

*Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Debi Bakhsh Singh v. Habib Shah, from the Court of the Judicial Commissioner of Oudh (P. C. Appeal No. 78 of 1912; Oudh Appeal No. 7 of 1912); delivered the 29th April 1913.*

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PRESENT AT THE HEARING :

LORD SHAW.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY LORD SHAW.]

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The Appellant's father, Raja Muneshar Bakhsh Singh, instituted a suit against the Respondent for payment of sums amounting to Rs. 15,908. The Plaintiff was filed on the 3rd May 1911, in the Court of the Deputy Commissioner of Bahraich. The Respondent filed his Written Statement on the 31st May 1911. On the 4th July the following occurred before the Deputy Commissioner:—"On the case being called "to-day the Plaintiff was not present. I therefore dismiss the claim. Costs upon Plaintiff."

The fact, unknown to the Deputy Commissioner, was that the Plaintiff was dead. He had died about a fortnight before, namely, on the 21st June. It is plain to their Lordships that, upon this being pointed out, it was the duty of the Deputy Commissioner to rectify the situation. This duty Mr. Clarke, the Deputy Commissioner, seems fully to have recognised.

It requires no words of their Lordships to show the inapplicability of Rules or Orders dealing with the case of the non-appearance of a suitor to the situation which arises when the suitor is dead. The principle of forfeiture of rights in consequence of a default in procedure by a party to a cause is a principle of punishment in respect of such default, but the punishment of the dead, or the ranking of death under the category of default, does not seem to be very stateable.

The deceased Plaintiff's son took the proper steps to have his name substituted in place of his deceased father under Order 21, Rule 9, of the Civil Procedure Code. He did so on the 3rd August, which was well within the period of six months' limitation under Article 176 of the First Schedule of the Indian Limitation Act of 1908. Some question arose as to the application being time-barred, but the latter was very properly accepted by Mr. Clarke. The Appellant had also taken the proper steps to have a report of his succession made under Section 34 of the Rent Act.

On the 11th September 1911 the Deputy Commissioner pronounced the following Order :—

“ The case was dismissed as no one appeared on the previous hearing. This was due to the death of the Raja of Mallanpur. The other side claim that the re-hearing is barred under Section 34 of the Rent Act, but that section clearly requires a report of the succession, which has already been made. It is argued that the application is time-barred, but it was filed and accepted under my order within time. But I cannot allow any technicality to obscure the fact that the case was only not heard because of the calamity which prevented Applicant's putting up this case. Under these circumstances I accept this application, and fix 27th October for hearing of issues, if necessary, and proof.”

This Order by the Deputy Commissioner is so manifestly sensible and correct that their Lordships are of opinion that it ought to be reverted to, and the case proceeded with accordingly.

On the 5th October 1911, however, the Court of the Judicial Commissioner of Oudh reversed the Deputy Commissioner's Order, and on the 20th February 1912, on review, that judgment was affirmed. In their Lordships' opinion these judgments cannot stand, being vitiated by applying to a dead man Orders and Rules applicable to a defaulter. By the Code of Civil Procedure, Section 151, it is provided that "nothing in this Code shall be deemed to limit" "or otherwise affect the inherent power of the" "Court to make such Orders as may be necessary" "for the ends of justice, or to prevent abuse of" "the process of the Court." In their Lordships' opinion such abuse has occurred by the course adopted in the Court of the Judicial Commissioner. Quite apart from Section 151, any Court might have rightly considered itself to possess an inherent power to rectify the mistake which had been inadvertently made. But Section 151 could never be invoked in a case clearer than the present, and their Lordships are at a loss to understand why, apart from points of procedure and otherwise, it was not taken advantage of.

Their Lordships have humbly advised His Majesty that the Appeal be allowed, the Order appealed from set aside and the Order of the Deputy Commissioner of the 11th September 1911 restored, and that the Appellant be found entitled to the costs of the proceedings since the 3rd August 1911, in India, and to the costs of this Appeal. The Suit will be remitted to India to be disposed of on the merits.

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In the Privy Council.

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RAJA DEBI BAKHSH SINGH

v.

HARIB SHAH

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DELIVERED BY LORD SHAW.

LONDON

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