1930

Present : **Macdonell C.J. and Akbar J.**

In re Estate of MATHAN LALL.

138—*D. C.* (*Inty.*) *Jaffna*, 5,870.

Administration — Judicial settlement of accounts—Right of Judge to direct a sum of money to be brought to Court.

In the course of a judicial settlement of an administrator's accounts the Court has power to direct the administrator to bring into Court a sum of money shown in the accounts.

APPEAL from an order of the District Judge of Jaffna.

Gratiaen, for appellant.

November 13, 1930. AKBAR J.—

This is an appeal by the official administrator against an order made by the District Judge in an application for judicial settlement by the appellant, directing him to bring into Court certain sums of money. The appeal was only pressed on a question of law, viz., whether the Judge had the power to make the order with respect to two items of money. The appellant's counsel made no attempt to question the Judge's findings of fact; neither the evidence nor the judgment was read to us, and I assume,

therefore, that these findings are correct. The judgment refers to a series of acts of maladministration on the part of the appellant ,and it will be interesting to state a few facts relating to appellant's administration as found by the District Judge. On March 5, 1928, the District Judge asked the appellant to file an inventory and valuation of the estate. This was not done, but the appellant obtained a report of an accountant selected by himself on the financial position of the estate, dated September, 1928. In May, 1929, he was ordered to file accounts under section 724 of the Civil Procedure Code. In June, 1929, orders came for his transfer to Kurunegala, but he was given an extension of time to give an account of his stewardship. The District Judge thereupon prepared a series of questions to be answered by the appellant, but instead of answering them himself he referred them to the same accountant, who sent replies to the questions on October 9, 1929. The intermediate accounts prepared by the accountant were filed in October, 1929, and in consequence of certain objections by the Judge that they were not in proper form, he filed additional accounts on November 13, 1929. In the meantime, on October 15, 1929, the District Judge appointed the secretary of the District Court as co-administrator with the appellant, from which order the appellant appealed unsuccessfully to this Court. The District Judge not being satisfied with the accounts fixed January 8, 1930, for the examination of the appellant. On that date he filed a petition for judicial settlement. The District Judge examined the appellant and other witnesses on January 9, 10, and 11, 1930, and made an order on January 13, ordering the administrator to bring into Court a sum of Rs. 1,200 which he held to be commission, which the appellant had paid wrongly to himself before the accounts were passed. The appellant was ordered to bring this money on or before January 23, which order he disobeyed. He was further ordered to carry out certain requirements with regard to the accounts already filed, which were even then not in proper form and to support them by affidavit. On his application for judicial settlement the appellant was further examined on March 28, 1930, and the order against which the appellant appeals was delivered on April 15, 1930. As I have already stated, the appellant is the official administrator appointed by the Court and the appellant's counsel made on attempt to question the findings of facts, on which the judgment is based ; the only point the appellant's counsel urged before us at the hearing of the appeal was a question of law, namely, whether the District Judge had authority to order the appellant to bring into Court two sums of money, namely, the sum of Rs. 1,200 already referred to by me and another sum of Rs. 9,000 debited against the estate as being due to Mr. Kanagasabai, Proctor. With regard to the sum of Rs. 1,200 it is true that the District Judge made a mistake of fact in the order that he made on January 13, 1930, because he was under the impression at that time there was no order made by his predecessor, Mr. Woodhouse, authorizing the appellant to retain the money belonging to the estate. But in the order now appealed against he has given good reasons for still thinking that this sum should be brought into Court and that the appellant was not entitled to help himself to the money before the accounts were finally passed. As the Judge points out in his judgment, Mr. Woodhouse's order authorizing the appellant to retain money belonging to the estate and to make disbursements was most unfortunate, and it was clear to him, as it is clear to us, that the appellant asked for such authority to trick the Government Auditor when he audited the fee book of the appellant under Government rules and orders. It certainly did not justify the appellant paying himself the commission without the sanction of the Court. The obligation to get the Court's covering authority is all the greater when we remember that the appellant was

appointed administrator in his capaicty as secretary of the District Court. In *Naidehamy v. Silva*[1] the Supreme Court held that an official administrator could not even appeal against a judgment without the leave of the Court, and if he did without such authority he did so at his peril. When it was pointed out to appellant's counsel by my Lord the Chief Justice that just as Mr. Woodhouse had power to rescind the rule requiring the appellant to deposit all sums belonging to the estate in Court and to authorize the official administrator to keep them in his hands, the District Judge had authority to modify Mr. Woodhouse's general authority in so far as this Rs. 1,200 was concerned and to order him to bring the sum into Court till the accounts were passed. Mr. Gratiaen abandoned his argument with regard to this item of Rs. 1,200 and confined his remarks to the sum of Rs. 9,000 only. He argued that this sum was not money actually paid to Mr. Kanagasabai, but was only put down in the accounts as a sum due by the estate, and that the District Judge was wrong in ordering the appellant to bring this sum into Court.

Mr. Gratiaen was clearly wrong in his contention, because the item was put down as a debt against the estate, whether the sum was actually paid out to Mr. Kanagasabai or was in the hands of the appellant for the purpose of payment out. There can be no doubt on this point, because the District Judge says at page 337 of his judgment as follows :—" The next item to be scrutinized is the sum of Rs. 9,000 put down as 'paid' to Mr. Proctor Kanagasabai (Vol. VI., pages 53, 79)". So that the dictum of Middleton J. *In re Estate Nukkutiar*[2] has no application. That dictum referred to sums which the administrator might have recovered but for his default, and not to sums like this item of Rs. 9,000 actually received by him. It might be mentioned that this *obiter dictum* has been criticised and dissented from in the later cases of *Holsinger v. Nickolas*,[1] *De Zoysa v. Zoysa*,[2] and *Muheeth v. Wahid*.[3]

In my opinion the District Judge had the necessary power to order this sum of Rs. 9,000 to be brought into Court. If any authority is required there is the case of *Ondatjie v. Ondatjie*,[4] and the new section 839 of the Civil Procedure Code added by Ordinance No. 42 of 1921. As this was the only point argued on this appeal, it must be dismissed.

MACDONELL C.J.—I concur.

Appeal dismissed.

[1] 2 *N. L. R.* 289.
[2] 1 *Currant Law Reports, page* 53.