obtained a final decision from the Court of Sudder Dewanny Adawlut upholding the gift, he instituted this action to recover possession of the land in question.

The defendants resisted the claim, and stated that the land formed a portion of their Birmooter land; and that Kishen Kinkur, the brother of the plaintiff, having dispossessed them from the land in question, they regained possession under a summary decree, which left to the father of the plaintiff the option of suing them to establish his right thereto. They pleaded that as the plaintiff had allowed so long a period as 17 years to elapse, during which they had held undisturbed possession of the land, without instituting his action, the cognizance of the suit was now barred by the rule of limitations.

The Provincial Court of Calcutta came to the following decision, after perusing the pleadings and documents filed by the parties. They observed that the evidence produced by the plaintiff was insufficient to establish his right to the land in question, and that as neither the father of the plaintiff, nor the plaintiff himself, had availed themselves of the permission granted by the summary decision of the Judge of Zillah Midnapoor, on the 1st of August 1796, confirmed by the Provincial Court of Calcutta on the 11th of September 1797, to institute a suit to prove their right to the land till the 30th of January 1815, the cognisance of the suit was now barred by the rule of limitations, contained in section 14, regulation 3, 1793, and regulation 2, 1805, for the Court did not hold the plea of the disputes between the plaintiff and his brother sufficient to reserve to him his right of action. A judgment was **[19]** accordingly passed in favour of the defendants on the 6th of April, 1821, dismissing the claim of the plaintiff with costs.

The plaintiff appealed from this decision, but the Court of Sudder Dewanny Adawlut (present C. Smith) seeing no reason for altering it, passed a final decision confirming it, and dismissed the appeal with costs.

While the appeal was still pending, a petition was presented to the Court by Kishen Kinkur, the brother of the appellant, claiming to share equally with him in the property of Ram Kaunt, their father, and praying to be allowed to carry on the appeal jointly with him. As the decision of the Provincial Court was confirmed, the Court did not pass any particular order on his petition.

BABOO RAM DOSS (HEIR OF BABOO MUKUND LAL, DECEASED), *Appellant* *v.* RAJA RUN BUHADOOR SAHEE, BABOO KULAHUL SING (SON OF DUNKA SING, DECEASED, AND BANOO JYE LAL SING (SON OF PERTAUB SING, DECEASED), *Respondents.* (1825. *Jan.* 27*th.*)

In an action for the recovery of a debt due on mortgaged property a third party appears and claims a large sum under a decision of the Sudder Dewanny Adawlut. The Provincial Court awarded to plaintiffs a certain part of their claim; after that was paid it was ordered that the holder of the decree of the Sudder Dewanny Adawlut should receive what was due thereon, and that the plaintiffs should then receive the balance of their claim.

The third party appealing to the Sudder Dewanny Adawlut, it was ordered that he should receive the whole of the sum due under the decree, before the plaintiffs were paid any part of their debt.

DUNEA SINGH and Pertaub Sing instituted a suit in the Provincial Court of Benares, on the 19th of February, 1819, to recover from Raja Run Buhadoor Sahee the sum of 65,581 rupees, stating that the Raja executed a bond in the year 1213, F. S., in their favour for money lent, &c., to the amount of 24,000 rupees, and mortgaged to them his *jageer*; and provided that they should hold possession thereof till the sum due to them should be liquidated from the proceeds of the *jageer*: that as the Raja had not given them possession in 1220, F. S., they threatened to sue him to recover their money; on which he entered into a fresh bond, mortgaging the *jageer* for 65,581 rupees, which, on a settlement of accounts, appeared to be the sum due to them, and put them in possession. But that as they had discovered that he was about to mortgage the *jageer* to another person, they instituted this suit to recover what was due to them under the bond.

Raja Run Buhadoor Sahee acknowledged the execution of the bond for 65,581 rupees; but pleaded that that sum was not now **[20]** due under the bond, as the plaintiffs must have re-paid themselves part of the debt from the proceeds of the estate. He stated that the said *jageer* was his only *jaidad* and that the plaintiffs had engaged to pay off his other debts, and to make him an allowance from the proceeds of the *jageer* for his support, but that as they had neglected to fulfil their engagements, and the *jageer* was about to be sold in satisfaction of a decree obtained against him by Baboo Mukund Lal, he, to preserve the *jageer*, had negotiated a mortgage thereof with Raja Oodwunt Sing, which coming to the plaintiffs' ears had caused them to institute this suit.

The plaintiffs in reply stated that they only wished to recover what, on an adjustment of accounts, might appear due to them.

A petition was presented to the Court while the case was still pending by Baboo Mukund Lal, who stated, that he having sued Raja Run Buhadoor in the Zillah Court of Mirzapore, to recover a sum of money due to him by the Raja, he obtained a decree in his favour on the 11th of February, 1809: that the Raja wishing to appeal therefrom, instead of furnishing security, executed an *ikrarnama* on 5th of December 1809, engaging not to sell, mortgage or otherwise alienate his *jageer* till the sum decreed against him was paid: that the said decree having been confirmed by the Sudder Dewanny Adawlut on the 20th of June 1817, a large sum was now due to him from the defendant's *jageer* which he contended ought to be liquidated before any other debts could be paid by the estate. He stated that the plaintiffs were servants of the Raja, and that this action had been got up by the connivance of the Raja, in order to defraud him of his due, and prayed that the decision in this action might not prejudice his claim.

The case was submitted to arbitrators, who gave in an award, whereby it appeared that the sum of 56,586 rupees, 12 anas, 3 gundas, 2 cowries, was due by Raja Run Buhadoor to the plaintiffs, up to the end of *Bhadoon* 1225, F.S. The Court observed that the first mortgage-bond executed by the Raja in favour of the plaintiffs was dated 1st *Jeet*, 1214, B. S. (22nd of May 1807) and that the second mortgage bond was dated 5th *Sawun Budee*, 1220, B. S.,

(18th of June 1813), and considered it just that the payment of the money due to the plaintiffs, under the first mortgage bond, should precede the payment of the money due to Baboo Mukund Lal, under the *ikrarnama* executed on the 5th of December 1800, by Raja Run Buhadoor, in lieu of security; and that after **[21]** the sum due on that *ikrarnama* was paid, the sum due under the second bond should be liquidated. The Court therefore ordered that the plaintiffs should first receive from the *jageer* of the Raja the sum of 24,170 rupees, being the sum due under the first bond executed in their favour; that Baboo Mukund Lal should receive the whole of the money due to him under the *ikrarnama*; after which the plaintiff should receive the balance of 56,586 rupees, 12 anas, 3 gundas, 2 cowries.

Baboo Mukund Lal demised, after having preferred an appeal from this decision, against Raja Run Buhadoor and the other respondents, the heirs of the original plaintiffs, who also had died; and was succeeded by the present appellant, his son and heir. The appellant stated, that the original plaintiffs were servants of the Raja, and that the two mortgages executed by him were not *bona fide* transactions; and that this suit had been instituted by them, with the consent of the Raja, with a view to defraud him of the sum due to him under a decree of the Sudder Dewanny Adawlut; which he pleaded should have the preference to any other claim. He therefore prayed that the Raja might be compelled to pay him the full amount due to him under the above decree, before the sums declared to be due to the heirs of the original plaintiffs were paid.

The respondents having failed to appear to defend the case, the appeal was decided *ex parte*. The Court (present C. Smith and W. B. Martin) on consideration of all the circumstances of the case, were of opinion that the Provincial Court of Benares were not authorized, four years after the passing of a decision of the Sudder Dewanny Adawlut, to give to any document filed by the plaintiffs a preference to such decree, and that the appellant was entitled to receive every rupee which was due to him under that decree, before the heirs of the original plaintiffs received any part of their debt. They therefore amended their decision of the Provincial Court, and ordered that the appellant should first receive the sum due under the former decision, passed in favour of his father, from the proceeds of the Raja's *jageer*, and that the heirs of the original plaintiffs should then receive the sum decreed to them by the Provincial Court.

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[22] BABOO RAM GHOSE, *Appellant v.* KALEE PERSHAD GHOSE (FOR HIMSELF AND HIS MINOR SON BISHUMBER GHOSE), AND DEB NATH GHOSE, *Respondents.* (1825. *Feb.* 9*th.*)

Claim by appellant to recover a sum of money on a bond. The bond being given in lieu of principal and interest due on two former bonds, which were executed in favour of the plaintiff, while he was acting as *Mokhtar* and guardian of the parties bound by them, and the third bond being also executed under similar circumstances, the Court rejected his claim.