Opinion of the Lords of the Judicial Committee of the Privy Council on the Petition of Prem Lal Mullick in the matter of the Appeal of The Administrator-General of Bengal v. *Prem Lal Mullick and others, from the High Court of Judicature at Fort William in Bengal; delivered 7th August* 1895.

Present:

LORD WATSON.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

This is a petition by Prem Lal Mullick for the amendment of an Order of Her Majesty in Council, dated the 30th March 1895, reversing two decrees of the High Court of Calcutta, pronounced in its Appellate and in its Ordinary Original Civil Jurisdiction, in a suit brought by the Petitioner against the Administrator-General of Bengal, and against two persons appointed to be the executors of his will by the Petitioner's father, the late Nundo Lal Mullick, and also dismissing the suit, with costs in the Courts below to the Petitioner and to the Administrator-General, as between solicitor and client, out of the estate of the testator.

The executors nominated by the testator accepted and retained office for two years and a half after his death, when they executed a transfer of the estate and its management to the Administrator-General, bearing to be in pursuance of the provisions of "The Administrator-General's "Act 1874" (Act No. II. of 1874). By the terms

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of the will the executors were directed to hold the estate in trust for the Petitioner, on his attaining majority, subject to the life-interest of the testator's widow. The Petitioner's suit was wholly based on the alleged illegality of the transfer by the executors to the Administrator-General. His plaint contained a variety of conclusions, these being: — (1) for the appointment of a Receiver; (2) for an injunction to restrain the Administrator-General from interfering with the estate or its management; (3) for removal of the executors-nominate, and the appointment of new executors or trustees, and a judicial scheme for their administration; (4) for an account of the dealings of the executors-nominate with the estate; and (5) to have the maintenance payable to the Petitioner and his mother fixed by the Court.

In support of this application, Counsel for the Petitioner represented that, in consequence of the dismissal of the suit, the Court below will be deprived of jurisdiction to entertain and dispose of various points of controversy in and connected with it; and also that he will be seriously prejudiced, as in a question with the Defendants, the executors-nominate of the testator, whom he charges in his plaint with malversation in their office. It appeared from the statement of Counsel that questions may or will arise upon the accounts of the Receiver appointed by the Judge of first instance during the dependence of the suit, who must now in consequence of Her Majesty's Order transfer the balance in his hands to the Administrator-General; and that the Petitioner is apprehensive that, in the event of a new action for accounts being brought against the executors-nominate, the dismissal of the suit may afford them a good defence of *res judicata*. It was accordingly suggested that the Order in Council ought to be amended, by limiting its

scope to the single question touching the legality of the transfer to the Administrator-General, and leaving all other questions raised in the plaint to be dealt with by the Court below in the course of the suit.

Their Lordships are very clearly of opinion that neither of the reasons advanced by the Petitioner for modifying the Order in Council is well founded.

As to the first of these reasons, although a Receiver has been appointed, who now holds and administers the estate of the testator, he is merely the officer of the Court, and the estate must, for all legal purposes, be regarded as being *in manibus curiæ*. It appears to their Lordships to be extravagant to suggest that the Court has not ample jurisdiction, without the aid of a pending process, to require accounts from their own Officer, to permit parties interested to intervene in the examination of these accounts, to make just allowances to their Officer for his administration, and to deal with all questions of costs connected with the investigation of his accounts, as between him and any parties interested who may be allowed to appear and take part in it.

In regard to the insufficiency of the second reason, their Lordships entertain as little doubt. The conclusions for accounting, which are directed, not against the Administrator-General, but against the executors-nominate who made the transfer to him, are simply ancillary to the leading conclusions of the plaint which precede them. They are aptly framed for the purpose of ascertaining the details of the property moveable and immoveable which these executors-nominate were to pay or deliver to the trustees whom the Court was asked to appoint in their stead. It must be presumed that the Administrator-General, now that the transfer to him—which is a transfer of the whole estate of

the deceased—will do his duty in recovering it, whether it be in the hands of the executors-nominate, or of the Receiver of the Court. If the executors-nominate fail to make over to him or to the Receiver funds or property which they have no right to retain, it will be open to the Petitioner, who has the ultimate beneficial interest in the estate, to call them to account, in order that such funds or property shall be paid or transferred to the Administrator-General. Their Lordships cannot conceive that the dismissal of conclusions, brought for such a special and limited purpose, could afford any good ground of defence to the executors-nominate in an action of that kind.

In these circumstances, their Lordships will humbly advise Her Majesty to make no Order on the Petition. The costs of both parties in this application, as between solicitor and client, must be paid out of the estate of the testator.