It appeared from the affidavits of Brown and Haig, that they were intimate friends of the deceased and of his family; and they were admitted to be men of property and great respectability. The effects left by the deceased were of the value of about Rs. 25,000.

The affidavits of Lowder stated him to be a friend and a creditor of the deceased to the amount of Rs. 360. It was also sworn that the deceased had often expressed his confidence in Lowder, and his desire that he would protect the deceased's three young children.

The affidavits in reply set forth that Lowder was a man of no property whatever, and that the petitioners had offered and were now ready to discharge the small debt due to him immediately.

Davies and *Ledlie* for the petitioners, contended that the claim of Lowder as a creditor must be put out of the question. Where there is an estate of twenty or thirty thousand rupees, could a khansamah, or other person, to whom a few hundred rupees happened to remain unpaid, be considered a creditor within the meaning of the charter, the petitioners being fitter in all other respects, and having offered to pay the debt?

W. Dunkin and *Casan* for the caveator, admitted that their client was not worth much money, but he offered **[14]** undeniable security, and he was the man of the intestate's choice. Besides, although the Court exercises a discretionary power in granting administrations, that discretion is regulated and controlled by the charter, and the right of a creditor comes before the claim of a friend.

The Court (*Chambers*, *Hyde*, and *Jones*, *Js.*) upon consideration, were of opinion, 1st. That Brown and Haig were fitter persons to be entrusted with that estate which was then vested in the relations (in England) of the deceased: 2ndly. That Lowder was not such a creditor, as, within the true meaning and intention of the charter, should be preferred to every 'friend' of the deceased (a) except the next of kin. And, accordingly,

Caveat over-ruled.

IN THE GOODS OF LOVEJOY (1787).

Chambers' Notes, (b) *Oct. 25th and 31st*, 1787.

Judgment creditor preferred to bond creditors. *Semble*, among creditors of equal degree, magnitude of debt is to be the criterion.

THIS case came on for argument upon the petition of Bondfield, and the caveat of Perreau and Palling, who also petitioned for administration. The former was a judgment creditor for Rs. 10,800 (the penal sum in a bond and warrant on which judgment had been entered up a few days before the death of the intestate,) Perreau and Palling were each bond creditors in their

[14] (a) The Registrar is now substituted for the 'friends' of the deceased; ante p. 10 *Note* (c). See *In the Goods of Porteous*, (in notis, tit. Administration) as to the nature of the debt as a title to administer.

(b) Shortly reported also in Dickens' MSS.

own right, the former for Rs. 6,310, and the latter for Rs. 4,947; and they also applied for the administration as the constituted agents and attorney of a Mr. Wilmot in England, who was a bond creditor to the amount of Co.'s Rs. 34,686, which was sworn to be the greater part of his fortune.

[15] *Davies, A. G.*, for the petitioner, contended that the point had been already decided in effect in this Court and cited four cases, *In the goods of Kellican*, *In the goods of Kirkman*, *In the goods of Peacock*, (a) and *In the goods of Churchill*, in which last case (November, 1785) the Court granted administration to a banian, being merely a creditor for a higher amount, in preference to two Europeans of good character, whose debts were of the same nature, but to a smaller amount. In the present case the petitioner was the principal creditor' in amount as well as in degree, because the attorney of the principal creditor could not be said to come within the description in the charter.

J. Dunkin for the caveat, submitted that Perreau and Palling, having united in the caveat and in their petition, were to be considered as one creditor, and then the joint debt would be greater than that of Bondfield

Chambers, J. said that the meaning of the word 'principal,' as applied to creditor, was nowhere defined, and that he conceived it to be rather a question of fact than of law. In deciding the question, the nature of the security ought to be the first and chief, but not the only consideration;—for the magnitude of the debt and the fitness of the person ought in some cases to have weight. It was not necessary to determine absolutely in the present case, whether the nature of the security constituted the principal creditor, because Bondfield was a judgment creditor, and also to a higher amount than either Perreau or Palling. The administration would be granted to him on condition of his entering into articles and bonds of average to pay Perreau, Palling and Wilmot pro ratâ, after payment of his own judgment debt.

[16] *Hyde, J.* agreed to this conclusion, but gave no absolute opinion whether the nature of the security alone constituted the principal creditor.

Jones, J. was of opinion that the words 'principal creditor' import, in the first place, the creditor of highest degree; and, secondly, among those who are equal in degree, the creditor whose debt is of the greatest magnitude. (a)

Caveat over-ruled with costs.

IN THE GOODS OF PHANUS JOHANNES (1788).

Chambers' Notes, Aug. 21st, 1788.

Administration granted of the estate of an Armenian, dying out of Calcutta.

DAVIES, A. G. moved that letters of administration be granted to Gregory Sarkies, administrator of Parsick Muckertoon, and in that capacity a creditor of the deceased. The deceased died at Seyidabad in Bengal, possessed

[15] (a) See these three cases reported ante, p. 6, 12.

[16] (a) As to the preference given to one creditor over another, by reason of the superior nature or larger amount of the debt, see *Kearney* v. *Whittaker*, 2 Cas. temp. Lee 324, *Carpenter* v. *Shelford*, ib. 502. Wms. Executors, p. 292.