

under litigation. The application, for permission to sue *in forma pauperis*, on the part of Rajeet Lall, was presented 5 or 6 years after the death of Futteh Singh, or 15 years after the death of Musst. Dolaroo. The respondents however plead the application for permission to sue *in forma pauperis*, presented by their fathers Ajeet Singh and Futteh Singh, which was lodged within 12 years after the death of Musst. Dolaroo. This petition should have been followed up at once, and the suit instituted within the 12 years; but it was neglected by them, and the period allowed for the institution of civil suits was suffered to elapse without any further steps being taken by them or their representatives. Adverting to the principle recognized by constructions 1913 and 1036, I am of opinion that the mere presentation of the petition to sue *in forma pauperis*, on the part of Ajeet Singh and Futteh Singh, is not a "preferring of the claim" within the meaning of Section 14, Regulation III, 1793, and I accordingly confirm the judgment proposed by Mr. Lee Warner.

[13] HURRISCHUNDER CHUNDER, NEXT OF KIN TO KEENEE DOSSEE, *Appellant v. RAM RUTTEN MITTER AND RUSSOMOY BOSE, GUARDIANS OF KALEE KISHEN CHUNDER, MINOR GRANDSON OF RAMCHUNDER CHUNDER, DECEASED, Respondents.* (1841. January 30th.)

The fact of probate of a will, affecting property under the local jurisdiction of the Mofussil Courts, having been granted by the Supreme Court, does not bar enquiry into the authenticity and validity of the will.

THIS was an action instituted by Keenee Dossee, in the Civil Court of the 24-Pergunnahs, against the respondents, to recover possession of Jadooratee and other talooks.

The plaintiff set forth that Rajchunder Chunder, the husband of the plaintiff, was one of four brothers, *viz.*, Preetram Chunder, Rajkishun, Rajchunder Chunder (the husband of the plaintiff,) and Ramchunder Chunder; that Rajchunder Chunder had from his own private means purchased the disputed property, in the year 1204, B.S., from the Rajah of Nuddea, had his own name registered as proprietor, and held undisputed possession up to the month of Pooos 1231 B. S. when he died, leaving as his heirs the plaintiff his widow, and an adopted son Jankeenath Chunder, the son of his brother Ramchunder Chunder. The elder brother of the plaintiff's husband died, leaving a son by name Hurrischunder Chunder; Rajkishore died, leaving a widow Bimmola. There remained the other brother Ramchunder Chunder, who, owing to the inability of the plaintiff to conduct the management of the property left by her husband, and to the minority of Jankeenath Chunder, managed it for her. Jankeenath however, in the year 1825, appeared before the Commissioner of the Soonderbunds, and presented a petition, stating that he was the adopted son, and, together with the plaintiff, the heir of Rajchunder Chunder; and to this effect a statement was also made before the Commissioner by Ramchunder Chunder, the father of Jankeenath. Subsequently Ramchunder Chunder collusively got

possession of the property, and embezzled the proceeds; and he further succeeded in persuading Jankeenath to file a petition denying his adoption by Rajchunder Chunder, and stating that he was the fourth son of Ramchunder Chunder, from whose family he had never been separated. Jankeenath died in Asarh 1237 B.S., Ramchunder also died in Kartick of the same year, leaving a son Soenath Chunder, and a grandson Kalleekishen Chunder. The plaintiff, [14] as heir to her husband, now sues the guardians of Kaleekishen, who are in possession of the property.

The defendants replied that the brothers Rajchunder Chunder and Ramchunder Chunder separated from the rest of their family, but held their own property in partnership. They purchased the disputed property with their joint funds, and held joint possession, though Rajchunder Chunder, as the eldest brother, was registered as the proprietor in the Collector's office. Rajchunder Chunder died in Poos 1231, and before his death bequeathed by will his share of the property to his brother Ramchunder Chunder, providing at the same time for the maintenance of the plaintiff his widow. The defendants deny the adoption of Jankeenath by Rajchunder Chunder; urging that even if true, that could in no wise benefit the plaintiff, as Jankeenath died after Rajchunder Chunder, and left a widow still alive; that the plaintiff, with a view to recover her husband's share of the property, colluded with Jankeenath and induced him to state to the authorities that he was the adopted son of Rajchunder Chunder; and that under color of this statement she brought forward repeated claims in the different Courts of law, in the whole of which she was unsuccessful.

The Principal Sudder Ameen, Moonshee Hafeezooddeen, gave judgment, on the 13th January 1835, in favor of the plaintiff. He was of opinion, that the statements put forth by the plaintiff, respecting the purchase of the property by her husband Rajchunder Chunder from his own separate funds, had been fully proved, and that the will pleaded by the defendants was a forgery.

The defendants appealed the case to the Zillah Judge. The plaintiff, dying, was succeeded by her next of kin Hurrishunder Chunder, the son of Preetram Chunder, her husband's elder brother.

The Zillah Judge, Mr. W. Cracroft, upheld the will pleaded by the defendants (probate of which had been obtained by them from the Supreme Court,) and reversed the decree of the Principal Sudder Ameen.

A special appeal was then applied for by the plaintiff to the Sudder Dewanny Adawlut, and admitted.

Mr. D. C. Smyth :—The Zillah Judge would appear to have upheld the will pleaded by the defendants, because probate had been taken out from the Supreme Court, which, according to his [15] opinion, precluded its rejection or any question as to its validity. I am of a different opinion, and hold that the mere fact of probate having been taken out does not bar investigation into the authenticity and validity of a will affecting property under our own local jurisdiction, when pleaded and filed in our Courts. I consider the will to be a forgery. The question of the adoption of Jankeenath, which has been denied

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 SOOBABHAR, *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.

THIS 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