

Before Mr. Justice Macpherson,

S. M. TARRAMGNEY DABEE v. HURRO MOHUN CHATTERJEE AND OTHERS.

1873
May. 8

Suit in Forma Pauperis—Act VIII of 1859, ss. 304—306.

This was a suit in *forma pauperis*. The petition had been admitted, and the usual order made under s. 305, and the case now came on for hearing under s. 306.

Mr. Branson for the defendant proposed to show by examination of the plaintiff that, on the facts stated in the petition, there was no cause of action.

Mr. Marsden for the plaintiff objected that in suits in *forma pauperis* no question except the pauperism of the petitioner could, under s. 306, be gone into—*Shiponnessa Bibee v. Kamince Bibee* (1) and *Dipsanji Jitsanji v. Fattesanji Jasvatsanji* (2). The petition had been presented in the usual way to the Court and it must have been decided that there was a cause of action, under s. 304, otherwise the notice provided for in s. 305 would not have been allowed to issue. The ss. 305, 306, 307 are to be taken together. S. 306 refers to the same kind of evidence as is to be taken under s. 305, *i.e.*, evidence as to the property with a view to judging of the pauperism. So also s. 307.

Mr. Branson.—There are cases later than those cited which are contrary to them. In *Bibee Muzerun v. Sims* (3), which was a suit in *forma pauperis* against an attorney for alleged negligence in allowing a decree to pass against the plaintiff, the defendant, when the case came on for hearing under s. 306, was allowed to show that the plaintiff had known of, and consented to, the decree as it was made. Where, on the day fixed for hearing evidence on the question of pauperism, the defendant brings to the notice of the Court any ground on which the Court would have been bound to refuse to admit the petition, it is in the discretion of the Court to admit or refuse to admit evidence of such ground—*In the matter of the Petition of Gunga Dass Adhikaree* (4).

(1) 2 I. J., N. S., 121.

(2) 5 Bom. H. C., A. C., 59.

(3) Unreported.

(4) Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

The 1st September 1870.

IN THE MATTER OF THE PETITION OF
GUNGA DASS ADHIKAREE.

Suit in Forma Pauperis—Act VIII of 1859, ss. 304—306—24 & 25 Vict., c. 104, s. 15.

Baboo Khetter Nath Bose for the petitioner.

The following judgments were delivered:—

JACKSON, J.—This is an application for the purpose of obtaining the intervention of this Court, under s. 15 of the High Court's Act, to set aside an order passed by the Subordinate Judge of Midnapore, purporting to have been made under the provisions of Chapter V of the Code of Civil Procedure.

The application was presented by the petitioner in person, but at the request of the Court, Baboo Khetternath Bose has been good enough to argue it for him, and has done to us the service of bringing to our notice several decisions on the point.

The suit which the petitioner proposed to