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*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and
Mr. Justice Banerjee.*LALIT MOHAN BHUTTACHARJEE (*Defendant*) v. NAVADIP
CHANDRA KAPARIA (*Plaintiff*).^{*} [30th May, 1901.]*Letters of Administration—Probate and Administration Act (V of 1881), s. 50—Heir
—Purchaser—Locus standi.*

A purchaser of properties from the heir of a deceased person has a *locus standi* to apply for revocation of Letters of Administration of a will said to have been executed by the deceased.

Komol Lochun Dutt v. Nil Ruttun Mundle (1) and *Muddun Mohun Sircar v. Kali Churn Dey* (2) referred to.

[588] THIS appeal arose out of an application for the revocation of Letters of Administration with the will annexed. The application was made on the 10th October 1898 by one Navadip Chunder Kaparia, a purchaser of a large portion of properties left by one Raj Bullav Bhattacharjya, who died in November 1882, leaving two sons, Joy Chunder and Sashi Bhusan. The petitioner alleged that, on the death of Raj Bullav, his two sons inherited his properties, and they were in possession since then; that at a sale in execution of decrees obtained against them he (the petitioner) purchased certain properties; that on an application made by one Lalit Mohun, a grandson of Raj Bullav, in an *ex parte* proceeding Letters of Administration were issued on the 21st June 1892. The will set up is dated the 2nd October 1892, and it purported to have given away properties by Raj Bullav to the grandson, Lalit Mohan, disinheriting the sons, Joy Chunder and Soshi Bhusan. The opposite party (defendant) *inter alia* objected that the petitioner (plaintiff) had no *locus standi* to make the application, and that he was not entitled to any notice. The Court of First Instance, having overruled the objections, allowed the application and ordered the Letters of Administration to be revoked. Against this decision the defendant appealed to the High Court.

Babu Sharat Chunder Roy Chowdhury for the appellant.

Babu Bhuban Mohan Das and *Babu Inanendra Mohun Das* for the respondent.

MACLEAN, C. J.—This appeal arises out of an application for revocation of Letters of Administration with the will annexed, the application being made on the 10th of October 1898, and the Letters of Administration having been granted on the 21st of June 1892. The will set up is dated the 2nd October 1882: it will thus be seen that no application for Letters of Administration was made, although we are informed that executors had been appointed by the will, till nearly ten years after the date of the alleged will.

The alleged testator left two sons as his heirs, and from the date of the father's death up to the time of the Letters of Administration being granted, they had, throughout, dealt with the property as [589] his heirs, and at no time was there any suggestion made that the

* Appeal from Original Decree No. 276 of 1899, against the decree of S. J. Douglas, Esq., District Judge of Dacca, dated the 29th of May 1899.

(1) (1878) I. L. R. 4 Cal. 360.

(2) (1892) I. L. R. 20 Cal. 37.

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father had left a will. They had mortgaged and sold the property and dealt with it entirely as their own; and the present applicant for revocation of the Letters of Administration is the purchaser of a large portion, if not the bulk, of the father's property, under decrees in mortgage suits in respect of mortgages made by the two sons. The mortgages and the decrees in the mortgage suits were anterior in point of date to 21st of June 1892, though the actual date of the purchase was subsequent to that time. Under these circumstances, the only question submitted for our decision is, whether the applicant had any *locus standi* to apply for revocation of these Letters of Administration. I think he had. He stood virtually in the shoes of the two sons, who claimed to be the heirs, and who had dealt with the property, as the sole owners of it. The applicant was the purchaser from the heirs, and, if the heirs could have applied for revocation of the Letters of Administration, I do not see why the purchaser could not do so, he being in the same position as they were. He was not in the position of an ordinary creditor, but was the purchaser from the heirs. I think, therefore, that, if the heirs were entitled to sue for revocation of the Letters of Administration, the purchaser from them had a *locus standi* to make a similar application. This view seems to me to be consistent with certain decisions of this Court, namely, the case of *Komol Lochun Dutt v. Nil Ruttun Mundle* (1), and also the very recent case of *Muddun Mohun Sircar v. Kali Churn Dey* (2). On these grounds I think the appeal fails and must be dismissed with costs.

BANERJEE, J.—I am of the same opinion.

Appeal dismissed.

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[590] *Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Banerjee.*

TAMASHA BIBI (*Defendant*) v. MATHURA NATH BHOWMIK AND OTHERS (*Plaintiffs*).* [18th June, 1901.]

Notice to quit, service of—Suit for ejectment against more than one tenant—Bengal Tenancy Act (VIII of 1885), s. 49, Ch. I, Rule 3.

In a suit for ejectment against the under-riayats the notice to quit, when addressed to more persons than one, should be made by Proclamation, and beat of drum according to Rule 3 of Chapter I of the Rules made by the Government of Bengal, dated the 21st December 1885.

THIS appeal arose out of a suit for ejectment. The plaintiffs stated that the defendants were their under-riayats, that they were served with a notice of ejectment according to the provisions of s. 49 of the Bengal Tenancy Act. Notwithstanding that they did not give up the lands, hence the suit was brought for ejectment. The defendants *inter alia* pleaded that they were occupancy raiyats and therefore they were not liable to be ejected; that they were not served with any notice under the law; and that there was no custom of ejecting the under-riayats. The Court of First Instance, having found that the notice was served upon the defendants according to the provisions of s. 49 of the Bengal Tenancy

* Appeal from Appellate Decree No. 2873 of 1899, against the decree of Babu Prasunno Coomar Ghose, Subordinate Judge of Nuddea, dated the 7th of August 1899, affirming the decree of Babu Upendra Chunder Chatterjee, Munsif of Kuste, dated the 24th of January 1899.

(1) (1878) I. L. R. 4 Cal. 860.

(2) (1892) I. L. R. 20 Cal. 37.