
(1897) 04 CAL CK 0005
In the Calcutta High Court
Case No : Suit No. 263 of 1897

Meerza Kuratul-Ain Bahadur and Another APPELLANT
Vs
L.P.D. Broughton RESPONDENT

Date of Decision : 02-04-1897

Acts Referred:

Citation : (1897) 04 CAL CK 0005

Judgement

Jenkins, J.—The authorities show that a suit for administration is maintainable against an administrator pendente lite, see *Tichborne v. Tichborne* L. R. 2 P. and M. p. 41. The creditors of an estate who take de hors the will, are not only entitled to sue for administration against an administrator pendente lite already in existence, but they can also apply for the appointment of an administrator pendente lite to enable them to institute a suit for administration where there are protracted probate proceedings, See *Tichborne v. Tichborne* L. R. 1 P. and M. 730. In the goods of *Evans* L. R. 15 P. D. 215. These are English cases, but sec. 70 of the Probate Court Act (21 & 22 Vict. c. 77) is, so far as the present question before the Court is concerned the same as sec. 34 of the Probate, and Administration Act. The English decisions are, therefore, authorities in support of the present application, [Jenkins, J., referred to the form of decree for administrations against an administrator pendente lite in *Seton on, "Judgment and Orders,"* Vol. II, p. 1187.] Reference was also made to *Annual Practice* for 1897 p. 366. With regard to the two-thirds of the said estate the Plaintiffs take de hors the will and therefore their position is the same as that of creditors of the estate. The receiver appointed in an ordinary civil suit does not represent the estate nor the parties. He only holds the estate for the benefit of the successful litigant. Although the position of an administrator pendente lite is similar to that of a receiver, there is a distinction, inasmuch as administrator pendente lite represents the estate for all purposes except for distribution. The estate is not in suit in the Probate Court. The only question which arises in that Court is as to whether the will was made or not.

2. No application could be made for the delivery of the two-thirds of the estate.

The Probate Court has always refused to make any order for payment even with regard to the claim of a creditor. In the goods of Evans L. R. 15 P. D. 215. The Probate Court further cannot ascertain the residue, and I am not entitled to any specific property which I claim in the hands of the Administrator-General. But the residue must be ascertained before I can get my two-thirds, and it can only be ascertained by administration. The investigation by a receiver pro interesse suo only applies where some specific property is claimed. The plaint was admitted for final disposal.