the existence of the pottah, or any cognizance of it on his part. The case is strictly similar to that of Teetooram Haldar *versus* Loknath Haldar and another, decided on the 14th instant, in which it was held that the plaintiff, wholly denying all the facts of the case which he knows will be set up by a defendant, [44] is not required to lay his valuation in reference to those facts, but only to the facts which he himself asserts to be the true ones. And on the last point, or the sixth issue, the principal sudder ameen does not say that the appellant was not a party to the setting up of the pottah, and that merely *his name* was used by the other defendants. On the contrary, it is manifest that the appellant was essentially a principal defendant, having throughout represented himself to be the rightful holder of a mookurure tenure and in possession as such, and having upon this ground resisted the plaintiff's claim in this suit, whereby he has rendered himself a party justly liable to the decree for wasilat.

We see, therefore, no ground for interfering with the decision of the principal sudder ameen, and dismiss the appeal with costs.

The 22nd January, 1852.

PRESENT: J. R. COLVIN, ESQ., *Judge*, AND A.J.M. MILLS AND R.H. MYTTON, ESQS., *Officiating Judges*.

No. 151 OF 1849.

Regular Appeal from the decision of Moulvee Fuzl Rubbi, Principal Sudder Ameen of Zillah East Burdwan, dated 12th February, 1849.

MUSST. GYAMONI AND OTHERS (*Defendants*), *Appellants v.* BISHUMBHER BIDDYABHOOSHUN (*Plaintiff*), *Respondent*.

[*Suit for wasilat—Only persons in actual wrongful possession of property liable.*]

Appeal, connected with the preceding case, by other defendants, against the award of wasilat and costs, as affecting them. Case remanded, for the striking of a fresh issue, and requisition of proof from both parties in regard to the person who had the real interest in, and enjoyment of, the property in dispute after dispossession of the plaintiff.

Vakeel of Appellants—Moonshee Ameer Alee.

Vakeels of Respondent—Baboo Ramapersaud Roy and Mr. J.G. Waller.

SUIT laid at rupees 8,254-13-10, for the possession of *ayma* lands situated in mouza Chanuk and others.

This appeal is connected with the preceding. The appellants object to the decision that they are not properly chargeable with wasilat or costs. Their issues are,—

Firstly.—Is it proved that they instigated or aided their co-defendant, Bepeenbeharee Ghose, in setting up a title on an alleged mookurure pottah?

Secondly.—Even if it be proved that they did so instigate or aid Bepeenbeharee Ghose, is such a circumstance a sufficient ground for holding them liable to the plaintiff for wasilat, and for the costs of this action?

[45] On the first point, the pleader for the appellants contends that the five witnesses Romaye Maharaj and four others, on whose evidence the principal sudder ameen relies as proving the connection between these appellants and Bepeenbeharee Ghose, speak merely from hearsay. On the second point, wasilat can only be recovered by the person who is shown to have made the collections. The Act IV proceedings distinctly upheld the possession of Bepeenbeharee, the other petitioner, and said nothing of the possession of the present appellants.

Then, there was no distinct call, in the section 10 proceeding, on the appellants to rebut the averment of their having been in possession, and having been the real parties who made the collections.

The pleader for the respondent, in reply, argues on the general character and probabilities of the case as affecting the appellants. He points out that there has been an attempt to injure and annoy the respondent, plaintiff, first by putting forward the mookururee pottah, and next by the separate suit brought by the appellants three months after the institution of this suit, on the ground that the sale to the plaintiff had only been a conditional one. It is in evidence that Bepeenbeharee Ghose is a nephew, through his wife, of one of the defendants, and lived in his house. Would he have put forward a pottah from the plaintiff as an absolute purchaser so as to injure the claim of the appellants, defendants, that he was only a conditional purchaser, while he was still living in the house of one of the appellants, and on friendly terms with him, unless his (Bepeen's) story of a pottah had also been put forward in collusion with the appellants? Then there are the facts of the purchase of the stampt paper on which the mookururee pottah is written, one year and ten months before it could have been required for use, by Neelkunt Singh, the father-in-law of another of the appellants, and the further fact, which is proved by the witnesses for the plaintiff, and not disproved by any evidence for the appellants, that Bepeenbeharee was not a person who could have had funds for the purpose of acquiring a mookururee pottah, and obtaining possession of the contested property for himself by means of such a pottah.

In reply, the pleader for the appellants remarks that all the reasons, on which the respondent seeks to hold them responsible for the wasilat and costs, are merely of general conjecture and inference. The son of a wife's sister is not, as the respondent's pleader would wish it to be supposed, a member of the family of the appellants: —what proof is there that Neelkunt Singh, who purchased the stamp on the 11th August 1843, at the Beerbhoom court, is the Neelkunt Singh whom the appellants, in their petition of August 3rd, 1848, acknowledged to be father-in-law of one of them, Muthoor Mohun Ghose?—Possession, and appropriation of collections, are facts which could and should have been established by direct evidence.

[46] JUDGMENT.

The court think that in this case the facts as to the real parties by whom the plaintiff was dispossessed, and with whom rested after his dispossession the substantial enjoyment of and control over the property in dispute, require to be more fully and closely scrutinized. The reasons given by the principal sudder ameen are, in our judgment, sufficient to establish a powerful general ground of suspicion or presumption that the appellants were the parties having such real interest and enjoyment. But the direct evidence on the point has been imperfectly taken. The case is now remanded that an issue may be struck afresh in respect to dispossession and subsequent possession or control as aforesaid, both parties being allowed to tender further evidence on such issue; and Mr. Erskine, the gentleman resident as an indigo planter in the neighbourhood, whose written report or statement is referred to in the deputy magistrate's proceeding in the Act IV of 1840 case, dated December 2nd 1846, as well as any witnesses, whom after receiving his evidence the court may deem likely to give trustworthy information, being summoned and questioned in its own part. On this remand, evidence may be also taken in order to show whether the Neelkunt Singh who purchased the stampt paper on which the mookururee pottah is written, at the Beerbhoom court on 11th August 1843 is, as is taken for granted under article 6, head 4, of the principal sudder ameen's decision,

the Neelkunt Singh, father-in-law of the appellant Muthoor Mohun Ghose, who is alluded to in the petition of the appellants to the principal sudder ameen's court of August 3rd, 1848.

The decision of the principal sudder ameen is annulled as regards the appellants, and the case remanded for further investigation as above intimated.

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[47] *The 22nd January*, 1852.

PRESENT: J. R. COLVIN, ESQR., *Judge*, AND A. J. M. MILLS, AND R. H. MYTTON, ESQRS., *Officiating Judges*.

CASE NO. 173 OF 1849.

Regular Appeal from the decision of Mr. John French, Additional Judge of Zillah Tirhoot, dated 20th March 1849.

CHUNDERBENODE OOPADHIA AND OTHERS (*Plaintiffs*), *Appellants v.* ISHWUREE DUT OOPADHIA AND OTHERS (*Defendants*), *Respondents*.

[*Regulation X of* 1793, *section* 5, *clauses* 2 *and* 3—*Regulation VI of* 1822, *section* 2—*Suit on behalf of disabled or incompetent plaintiff—Must be instituted by next friend or guardian acting as such—Wards of court—Guardian whether can act for them without some official intimation or acknowledgment.*]

A plaint, which is intended to be laid as for the benefit of a party, professed to be legally incompetent to manage his own affairs, must be preferred by the plaintiff in the express character of a guardian of such party, or of a near friend acting as such.

A point yet undermentioned, *viz.*, whether a guardian, not appointed by the Court of Wards, has any authority to act without some official intimation or acknowledgment on its part with reference to section 4, Regulation VI of 1822, was discussed in this case, but it was not necessary to decide it.

Vakeel of Appellants—Mr. J.G. Waller.

Vakeels of Respondents—Baboo Ramapersaud Roy and Nilmoney Banerjee.

SUIT laid at rupees 96,344-8-0-3, being the principal amount of wasilat with interest.

This is an appeal against the decision of the additional judge of zillah Tirhoot, rejecting the competency of the plaintiffs to sue in these words:

"Be that as it may, it is first requisite to ascertain in this case whether the plaintiffs hold a rightful claim to sue. The suit is instituted under the plea that their grand-father, who is still in existence, is in a state of lunacy; that point cannot now be inquired into. Although clauses 2 and 3, section 5, Regulation X of 1793, and section 2, Regulation VI of 1822, point out that collectors are to make the first representation of lunacy to the Board of Revenue, &c., that is, when lunatics hold an entire estate, in cases of lunacy of sharers in a joint property they cannot interfere. If the heirs of lunatics, who are sharers in joint property, mean to deal honestly, they should fairly represent the case of lunacy to the judge, not as a matter of mere notification, to be taken advantage of at some future time, but at the same time pray for investigation into the truth of the matter, under the Regulation above cited, and to be legally permitted to take the management of the property, &c. All assumption of management of the property, even by heirs, without the authority of the Government or the court, cannot but be deemed illegal."

The issues proposed by the parties are:

Issue on behalf of the Appellants.

Whether the additional judge has assigned a legal and sufficient reason for ruling that the plaintiffs are not competent to sue?