1869
ROY PRIYANATH CHOWDHRY v. BIPINBEHARI CHUCKERBUTTY.

are beneficially interested, settle their disputes amongst themselves. When a dispute arises as to who is beneficially interested under a lease, and to what extent and in what shares, it can be settled only in the ordinary Civil Courts.

It appears to me, therefore, that the suit ought to be dismissed; and that this appeal ought to be allowed with costs of suit and of this Court.

There being a difference of opinion between the two Judges, the opinion of the Senior Judge will prevail, and the decree will be entered accordingly.

Before Mr. Justice Loch and Mr. Justice Mitter.

1869
Feby. 15.

JONES CATHARINE DURANT AND ANOTHER, (PETITIONERS) v. CHANDRA NATH CHATTERJEE, (OPPOSITE PARTY.)*

Lunatic—Act XXXV. of 1858, s. 2—"Residing"—Jurisdiction.

A lunatic had been for a number of years in involuntary confinement in Bhowanipore Lunatic Asylum, within the jurisdiction of the Court of the Judge of the 24-Pergunnas, and was possessed of property out of that jurisdiction. On an application to the Judge to appoint a manager of his property, *held*, that, as the lunatic was residing within the jurisdiction of the Court of the 24-Pergunnas, the Judge could, under Act XXXV. of 1858, section 2, inquire into the fact of his insanity, and order a manager to be appointed to the estate.

THIS was an application by the son and daughter of one Nicholas Kullonas, a lunatic in Bhowanipore Asylum, situated within the jurisdiction of the Judge of the 24-Pergunnas, to be continued as managers of the estate of the lunatic which was situated out of that jurisdiction, and that a previous order, appointing the Collector of Backergunge guardian, should be withdrawn.

Baboo *Anukul Chandra Mookerjee and Mr. Allan* for appellants.

Baboo *Jagadanand Mookerjee* for respondent.

* Miscellaneous Regular Appeal, No. 375 of 1868, against a decree of the Judge of 24-Pergunnas, dated the 30th June 1868.

1869

JONES CATHARINE DURANT v. CHANDRA NATH CHATTERJEE.

The facts sufficiently appear in the judgment which was delivered by.

LOCH, J.—It appears that Nicholas Kullonas was in 1844 placed as an inmate of the private Insane Asylum at Bhowanipore, and has since then continued, first as an inmate of the private asylum, and then of the Government asylum. In 1867 the Collector of Backergunge applied to the Judge of the 24-Pergunnas, within whose jurisdiction the insane was then residing, praying that a manager to the estate of the insane might be appointed under the provisions of Act. XXXV. of 1858. The Judge, after making the inquiries as required by the Act regarding the state of Mr. Kullonas, passed an order on the 27th November 1867, declaring him to be insane, and directing the Collector to take charge of his estate.

After this order was passed, the son and daughter of Nicholas Kullonas applied to the Judge, praying that, as they were in the management of the estate, they might be continued as managers and the order appointing the Collector manager might be withdrawn.

After hearing what the parties had to say, the Judge held that the past management was so unsatifactory, that their prayer could not be complied with, and their application was rejected. An appeal has been preferred, from this order, by the son and daughter of Nicholas Kullonas. Two points are raised : *first*, that the Judge of 24-Per gunnas has no jurisdiction in the matter, as the properties are situated in the district of Backergunge; *second*, that the Judge has decided upon the management of the estate, and pronounced that the applicants are not qualified to act as managers, without looking into the evidence which they adduced.

On the *first* point we refer to section 2, Act XXXV. of 1858, and we see that the words are :—" Whenver any person, not sub-"ject to the jurisdiction of the Supreme Courts, who is possessed " of property, is alleged to be a lunatic, the Civil Court, within " whose jurisdiction such person is *residing*, may, upon such " application as is hereinbefore mentioned, institute an enquiry " for the purpose of ascertaining whether such person is, or is " not, of unsound mind, and incapable of managing his affairs."

1869

JONES CATHARINE DURANT v. CHANDRA NATH CHATTERJEE.

It is said before us that the word "*residing*" means a voluntary residence, and cannot be applied to the case of Kullonas, who *had been* in the asylum for the last twenty years, and *was* so at the time when the Collector made the application. We think that we must take the word in its simple meaning; and it would certainly be very in convenient of a party living in one part of the country, and there found to be insane, were obliged to be removed to another part of the country, were he had originally resided, and where his property is situated, in order that the inquiry regarding his lunacy might be made at that place. We may observe, with regard to the present case, that the lunatic was originally pleased in the asylum by the act of his relations when it was a private asylum. We think there can be no doubt, looking into the wording of the section, that the Judge of the 24-Pergunnas had jurisdiction in the matter.

On the *second* ground, the appellants have altogether failed to satisfy the Court that they have managed the estate properly. What the Judge had to do, was to select a manager. The appellants came before him, alleging that the estate had been in their possession for a long time; and in proof of their good management, they produced an account and certain copies of decrees as vouchers to show that they had paid off large debts due by the estate. The copies of decrees prove nothing with regard to the payment of the debts, and there is no other evidence to show that these debts had been paid while we have, on the other hand, clear proof of the neglect of those managers in failing to pay for the subsistence of the lunatic. Various arrangements appear to have been made with them, *first*, to pay Rs. 100 per month; then to pay Rs. 500 a year. But all these arrangements fell through owing to their neglect to fulfil the conditions of the arrangements; and from a letter from the Superintendent of the Insane Hospital, dated the 13th July 1867, it appears that a sum of Rs. 4,500 is due as arrears for the maintenance of the insane, from the year 1858 up to the close of the year 1866. Under these circumstances we think it unnecessary to interfere with the order of the Judge, and we therefore reject this appeal.

MITTER, J.—I am of the same opinion.