

IN THE GOODS OF CUMMOLAH KONTO SEAT (1778).

Hyde's Notes, Nov. 9th, 1778.

Administration refused, when it would disturb possession taken before this Court was established.

THE surviving brother of the deceased petitioned for administration, and a caveat was entered by Diaram Seat, the son of another brother, the eldest, deceased. The widow of Cummolah Konto, the intestate, was alive, but did not apply for administration.

[4] It appeared that Cummolah Konto died about seven years ago, and that his widow had suffered Diaram to retain possession of the property, and had made a kind of assignment to him of all the effects upon condition of his maintaining her.

The Court refused to grant administration to the petitioner, as it would disturb possession, taken at a time when there was no authority here to grant administration to natives, and that possession had been acquiesced in by all parties.

Caveat allowed.

IN THE GOODS OF BINDABUND GOSSAIN (1778).

Hyde's Notes, Nov. 16th, 1778.

Administration refused when 20 years had elapsed after intestate's death.

SOORUDDUNNY, widow of Bindabund Gossain, applied for administration of the goods of her husband. A caveat was entered by Bissummer Gossain, the nephew and adopted son of the deceased.

The intestate had died 20 years before. The nephew had been in possession of all the effects of the deceased, under the adoption, ever since his death, and the widow had acquiesced, and had received a stated maintenance.

The Court were all of opinion that the administration should be refused, and the petition dismissed, with the costs of the caveat to be paid by the petitioner to the caveator.

Impey, C. J. I think, in analogy to the resolution of the Court of King's Bench, respecting granting informations in the nature of a *quo warranto*, that they would not grant them to disturb a possession of 20 years, considering that a reasonable limitation, though the statute does not extend to this kind of information, and that we should adopt the same limitation, which is the longest time of limitation mentioned in the statute. I think it **[5]** a good general rule to guide our discretion, but under particular circumstances it may be otherwise. If, for instance, it should be necessary to have an administration in order to enable the person to bring some kind of action, the Court would grant administration even after 20 years. But I do not know that it could be necessary. As a general rule, I think administration ought not to be granted after 20 years. I was at first against granting any administrations to Hindus, thinking it would create confusion, and if we went so far back it certainly would. I acceded to the

opinions of others of the Judges (meaning the late Mr. Justice Lemaistre, and Mr. Justice Hyde), and agreed that administration might be granted to Hindus under the description of British subjects. I do not mean that no time less than 20 years shall prevent the granting administration.

Chambers, J. I think, as a general rule, administration should not be granted after 20 years. Exceptions in particular cases, which I cannot undertake to enumerate, may arise, and therefore I do not care to bind myself by a declaration that it can never be done.

Hyde, J. I think the limitation of 20 years very proper to be observed as a general rule, with such exceptions as when the cases arise may appear just. The Court on Monday, November the 9th, (a) refused an administration when only seven years were elapsed.

Caveat allowed with costs.

[6] IN THE GOODS OF KIRKMAN (1780).

Hyde's Notes, July 13th, 1780.

Commission issued beyond the jurisdiction to swear in administrator of a British subject.

THE intestate, Kirkman, was at the time of his death in the Province of Oude where he was one of the Pay Masters of the Company's forces. Kirkman was the owner of several houses in Calcutta. One of his creditors was a Mr. Wilson, his own deputy, and an application was made on behalf of Wilson for letters of administration.

Impey, C. J., granted a commission to issue to certain persons in the Province of Oude for administering the usual oath to Wilson.

Hyde, J., concurred, and said, that the like had been done with his consent three or four times. But he thought, that when the administration was to be granted and the oath of administrator to be administered, Mr. Wilson ought to be within the Provinces. (a)

Granted.

IN THE GOODS OF PEACOCK (1781).

Hyde's Notes, Nov. 12th, 1781.

Principal creditor' means the principal in degree.

RAJAH Ramlochun Roy petitioned for administration, and a caveat was entered by a bond creditor.

The Court (*Chambers and Hyde, Js.*) now delivered their opinion, that the 'principal creditor' meant the principal in degree, and not the greatest in sum, and [7] consequently that a smaller creditor, whose debt was due on bond,

[5] (a) See the preceding report.

[6] (a) In a subsequent case (March 26th, 1781) *Brix* moved for a commission to be sent to Furruckabad, which is far beyond the Province of Behar (and at that time out of the general jurisdiction of the Court) to two gentlemen there, to see Thomas Soder execute a security bond for the due administration of the goods of Charles Dillon, *Impey, C.J.*, said that it could not be done. (*In the Goods of Dillon, Hyde's Notes.*) But see *In the Goods of Harrison, post.*