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the assumption of the Sessions Judge, cannot be sustained. But in our judgment there is no ground for the assumption of the Judge, that Exhibit A was purposely antedated. The inspection of the locality having unquestionably taken place on the 15th and the results noted in Exhibit Aa, the fair copy, whenever prepared (and excepting the hypothesis of the Sessions Judge [441] there is nothing to show it could not have been prepared on that day) would naturally bear the date of the inspection, and any other date would misrepresent the fact.

As regards the pencil marks on Exhibit Aa, there is absolutely no reason for suggesting them to be dishonest interpolations by the petitioner or for not accepting his explanations regarding their omission from Exhibit A. It was no doubt wrong on the part of the petitioner not to have insisted on the breaks being shown on the maps, and that error of judgment is deserving of censure, but in our opinion the imputation of forgery and of having used a forged document is not only groundless, but a straining of the law as well as the facts.

We may observe in this connection that the offence of giving false evidence, s. 193, is bailable, so also is the offence of using a forged document, s. 471, whilst forgery, s. 466, is non-bailable. It was unfortunate that the Sessions Judge applied s. 466 against the petitioner in the way he has done, as it gives colour to the suggestion made at the bar, that it was purposely used to deprive the petitioner of the right to bail.

We regret to observe that in dealing with this matter the Sessions Judge does not seem to have maintained a judicial balance of mind.

For these reasons we think that his order must be set aside, and we set it aside accordingly.

A copy of this judgment will be forwarded to the Local Government.  
*Rule made absolute.*

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APPELLATE CIVIL.

*Before Mr. Justice Rampini and Mr. Justice Gupta.*

KISHEN DAI (*Petitioner*) v. SATYENDRA NATH DUTT AND  
OTHERS (*Opposite Party*).\* [31st May, 1901.]

*Probate—Caveat—Judgment—creditor—Fraudulent creditor—Probate and Administration Act (V of 1881), s. 69.*

[442] The words "interest in the estate of the deceased" in s. 69 of the Probate and Administration Act mean "interest in the estate left by the deceased."

A judgment-creditor who, but for the will, would in execution of his decree have a right to seize the property or that share of it which should descend to his debtor, and who alleges that the will has been set up for the purpose of defrauding the creditors, is a person claiming an interest in the estate of the deceased, and has such a *locus standi* in opposing the grant of probate of the will.

*Umanath Mookhopadhyaya v. Nilmoney Singh (1) and Nilmoni Singh Deo v. Umanath Mookerjee (2)* referred to.

AN application was made for probate of a will alleged to have been executed on the 25th of July 1897 by one Bal Kissen, who died on the 2nd of August 1897. The will purported to leave the testator's property

\* Appeal from Original Decree No. 6 of 1899, against the decree of H. E. Ransome, Esquire, District Judge of Patna, dated the 25th of August 1898.

(1) (1830) I. L. R. 6 Cal. 429.

(2) (1888) I. L. R. 10 Cal. 19.

to his nephew, a minor, and to appoint the minor's mother his guardian. The mother was the petitioner for probate. But for this will, the testator's property would pass equally to his two brothers, and probate was opposed by the Bankipore Loan Office Company, Limited, through their Secretary, Satyendro Nath Dutt, on the ground that the will was a forgery and that it had been set up for the purpose of defrauding the Company, which held a decree for Rs. 6,372 against one of the said brothers; for, if the property had descended to the heirs of the deceased, as it would have done, if there had been no will, then the property would have been liable to be attached in execution of the Company's claim against the said brother. It was urged on behalf of the petitioner that the Company had no *locus standi* in opposing the grant of probate, inasmuch as it had no interest in the estate of the deceased as contemplated by s. 69 of the Probate and Administration Act. The District Judge held that the Company had *locus standi* and that the will was a forgery and refused to grant probate. The petitioner appealed to the High Court, and it was urged on her behalf that the Company had no *locus standi* and that the decision of the District Judge refusing probate was against the weight of evidence.

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Babu Umakale Mookerjee, on behalf of the appellant.

Babu Surendra Nath Roy, on behalf of the respondents.

[443] The judgment of the High Court (RAMPINI and GUPTA, JJ.) is as follows:—

This is an appeal against a decision of the District Judge of Patna, dated the 25th of August 1898.

The suit, out of which the appeal arises, relates to probate of a will put forward as that of a deceased person named Bal Kishen. The will purports to have been executed on the 25th of July 1897. The testator is said to have died on the 2nd of August 1897, and the application for probate was made on the 17th idem. The grant of probate is opposed by the Patna Loan Office, which claims to be a creditor of one of the natural heirs of the deceased, namely, Gopi Chand, his brother; and the allegation of the Loan Office is that the will in dispute is a forgery, which has been set up at the instance of the brothers of the deceased, Gopi Chand and Puran Chand, so as to put the property of the deceased beyond its reach; for, if the property had descended to the natural heirs of the deceased, as it would have done, if there had been no will, then the property would have been liable to be attached in execution of the Patna Loan Office's debt against Gopi Chand.

The District Judge has found that the will is a forgery and has, therefore, refused probate.

The applicant for the grant of probate now appeals; and on his behalf two grounds of appeal have been pressed before us, namely, *first*, that the Patna Loan Office has no *locus standi* in this case, and, *secondly*, that the decision of the District Judge refusing probate is against the weight of evidence.

We cannot admit the force of either of these contentions.

It appears to us that the Patna Loan Office is a person who has a right to come in and oppose the grant of probate under s. 69 of the Probate and Administration Act, inasmuch as it is a corporate body having an interest in the estate of the deceased. The learned pleader for the appellant maintains that the Patna Loan Office cannot be a person claiming to have any interest in the estate of the deceased, because the

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Patna Loan Office claims to have an interest in the estate of Gopi Chand, the brother of the deceased, and not in the estate of the deceased Balkishen. But we think that the pleader for the appellant puts too narrow a [444] construction on the words in s. 69, "claiming to have any interest in the estate of the deceased." In our opinion they mean "claiming to have an interest in the property left by the deceased," because it is clear that, when a person dies leaving any property, that property must descend to some one else, and, therefore, strictly speaking, there can be no person claiming to have any interest in the estate of the deceased person. Every person who comes in to oppose the grant of probate must be a person claiming to have an interest in the estate left by the deceased. Now in this case the Patna Loan Office would seem to us to have a clear claim to an interest in the property left by the deceased, because, if it were not for this will, it would have a right to seize the property, or that share of the property, which should descend to Gopi Chand, in execution of the decree which it has obtained against him. The Judge in the Court below has relied on two rulings. The first of these is to be found in the case of *Umanath Mookhopadhya v. Nilmoni Singh* (1), in which it is laid down that "the judgment-creditor, who has attached property of his debtor, which purports to have been inherited by such debtor from his deceased father, may, where the will of such deceased is set up and proved at variance to his interests, apply for a revocation of the order granting probate of the will so set up." That would seem to support the view of the Judge that the Patna Loan Office has a *locus standi* in this case. That case was appealed to the Privy Council and the judgment of their Lordships of the Privy Council, which is to be found in the case of *Nilmoni Singh Deo v. Umanath Mookerjee* (2) affirms the decision of this Court on the merits, the will having been held by the Privy Council to be a genuine will. In their judgment it is said that, whether an attaching creditor can oppose the grant of probate or apply to have it revoked is a matter of grave doubt, at least in a case which is not founded on the ground that the probate has been obtained in fraud of the creditors. Now, in the first place, we observe that in this passage of the Judgment of the Privy Council their Lordships do not expressly say that an attaching creditor cannot oppose the grant of probate or apply to have it revoked, [445] and in the second place they seem to imply that, in a case which is founded on the ground that the grant of probate has been obtained in fraud of the creditor, such attaching creditor would have a right to come in and oppose the grant of probate. That seems to us to be authority for holding that the Patna Loan Office has a right to come in and oppose the grant of probate, because in the present case it is expressly alleged by the Patna Loan Office that the will has been set up by two brothers of the deceased Gopi Chand and Puran Chand, so as to defraud it and put the property of the deceased beyond its reach. We, therefore, must find that the Patna Loan Office has a *locus standi* in this case and is entitled to come in and oppose the grant of probate.

On the merits, too, we think that the judgment of the lower Court is perfectly right. The will is a very suspicious will. The testator Bal Kishen died, leaving him surviving two brothers, of adult age, Gopi Chand and Puran Chand, and the will purports to bequeath the testator's property to an infant of five or six years of age, who could not possibly

1. (1880) I. L. R. 6 Cal. 429.

2. (1888) I. L. R. 10 Cal. 19.

manage it and to appoint the mother of the infant as his guardian. The mother would seem to us to be a very unsuitable person to manage the property, and there would seem to us to be no reason for excluding Puran Chand or Gopi Chand from the management of the property, except that it was desired to avoid complications with the Patna Loan Office and the other creditors of these two persons. Then, the draft of the will has not been produced and the will has not been registered. The evidence as to its execution seems to us very unsatisfactory and not altogether consistent. One witness Jai Narain Misser, according to his endorsement upon the will, executed it on the admission of the testator, whereas in his deposition he says that he actually saw the testator sign it in his presence. We, therefore, consider that on the merits the decision of the Judge is perfectly correct, and we dismiss this appeal with costs.

*Appeal dismissed.*

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[446] CRIMINAL REVISION.

*Before Mr. Justice Ameer Ali and Mr. Justice Stevens.*

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ANESH MOLLAH AND OTHERS (*Petitioners*) v. EJA HARUDDI MOLLAH AND ANOTHER (*Opposite Party*).<sup>\*</sup> [9th and 18th January, 1901.]

*Jurisdiction—Code of Criminal Procedure (Act V of 1898) s. 145—High Court—Non-joinder of necessary parties—Subordinate Criminal Courts—Circumstances under which they have jurisdiction.*

The High Court has power to set aside a proceeding under s. 145 of the Code of Criminal Procedure on the non-joinder of parties, whose presence is essentially necessary for the proper and effectual decision of the case. *Laldhari Singh v. Sukdeo Narain Singh* (1) followed.

Under s. 145 of the Code of Criminal Procedure a special jurisdiction is vested in the Subordinate Criminal Courts under special circumstances and for a special purpose. When either the special circumstances do not exist or when the order made under s. 145 does not attain the purpose, for which the jurisdiction is created, then the special jurisdiction vested under that section falls to the ground.

The circumstances under which the jurisdiction springs up are circumstances, which give rise to an apprehension of a breach of the peace, and, if there is no apprehension of a breach of the peace, there is no jurisdiction to make the order.

The purpose the Legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under s. 145, it must be taken to have been without jurisdiction.

IN this case there was a dispute in regard to certain lands between two sets of zemindars called respectively the Kharoria and Shahapur Babus. In September 1885 an order under s. 145 of the Code of Criminal Procedure was made in favour of the Kharoria zemindars. The Shahapur zemindars thereupon brought a civil suit in respect of the lands and obtained a decree. They were then put in symbolical possession thereof and proceeded to give *pottahs* to various persons. One Ejaharuddi, who claimed to have been for a long time in occupation of the lands in dispute, presented a petition to the Deputy Magistrate [447] of Madaripur on the 7th April, 1900, in which he stated that the

<sup>\*</sup> Criminal Revision No. 868 of 1900, made against the order passed by Babu Ramani Mohan Das, Sub-Divisional Magistrate of Madaripur, dated the 24th of August 1900.