

*Before Sir W. Comer Petheram, Knight, Chief Justice, and
Mr. Justice Beverley.*

1894.
Feb. 15.

RATTAN KOER (PETITIONER) v. CHOTAY NARAIN
SINGH (OPPOSITE PARTY).*

*Practice—Evidence—Exhibits marked for identification afterwards marked
as “admitted on both sides” by Bench Clerk—Certificate by Court
as to the endorsement on exhibits—Record of appeal to the Privy
Council.*

In an application for a certificate that a limited meaning should be placed upon endorsements made by the Bench Clerk on certain exhibits printed in the paper-book in the suit, which had gone on appeal to the Privy Council, the Court considering the reasons for the application to have arisen from the nature of the case and from the contentions on either side, left the matter to be dealt with by their Lordships of the Judicial Committee, at the same time directing its order to be forwarded to the Privy Council.

THIS was an application made to amend or, to certify to the circumstances of endorsements made by the Bench Clerk of the 1st Division Bench on two documents in the record of this case, marked as exhibits 1 and 2.

It appeared from the petition verified by affidavits filed on this application that the petitioner, Rajkumari Rattan Koer, on the 7th April 1890, applied to the District Judge of Gaya under Act V of 1881 for letters of administration under the last will and testament of the late Rajah Run Bahadoor Singh of Tekari, and that one Chotay Narain Singh entered caveats and filed his objections thereto, contending that the will was a forgery, and amongst other documents filed in Court in support of his case two letters dated the 10th Bhadro 1292 and the 28th Assin 1293 F.S. respectively, purporting to be letters under the signature of the late Rajah.

The letter of the 28th Assin 1293 was put to one Deb Narayan, a witness on the side of the petitioner, on the 1st August 1890, during his cross-examination, whereupon the said Deb Narayan stated that the seal on the document was not the seal of the late

* Application in appeal from original decree No. 57 of 1891.

Rajah; this letter was marked No. 1 for identification by the District Judge. The letter of the 10th Bhadro being marked No. 2, for identification on the 2nd August 1890, the District Judge recorded on his order sheet, with reference to one of these letters, the following order:—

“The Court thought it right in the interest of both parties to remark, with reference to the seals on exhibit F and on the paper marked No. 1 for identification, that it was satisfied after examination that they were not both impressions of the same seal (whether the one, or the other, or both, or neither, were genuine). Both the seals, *i.e.*, the impressions, had been shown to the first witness for identification, and so they had come before the notice of the Court. As the remark was made, it has been placed on record.”

After this order no questions were put to the petitioner's witnesses by the caveator's legal advisers with reference to these letters, nor was their genuineness proved in any way: whilst on the other hand the two letters were put to one Sujeewan Lall a witness for the petitioner, by her pleader, and such witness deposed that the seal and signature on the letters marked 1 and 2 for identification were not those of the said Rajah.

On appeal to the High Court from the order passed by the District Judge, the petitioner's Counsel in the course of his argument referred to the said two letters as indicating an attempt on the part of the respondent's advisers to meet the case by forgery, and observed that as soon as the forged character of these letters had become apparent, and the order of the 2nd August 1890 had been recorded, the said respondent had abandoned all idea of relying on these letters and took no steps to prove them; and that thereupon Counsel for the respondent objected to their being read or referred to, on the ground that, though printed in the paper book, they were marked for identification only, and had not been admitted in evidence, and thereupon Counsel for the petitioner stated that though he in no wise admitted their genuineness, he had no objection to their being admitted in evidence and marked as exhibits. A decree was made on the 18th December 1891 by the High Court in favour of the respondent, and the appellant thereupon obtained leave to file an appeal to Her Majesty in Council. The petitioner's legal advisers were unaware of the endorsements,

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“Admitted on both sides.—H. A. T., Clerk, 1st Bench,” placed upon these two letters by the Bench Clerk during the hearing of the said appeal and subsequently to the above statement, and the same did not come to their knowledge until December 1893, when the draft case drawn by Counsel in England on behalf of the petitioner was received by the petitioner’s pleader at Gaya, when the said pleader at once came down to Calcutta to enquire into the matter.

On these facts Rajkumari Rattan Koer, considering that the endorsements as made might be taken to be an admission of the genuineness of the two letters, applied to the Division Bench before which the appeal had been heard for a certificate declaring that the genuineness of the two letters had not been admitted by her, or for amendment of the endorsements.

In reply to the above facts no counter-affidavit was filed.

The *Advocate-General* (Sir *Charles Paul*), with him Mr. *Woodroffe*, for the applicant, contended that as the endorsements had been made inadvertently, an amendment of the endorsements should be made, or a certificate given by the Court, as was done in *Doe d. Seebkristo v. East India Company* (1), and referred to *Amir Ali v. Indurjeet Singh* (2).

Sir *Griffith Evans* (with him Mr. *Jackson*) for the respondents contended that this was an unprecedented application, and that the Code did not allow of it being made; that the Court was *functus officio*, the appeal to the Privy Council having been allowed and the transcript having been sent to England; that a list of the documents to be used in the appeal had been sent to the applicants on the 15th June and 15th July 1892, and the transcript sent to England in March 1893. The matter should therefore have been brought to the notice of the Court before. The case of *Amir Ali v. Indurjit Singh* was no authority for this application, as there the certificate was sent with the transcript, the Court having had an appeal forced upon it in violation of the agreement to compromise.

The order of the Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows:—

This is an application on behalf of the respondent in an appeal for a certificate by this Court that the note of the Bench

(1) 6 Moo. I. A., 207.

(2) 9 B. L. R., 400: 14 Moo. I. A., 203.

Clerk which is printed in the paper book has a particular limited meaning only. Neither of us has any note of the matter to which the application referred, and we have not, nor has the Bench Clerk, any recollection of the circumstances under which the note came to be made by the Bench Clerk, but the note as printed is a copy of the note which appears in his book. The reasons given by the respondents why the note should bear the limited meaning they seek to place upon it are reasons arising from the nature of the case and of the contentions on either side, and when the whole matter is before their Lordships of the Judicial Committee they will be in a position to deal with them. Let these remarks be sent with the case to the Privy Council.

T. A. R.

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ORIGINAL CIVIL.

Before Mr. Justice Sale.

MINATOONNESSA BIBEE AND OTHERS v. KHATOONNESSA
BIBEE AND OTHERS.*

1894
Jan. 18.

Sale by Receiver—Obstruction of Possession—Purchaser, rights of—Code of Civil Procedure (Act XIV of 1882), chapter XIX and s. 647—Practice—Costs.

Practice of the Original Side of the Court followed in recognizing the right of a purchaser at a Receiver's sale to obtain the assistance of the Court in obtaining possession under the provisions of the Code relating to sales in a suit.

UNDER an order of the High Court, dated the 29th November 1892, made with the consent of all parties, it was amongst other things ordered that the Receiver of the High Court should be at liberty to cancel a certain lease granted by him, and to re-enter and take possession of the premises comprised in the said lease, and to sell either by public auction or private contract the entire 16-annas share of the properties in his hands belonging to the estate of Shamsoddeen Nuskar, deceased, or a sufficient part thereof, or at his discretion to grant a perpetual lease of such properties for the purpose of raising Rs. 55,000 for the payment of the liabilities

* Original Civil Suit No. 247 of 1876.