

*Baboo Chunder Madhub Ghose* for Appellants.

*Baboo Onookool Chunder Mookerjee* and *Nil Madhub Sein* for Respondent.

*Quære.*—Whether, as between owners of adjacent plots of land, pre-emption can exist by right of vicinage.

*Norman, J.*—THIS is an appeal from the decision of Mr. Ainslie, the Judge of Patna, remanding the case to the first Court for a trial on the merits. The suit is a claim of pre-emption, the right alleged being founded on vicinage. The objection taken is that, inasmuch as the plaintiff and defendant are shareholders in adjacent mouzahs, these mouzahs paying Government revenue separately, and being wholly unconnected with each other, no right of pre-emption by reason of vicinage and by reason of the two plots of land owned by plaintiff being adjacent to that in which the defendant has a share, can exist.

A decision of the Full Bench, page 145 of the Special Number of the Weekly Reporter, and another from the 2nd Volume of the Weekly Reporter, page 262 of the Civil Rulings, have been cited before us. We are not prepared at present to lay down broadly the proposition that in *no case* as between owners of adjacent plots of land can pre-emption by right of vicinage exist. It is certainly possible that cases may occur which may come within the rules laid down at page 476 of Baillie's Digest of Mahomedan Law. We think it more satisfactory that the case should go back to the Moonsiff, who will ascertain the facts exactly, giving a plan, if necessary, of the plots of land belonging to plaintiff and defendant, showing their relative situations, stating their value and any considerations that may make it desirable that the owner of one should be the owner of the other. He will record any circumstances which seem to show that the right of pre-emption does not exist.

The costs of this special appeal will abide the ultimate result of the suit.

The 3rd June 1867.

*Present:*

The Hon'ble Sir Barnes Peacock, *Kt.*, *Chief Justice*, and the Hon'ble C. P. Hobhouse, *Judge*.

**Probate or Letters of Administration—British born subjects dying in Moulmein.**

*Reference made to the High Court by Mr. J. Coryton, Recorder of Moulmein, under Section 22, Act XXI of 1863.*

E. Saunders, executrix of the late H. B. Saunders, by her recognized agent R. C. Saunders, *Plaintiff*,

*versus*

Nga Shoay Geen and another, *Defendants*.

In the case of a British born subject dying and leaving assets in Moulmein, but no assets in Calcutta, and a will dated 5th August 1865, before Act X of 1865 came into effect,—HELD that the executrix could not obtain probate or letters of administration with will annexed from the High Court in Bengal.

*Case.*—The plaintiff, as the widow and executrix of the late H. B. Saunders, sues the defendants to recover the amount of a promissory note executed by the defendants in favor of the late H. B. Saunders, who died at Moulmein on the 6th March 1866, leaving a will dated 5th August 1865, and property in Moulmein, British Burmah, and in England, but no property in Calcutta or Bengal.

The plaintiff on the 23rd August 1866, as sole executrix, obtained probate of the will in the Court of Probate in England, but she has not taken out probate or letters of administration with will annexed in India.

The defendant at the hearing objected to the suit, as the plaintiff had not taken out probate in India, and the English probate, though stamped correctly for the amount within the jurisdiction of the English Court of Probate, is not sufficiently stamped to cover the amount of the present claim.

I hold that the plaintiff under the English probate has shewn such representation as entitles her to sue in this Court, subject to such limitations as to the stamp or other

provisions as may have been prescribed for representation of parties who have died leaving assets in this country.

I find as a fact that the deceased was a British born subject; that he has assets in Moulmein and England, but no assets within the Calcutta or Bengal jurisdiction of the High Court; and that the will being dated before the 1st January 1866, Act X of 1865 does not apply, but the law relating to wills executed before the 1st January 1866 is the law applicable to the case; and that this Court has not the power of granting probate or letters of administration.

Under the old law probates or letters of administration were granted by the Supreme Court in Bengal in regard to the estates of all British born subjects dying and leaving assets within the countries and provinces attached to the Bengal Presidency. Allowing that Moulmein belongs to the Presidency of Bengal, I have come to the conclusion that plaintiff can obtain probate from the High Court at Calcutta, and cannot sue in this Court without such probate or letters of administration from the High Court at Calcutta.

Having some doubt on this point I submit the following question to the High Court:—

Whether in the case of a British born subject dying and leaving assets in Moulmein, British Burmah, but no assets in Calcutta or Bengal Proper, and a will dated the 5th August 1865, the executrix of such testator can obtain probate or letters of administration with will annexed from the High Court in Bengal.

*The judgment of the High Court was delivered as follows by—*

*Peacock, C. J.*—We are of opinion that in the case of Mr. Saunders, a British born subject, who died on the 6th of March 1866, leaving assets in Moulmein in British Burmah, but leaving no assets in Calcutta or Bengal Proper, and a will dated the 5th August 1865, before Act X of 1865 came into effect, the executrix cannot obtain probate or letters of administration with will annexed from the High Court in Bengal.

The Provinces of Arracan and Tenasserim are part of British Burmah and not part of the Presidency of Bengal, see Act XII of 1862; and Moulmein is part of the Tenasserim Provinces.

The 3rd June 1867.

*Present :*

The Hon'ble J. P. Norman and  
W. S. Seton-Karr, *Judges.*

**Limitation—Suit for balance of accounts  
(limited dealings).**

Case No. 428 of 1867.

*Special Appeal from a decision passed by the Principal Sudder Ameen of Midnapore, dated the 11th January 1866, reversing a decision passed by the Sudder Ameen of that district, dated the 30th June 1866.*

Gopal Chunder Shaha and others (Plaintiffs),  
*Appellants,*

*versus*

Mr. K. Sinaes and another (Defendants),  
*Respondents.*

*Bahoo Roop Nath Banerjee* for Appellants.

*Baboos Otool Chunder Mookerjee and Gopeenath Mookerjee* for Respondents.

A suit for balance of account in respect of dealings of a limited nature is governed by the limitation of six years.

*Seton-Karr, J.*—THIS was a case in which the plaintiff sued the defendant to recover rupees 783 as the balance of account. The defendant pleaded limitation, the suit not having been brought within three years from the date of the last payment or the last account.

The Sudder Ameen held that limitation did not apply, as the two parties had carried on business together; and, as the sum of rupees 99 had been paid in 1270, and after the accounts had been closed in the year 1269, the Sudder Ameen held that Section 8 of Act XIV of 1859 applied, but decided the case on the merits in plaintiff's favor.

The Principal Sudder Ameen overruled this decision. Both parties, it seems, appealed, the defendant urging that limitation barred the suit, and the plaintiff contending that he was entitled, not to 3, but to 6 years. The Principal Sudder Ameen ruled that the plaint did not disclose a trading business between the parties; that their dealings were of a limited nature; and that the period of three, and not of six, years applied to the suit.

We have looked at the plaint and at the chief documents filed, and we think that the Principal Sudder Ameen was not legally correct in ruling that the parties were not traders. Wine and other