

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Debendra Nath Dutt v. The Administrator-  
General of Bengal and others, from the High  
Court of Judicature at Fort William in  
Bengal; delivered the 3rd June 1908.*

Present at the Hearing:

LORD MACNAGHTEN.

LORD JAMES OF HEREFORD.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from the High Court of Judicature at Fort William in Bengal.

The Appellant, Debendra Nath Dutt, was one of two sureties in a bond conditioned for the due administration by Ernest Hardwicke Cowie, a solicitor in Calcutta, of the estate of a retired Indian civil servant named Craster. Mr. Craster died in England in August 1898, leaving a will which was duly proved here in the following month of October. Part of the deceased's estate consisted of shares in the Bank of Bengal and other Indian assets. The Indian assets escaped the notice of the executors and remained unclaimed and outstanding. On the 29th of July 1902, Cowie, who is stated in the printed cases to have been one of the solicitors to the Government, and who certainly was then in good credit, obtained an order for the grant of letters of administration to himself as attorney for a fictitious person represented by him to be the only son and sole next-of-kin of the deceased, who

had, as he pretended, died intestate. The letters of administration were issued on the 15th of August 1902, on the production of a bond in the usual form executed by Cowie and the two sureties, who received a small payment for their services, but were not themselves parties to the fraud or cognizant of it. By these means Cowie obtained possession of the bank shares, sold them in the market, and converted the proceeds to his own use. The fraud was not discovered till the end of 1903 or the beginning of 1904. Cowie then absconded. He was apprehended, tried, and convicted. The grant of administration in his favour was cancelled, and in May 1904 letters of administration with a copy of the will annexed were granted to the Administrator-General of Bengal. The bond of the 15th of August 1902 was then assigned to the Administrator-General, and he brought this suit against Cowie and Cowie's sureties. Cowie made no defence. The suit was heard by Sale J. That learned Judge pronounced a Decree in favour of the Administrator-General, the result of which, so far as regards the sureties, was that they were ordered to pay to the Administrator a sum equal to the amount of the proceeds of the bank shares misappropriated by Cowie together with interest and costs. Both the sureties appealed to the High Court. But that Court in its Appellate Jurisdiction by a majority affirmed the order of Sale J. and dismissed the Appeal with costs.

The case of the Appellant Dutt, who alone has appealed to His Majesty, as presented to this Board, was that the letters of administration granted to Cowie, having been annulled by the Court on the ground of fraud, must be regarded as a mere nullity from the beginning; that Cowie, therefore, never was Administrator and that the bond, so far as the sureties were concerned, was void and of no effect; for the sureties undertook

to be responsible for a real Administrator, not for a person assuming to act in a capacity which he never possessed and which the Court could not have conferred upon him. The case was argued very ably by the learned Counsel for the Appellant who said everything that could be said on his behalf. But there is really no substance in the Appellant's contention. So long as the letters of administration granted to Cowie remained unrevoked, Cowie, although a rogue and an impostor, was to all intents and purposes Administrator. He, and he alone, represented the deceased in India. His receipts were valid discharges for all moneys received by him as Administrator. As Administrator he collected the assets belonging to the deceased in India, and he misappropriated the assets which he so collected. For his acts and defaults as Administrator the Appellant and his co-surety became and must remain responsible.

Their Lordships are therefore of opinion that Maclean C.J. and the learned Judges who concurred with him were perfectly right, and they will humbly advise His Majesty that the Appeal must be dismissed.

The Appellant will pay the costs of the Appeal.

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