

ORIGINAL CIVIL.

Before Mr. Justice Pontifex.

1877
Jan'y. 11.

NIRMUL CHANDRA MOOKERJEE AND ANOTHER v. DOYAL NATH
BHUTTACHARJEE AND OTHERS.

*Suit in formâ pauperis—Act VIII of 1859, ss. 367—371—Continuation in
formâ pauperis of suit commenced in ordinary form.*

The power of the Court to allow a suit to be instituted in *formâ pauperis* includes the power to allow a suit to be continued as a pauper suit after it has been commenced in the ordinary form.

THIS suit was filed in the ordinary way under Act VIII of 1859, and the defendants appeared and filed their written statement, and the suit was ready for hearing; but, in consequence of the illness of one of the defendants, the hearing was postponed on three occasions. After the postponement on the last occasion, the plaintiffs presented a petition, praying to be allowed to continue the suit *in formâ pauperis*, stating that they had no means to carry it on by paying the Court fees. After a preliminary enquiry as to the plaintiffs' means, the Court ordered that notices should be issued to the defendants, calling on them to show cause why the plaintiffs should not be allowed to continue the suit *in formâ pauperis*. On the matter coming on for hearing—

Mr. *Bonnerjee*, for the defendants, objected, that the Court had no power to grant the application,—Act VIII of 1859 not providing for a case like the present. Under that Act a person is only entitled to commence a suit *in formâ pauperis*, but not to continue as a pauper suit, a suit commenced in the ordinary way. Act VIII of 1859, too, enacts, that, the petition to be allowed to sue as a pauper is to be taken as the plaint in the suit but the plaintiffs had had the advantage of seeing the defendants' written statement before filing that petition. There cannot be two plaints in the suit. The proper course is to allow the plaintiffs to withdraw their suit with liberty to bring a fresh one as paupers.

Mr. *D. Orr*, for the plaintiffs, was not called on.

PONTIFFE, J.—I think the Court has power to grant this application; if the plaintiffs are actually paupers. The power to allow a case to be continued as a pauper suit is, I think, included in the power given to the Court to allow a suit in *forma pauperis* to be instituted.

Attorney for the plaintiffs: Mr. *Pearson*.

Attorney for the defendants: Baboo *P. C. Mookerjee*.

1877

NIRMUL
CHANDRA
MOOKERJEE
v.
DOYAL NATH
BHUTTACHAR-
JEE.

PRIVY COUNCIL.

[On appeal from the High Court of Judicature at Fort William in Bengal.]

IN THE MATTER OF THE PETITION OF HADJEE ABDOOLLAH.

REASUT HOSSEIN *v.* HADJEE ABDOOLLAH AND ANOTHER.

P. C.*
1876
May 24.

Registration Act (VIII of 1871), s. 76—District Court—Order refusing Registration—Proceeding to compel Registration—Review—Act XXIII of 1861, s. 38—Act VIII of 1859, s. 376.

The Registration Act of 1871 gives power to the Government to appoint Districts and Sub-Districts for the purposes of registration; but the "District Courts" mentioned in the Act (except where the High Court when exercising its local jurisdiction is said to be a District Court within the meaning of the Act) must, in the case of a regulation province, be taken to import the ordinary Zilla Courts.

Semble.—The final words of the 76th section of the Registration Act, which declare that "no appeal lies from any order made under this section," apply to an order rejecting, as well as to an order admitting, an application for registration.

Quere.—Whether, after an order has been made under s. 76 of the Act rejecting an application for registration, it is open to the parties benefited by a deed to propound it in, and to obtain its registration by means of, a regular suit? *Futteh Chund Sahoo v. Leelumber Singh Doss* (1) referred to and distinguished.

* *Present*:—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, AND SIR R. P. COLLIER.