

1904.

Haji Hassum  
v.  
Nur  
Mahomed.

*Strangman* appeared for the appellants.

*Lowndes*, for respondents :—The plaintiffs having omitted to file this appeal within 20 days from date of Judgment, they cannot now be heard. We rely upon the Judgment of Candy and Tyabji, JJ., in *Jadhaji Raghaji v. Rajoo Babaji*,<sup>(1)</sup> on which case the present practice of this Court is based.

JENKINS, C. J. :—Section 12 of the Limitation Act XV of 1877 provides that “where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the Judgment on which it is founded shall also be excluded”; and it is not within the power of the Court to nullify the effect of that section.

I am therefore of an opinion that on the facts of this case the appeal is within time.

Attorneys for appellants : *Messrs. Payne & Co.*

Attorneys for respondents : *Messrs. Malvi, Hiratal & Mody.*

## TESTAMENTARY JURISDICTION.

*Before Sir Lawrence H. Jenkins, K.C.I.E., and Mr. Justice Batchelor.*

1904.  
September 20.

OCHAVARAM NANABHAI HARIDAS (DEFENDANT), APPELLANT, v.  
DOLATRAM JAMIETRAM NANABHAI (PLAINTIFF), RESPONDENT.\*

*Grant of Letters of Administration—Scope of enquiry  
prior to grant—Practice.*

On the hearing of a petition for issue of Letters of Administration to the estate of a deceased person it is not the province of the Court to go into questions of title to the property to which the Letters of Administration refer.

The respondent filed a petition under the Testamentary Jurisdiction of the High Court, praying for a grant of Letters of Administration to the estate of his father Jamietram Nanabhai Haridas, who died intestate on 8th September, 1903.

\* Appeal No. 1339; Suit 1 of 1904.

(1) (1899) 1 Bom. L. R. 112.

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The appellant, who claimed to be a member of the joint family of which the deceased was also alleged to be a member, lodged a 'caveat' against the issue of Letters of Administration to the respondent.

The case came on before Mr. Justice Russell on the 28th February, 1904.

On behalf of the plaintiff a preliminary issue was raised as to whether the Court would go into questions of title to property to which the Letters of Administration refer.

*Lowndes* (with *Inverarity*), for the plaintiffs.

*Vicaji*, for the defendants.

RUSSELL, J. :—Were I to decide in favour of Mr. Vicaji's client I should do so contrary to a long series of cases, and the words in *Hormusji Navroji v. Bai Dhanbaiji*<sup>(1)</sup>, "On the application for probate it is not the province of the Court to go into the question of title with reference to the property of which the will purports to dispose," apply to an application for Letters of Administration with reference to any property to which they may apply.

The plaintiff is the legitimate son of the deceased and, as such, is entitled to Letters of Administration; the defendant has no interest to oppose them. I therefore find on this preliminary issue in the negative as to both the heads of it. I dismiss the caveat with costs, and direct Letters of Administration to issue to the plaintiff saving all just exceptions.

Letters of Administration were issued to the plaintiff in common form.

The defendants appealed against this decision.

*Vicaji*, for appellants, cited *Guracharya v. Svamirayacharya*<sup>(2)</sup>.

*Lowndes*, for respondents :—The decision of the lower Court was based on the settled practice of these Courts; he cited *Behary Lall v. Juggo Mohun*<sup>(3)</sup>; *Hormusji Navroji v. Bai Dhanbaiji*<sup>(4)</sup>; *Barot Parshotam Kalu v. Bai Muli*<sup>(5)</sup>; *Birj Nath v. Chandar*.

(1) (1887) 12 Bom. 164 at p. 166.

(3) (1878) 4 Cal. 1.

(2) (1879) 3 Bom. 431.

(4) (1887) 12 Bom. 164.

(5) (1893) 18 Bom. 749.

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*Mohan*<sup>(1)</sup>; *Arunmoyi Dasi v. Mohendra Nath Wadadar*<sup>(2)</sup>; *Kulbanti v. Bahadoor Husam*<sup>(3)</sup>; *Raghu Nath v. Mussamat Pate Koer*<sup>(4)</sup>.

JENKINS, C. J.:—The point urged on behalf of the appellant is that the deceased was, at the time of his death, joint in family and entitled only to joint property; so that Letters of Administration could not be granted, as though he had left separate property. But in Bombay it has been repeatedly held that on applications for probate the Court will not enter on a question as to the title to the property which the testator by his will purports to leave. *Hormusji v. Bai Dhanbaiji*<sup>(5)</sup> and *Barot Parshotam Kalu v. Bai Muli*<sup>(6)</sup> may be referred as illustrations in point. Nor is this doctrine peculiar to Bombay; the same view prevails in Calcutta and Allahabad: *Behary Lall Sandyal v. Juggo Mohan Gossain*<sup>(7)</sup>; *Arunmoyi Dasi v. Mohendra Nath Wadadar*<sup>(8)</sup>; and *Birj Nath De v. Chandar Mohan Banerji*<sup>(9)</sup>. It is urged these cases do not touch the present, because here the Court is asked not to grant probate, but Letters of Administration. The petition, however, alleges property in the deceased, and the reasons operating to limit the scope of the inquiry, when probate is sought, are equally applicable to a petition for Letters of Administration. This was recognised by the Allahabad High Court in *Birj Nath De's case*<sup>(10)</sup>, and was actually decided in *Raghu Nath Misser v. Mussamat Pate Koer*<sup>(11)</sup>. Nor does the matter rest there; for, on inquiry from the Testamentary Registrar, Mr. Linji N. Banaji, an officer of very great experience, we learn that the invariable practice on the Original Side of this Court is, in applications for Letters of Administration, not to enter into the question whether deceased's property is joint or separate. This view, it has been argued, is in conflict with the decision in *Guracharya v. Swamirayacharya*<sup>(12)</sup>, but that case has no application. The grant in no way hurts or prejudices

(1) (1897) 19 All. 458.

(2) (1893) 20 Cal. 888.

(3) (1899) 3 Cal. W. N. CCLXXVII.

(4) (1901) 6 Cal. W. N. 345.

(5) (1887) 12 Bom. 164.

(6) (1893) 18 Bom. 749.

(7) (1878) 4 Cal. 1.

(8) (1893) 20 Cal. 888.

(9) (1897) 19 All. 453.

(10) (1897) 19 All. 458.

(11) (1905) 6 Cal. W. N. 345.

(12) (1879) 3 Bom. 431.

the caveator, for it is general in its terms, specifying no item of property and prejudging nothing to the detriment of the appellant. It has been suggested that a grant of Letters might involve peril to the appellant's interest, but this is not so, as on the grant of Letters adequate security is taken. The result then is Mr. Justice Russell's decree is confirmed with costs.

*Appeal dismissed.*

Attorneys for the appellants—*Messrs. Nadirshah & Tyabji.*

Attorneys for the respondents—*Messrs. Dixit, Dhanjishah & Co.*

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## ORIGINAL CIVIL.

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### JUDGMENT IN CHAMBERS.

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*Before Mr. Justice Chandavarkar.*

*IN RE BULLOCK.*

*Witness—Application in Chambers—Expenses for attendance in Court—  
High Court Rule 195.*

A witness who attends the Court on a subpoena is entitled to demand at any time his reasonable expenses of such attendance from the party issuing the subpoena even though he only gives evidence as a witness for a party to the suit other than the party summoning him.

THE facts of this case appear fully in the judgment.

CHANDAVARKAR, J. :—This is an application made to me in chambers by Mr. Bullock in connection with suit No. 205 of 1904, which was decided by me on 26th August, 1904.

Mr. Bullock was a witness subpoenaed by the plaintiff to produce certain documents, but was not examined for the plaintiff; the defendants examined him as their witness. He urges, however, that he attended the Court for four days, waiting to be examined for the plaintiff, and claims expenses from the plaintiff on that account at the rate of Rs. 10 *per diem*.

Mr. Bicknell of Messrs. Bicknell and Merwanji, plaintiff's solicitors, contests the claim on two principal grounds :—

(1) That the Court has no jurisdiction to deal with it; and

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October 3.