the letters. All that is urged is that the grant of the letters was made to an estate which really did not exist and that, therefore, no Court-fee was payable. But it was the respondent's own case in his petition that such an estate as was required for the grant of letters of administration did exist; having succeeded on that case, he cannot now disclaim it for the purpose of recovering the Court-fee which was chargeable on the petition.

Under these circumstances it is not necessary to decide whether a father or a manager in an undivided Hindu family holding its property for himself and other coparceners is a trustee within the meaning of section 19 D of the Court Fees Act. Assuming that he is a trustee, we are unable, for the

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reasons above given, to follow the ruling of the Calcutta High Court in the case of *In the goods of Pokurmull*.(1)

We think that in this case the District Judge has assumed jurisdiction under section 19 D of the Court Fees Act which that section does not give, and we must, therefore, allow the appeal to be converted into an application under section 622 of the Civil Procedure Code. Under our Extraordinary Jurisdiction we set aside the order of the District Judge. Respondent to pay the costs of this application and of the application to the lower Court.

Order reversed.

(1) (1896) 23 Cal. 980.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Batty.

1902, *December* 2.

ISHVAR TIMAPPA HEGDE (ORIGINAL DEFENDANT 2), APPELLANT, *v.* DEVAR VENKAPPA SHANBOG AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT 1), RESPONDENTS.*

Fraudulent conveyance—Suit by one creditor to set aside deed—Creditor not a judgment creditor—Transfer of Property Act (IV of 1882), section 53—Meaning of the word "creditor"—Statute 13 Eliz., c. 5.

Under section 53 of the Transfer of Property Act (IV of 1882), a creditor may sue to set aside a deed executed by his debtor by which he (the creditor) is defrauded, defeated or delayed, although he has not obtained a decree for the debt in respect of which he is a creditor. But such a creditor can only sue on behalf of himself and all other creditors.

APPEAL from an order of remand passed under section 562 of the Civil Procedure Code (Act XIV of 1882) by Mr. E. H. Leggatt, District Judge of Kánara, reversing the decree of Mr. E. H. Rego, Subordinate Judge of Kumta, and remanding the case for decision on the merits.

The plaintiff alleged that the first defendant owed him Rs. 600, and that in order to defeat this claim and the claims of other

* Appeal from Order No. 24 of 1902.