

by the defendants, is immaterial as between the present parties. I would uphold the decree of the Principal Sudder Ameen, for the reasons therein stated.

Mr. J. J. Warner concurred with Mr. Smyth, and made final the judgment proposed by him.

COLLECTOR OF CHITTAGONG, *Appellant v.* MUSSAMAUT MALLAKA  
BANOO, WIDOW OF KUMBER ALLEE SOOBABHDAR, *Respondent.*  
(1841. February 2nd.)

A claim, for re-payment of a deposit, against a Collector by the heirs of a party deceased, who had deposited a sum of money as an investment in the public funds, but died before obtaining the promissory note, disallowed,—sale of the promissory note and distribution of proceeds among the heirs ordered.

**T**HIS was an action instituted by the respondent *in forma pauperis*, in the Zillah Court of Chittagong, on the 27th June 1835, against the Collector and the rest of the heirs of Kumber Allee Soobahdar, to recover the sum of rupees 1,979-13, being portion of a sum of 5,000 rupees deposited by the late Soobahdar in the Collector's treasury. The plaintiff claimed the above sum out of the deposit as the share of herself and her infant daughter, stating that as the widow of Kumber Allee she was entitled to that proportion of the deposit, and had applied to the Collector for it, but without effect.

The Collector replied that the Soobahdar had deposited the sum of 5,000 rupees in his treasury as a loan to the Government; that he (the Collector) had forwarded the prescribed certificate to the Accountant-General, in order to obtain a promissory note to that amount in favour of the Soobahdar, but that before it could be made over to him he died;—that information of his death was given to the Accountant-General, who informed the Collector in reply, that as the money had been paid into his treasury as an investment in the public funds, it could not be re-paid until payment of the loan to which it had been subscribed was made under the orders of Government, but that if the heirs of the deceased Soobahdar would appear before the Magistrate of the dis-  
[16] trict, and take the necessary steps to prove that they were entitled to the estate of the deceased, the promissory note should be made over to them on their signing the usual receipt on the Collector's certificate of deposit;—that the heirs could not agree among themselves, and presented conflicting applications for the money to the Collector, who of course could not pay them, but referred them to the Civil Court for an adjustment of their differences. The Collector pleaded in conclusion that he ought not to have been made a party to the action.

The rest of the defendants replied, asserting their claims to what they considered to be their portions of the deposit.

The Additional Judge of Chittagong, Mr. R. Torrens, gave judgment against the Collector. He observed that there had been some neglect on the part of the Collector in transmitting the prescribed certificate of deposit to the Accountant-General, which prevented the transfer of the promissory note to the Soobahdar, Kumber Allee before his death. The Additional Judge therefore

adjudged payment of the principal of 5,000 rupees, with interest from the date of deposit to the date of payment, and all costs of suit, against the Collector, directing that the sum thus decreed should be paid to the heirs of the deceased Soobahdar in their respective portions.

From this decision the Collector appealed to the *Sudder Dewanny Adawlut*, and the case was first heard by Mr. D. C. Smyth, who was of opinion that it was not competent to the Collector to refund the money to the heirs of the deceased Soobahdar, or of the Judge to order it. Mr. Smyth observed that the money, having been deposited as an investment in the public funds, could not be re-paid without the orders of Government published in the *Government Gazette*; that in his opinion no neglect had been shewn on the part of the Collector; and that that officer, in consequence of the dispute between the heirs of the deceased, could not have properly acted otherwise than as he did, *viz.*, referring the claimants to the Civil Court for an adjustment of their respective claims. Mr. Smyth was therefore of opinion that the judgment of the lower Court must be amended, and that the Collector, must be altogether absolved from the payment of costs.

Mr. Smyth then called upon the law officers of the Court to [17] state the shares to which the heirs of the deceased were respectively entitled, and proposed to pass judgment to the following effect; that the promissory note should be obtained from the Accountant-General by the Registrar of the Court, sold at the market rate, and the proceeds remitted to the Judge of Chittagong, with instructions to pay the costs of suit out of the same, and to divide the balance among the heirs of the deceased, according to their respective shares as set forth in the *futwa* of the chief *Cazee*.

Mr. Lee Warner, fully concurring with Mr. D. C. Smyth, made final the judgment proposed.

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MUSSAMAUT RAMDHUN DIBBEA, *Appellant v. ROODERNERAIN*  
CHOWDREE AND OTHERS, *Respondents.* (1841. February 10th.)

In an action founded on the right by inheritance for possession of the estate, real and personal, of a party deceased, the lower Court gave judgment in regard to the real estate and referred the plaintiff to a separate suit for the personal property: held by the *Sudder Dewanny Adawlut* that the orders was irregular in the latter respect, and that the lower Court should have decided on the merits of the entire claim.

THE appellant instituted this action in the *Zillah Court* of Moorshedabad against the respondents, to recover the estate, real and personal, of her deceased father Govind Dass Chowdree. The Principal *Sudder Ameen* of the district gave judgment in favour of the plaintiff for recovery of one-third of the real estate, but referred her to a separate action for the personal property.

The appellant appealed to the *Sudder Dewanny Adawlut* from the latter part of the decree.

By the Court—Mr. Reid. As the action was brought for recovery of the entire estate, both real and personal, the Principal *Sudder Ameen* acted against the practice of the Courts in giving judgment in regard to the real estate, and