

tion. The defendant was a Captain in the Bombay Staff Corps, and for some years had held, and still held, an appointment in the Revenue Survey in Upper Sind. In the month of September last he had to come to Bombay for a few days, and during his stay had been served with the writ.

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 WALLACE.

*Marriott*, for the plaintiff, contended the objection was too late, the defendant's solicitor having filed a warrant to defend, signed by him. After that it was too late for the defendant to object to the jurisdiction: if he meant to do so, he should have appeared under protest. The defendant was described in the plaint as residing at Malabar Hill, Bombay, and he was so residing when the plaint was filed.

*Dunbar*, in reply:—The warrant to defend was necessary to authorise counsel and attorney to appear for the defendant; unless the warrant had been filed they could not appear to take the objection.

A witness was then called, who proved that defendant held an appointment in Sind, and resided at Sakkar, and had been in Bombay for about ten days only, during which time he resided in a friend's house.

PER CURIAM:—The Court has no jurisdiction; a temporary residence of a few days is not a "dwelling" within the meaning of cl. 12 of the Letters Patent. The Court having no jurisdiction, I consider that, having regard to Act VIII. of 1859, the proper course is to return the plaint to the plaintiff. The plaint would not have been received if the facts had been fully stated to the Judge, to whom it was presented: the plaintiff must, therefore, pay the costs incurred by the defendant.

*Cause struck out, and plaint returned.*

~~and~~

In the goods of BA'LKRISHNA GANPATJI, late of Máhim, in the Island of Bombay, Hindú inhabitant.

1864.  
 Jan. 15.

*Will of Hindú—Inspection.*

The Court will, on the application of one who is next of kin of a deceased Hindú, order a person in possession of an alleged Will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected, and a copy thereof taken by such applicant.

*Austey*, on the 13th of November 1863, on behalf of one Shrídhár Lád kobá, moved for and obtained an order for a citation, calling on one Rámchandra Kerobá to appear before

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the court, and bring in, and deposit in the registry of the court, the Will of the abovenamed Bálkrishṇa Gaṇpatji, otherwise to show cause why letters of administration to his effects should not be granted to the Administrator General.

The application was supported by the affidavit of the applicant, Shrídhār Ládḱobá, by which it appeared that the said Bálkrishṇa Gaṇpatji died at Máhim in the year 1833, possessed of immoveable and moveable property within the jurisdiction of the court, and leaving surviving as sole next of kin two widows, Rádhábái and Anpurnábái, a daughter, Krishṇábái, by his wife, Rádhábái, and three second cousins, Bháskar Ládḱobá, Gangádhār Ládḱobá, and the applicant, Shrídhār Ládḱobá. Rádhábái died in 1837; Anpurnábái in 1848; Krishṇábái in 1857, without issue; Bháskar Ládḱobá in 1858, leaving issue; and Gangádhār Ládḱobá in 1854, also leaving issue; thus the applicant became, on the death of Krishṇábái, the next of kin of Bálkrishṇa Gaṇpatji, then surviving. It further appeared that Bálkrishṇa Gaṇpatji had left certain testamentary papers relating to his estate, and that they were now in the hands of the said Rámchandra Kerobá, the treasurer to the Khatri caste, to which the deceased belonged, and to whom the applicant had made several ineffectual applications either to allow him inspection of the said testamentary papers, or that he, Rámchandra Kerobá, should prove the Will or apply for letters of administration. It was also alleged that a portion of the estate had been misapplied or misappropriated, and no proper accounts of it kept, and that the Administrator General, acting on the representations of the applicant, had also required Rámchandra Kerobá to produce any testamentary papers of the deceased, and intimated that in default he would consider that the deceased had died intestate, and would take proceedings to obtain letters of administration to his estate.

*Bayley*, on the 15th of January 1864, on behalf of Rámchandra Kerobá, showed cause against the issue of the citation, and read affidavits setting forth copies of the testamentary papers, and deposing to their due execution; most of the facts deposed to by the applicant were admitted, but misappropriation or misapplication of the estate, or that no accounts had been kept, were denied, and it was alleged that, except as to one house (portion of the estate), the estate and effects were, by virtue of the testamentary papers, held in trust and

managed for the benefit of the caste. He contended (1) that no danger to the estate was shown to exist, so as to call for the interposition of the Administrator General. - On this point he cited *In the goods of Girdar Dás Vallaba Dás (a)*. (2) That the ecclesiastical jurisdiction of the court over the wills and estates of deceased Hindús existed only in cases where it was invoked or submitted to by them, and that the court had no power either to compel a person named executor in the Will of a Hindú to bring in and prove that Will, or, as in the present case, to call on a person in possession of a testamentary paper to produce the same in court for the purpose of allowing inspection. On this point he cited *In the matter of the pretended Will of Tiruvalúr Kirustnappa Mudali deceased (b)*, and relied on the language used by the Judges at Madras in delivering judgment in that case.

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*Anstey*, in reply, distinguished the lastmentioned case from the present, and contended that it did not go the length required for the case of the parties resisting the present application.

SAUSSE, C. J. :—This is a case where the action of the court is invoked by a Hindú. He is admitted to be the nearest of kin now surviving of the deceased Bálkrishna Ganpatji. If no Will were in his way, he would be entitled to the property of the deceased, and he has, therefore, the strongest interest in the question of the validity and effect of that Will. He alleges that Rámchandra Kerobá is in possession of testamentary papers of the deceased Bálkrishna Ganpatji, and claims a right to inspect those papers in order to judge whether his rights as next of kin are taken away. That inspection has been refused. He has been placed at arm's length by Rámchandra Kerobá and those with whom Rámchandra has been acting, and he, therefore, comes to the court to ask its aid in causing such inspection to be allowed him. If the court were to refuse his application, it would practically say that the applicant must proceed by a suit in the nature of an ejectment against the parties in possession of the deceased's estate, and by that means put them on their defence, which should apparently be grounded on the existence of this Will. At the settlement of issues in such a suit the Will should be produced, and inspection as a matter of course would be allowed. Are we then to put the applicant to the expense of bringing such a suit

(a) 1 Mad. H. C. Rep. 234.

(b) *Ibid.* 59.

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in order to obtain such inspection? We do not think we ought to do so. This court has been in the habit of exercising testamentary and intestate jurisdiction over the wills and estates of deceased Hindús and Muhammadans, and it is difficult to define the exact limits of that jurisdiction. We will order that Rámchandra Kerobá do deposit the testamentary documents, admitted to be in his possession, in the hands of the officer of the court, where the applicant is to have an opportunity of inspecting and taking a copy of them. After doing so he may take such further proceedings as he may be advised: we do not say anything about proving the Will or testamentary papers, or about their future custody. With this decision no case that has been cited conflicts. The case of the Will of *Tiruválur Kirustnappa Mudali*, cited from the Madras Reports, decides that that court will not compel a Hindú to bring in and prove an alleged Will. Our order only goes the length of ordering an alleged Will to be deposited in court to be inspected by a person who is next of kin of the alleged testator, and who has been refused inspection by the parties in possession of it.

ARNOULD, J., concurred.

*Anstey* applied for costs.

PER CURIAM:—Having regard to the laches and delay of the party applying, the proper order to make will be that each party shall bear his own costs.

#### LATE SUPREME COURT, EQUITY SIDE.

1861.  
 March 28.

VINA'YAK ANANDRA'V, LAKSHUMAN ANANDRA'V, MA'DHAVRA'V ANANDRA'V, and VENKOBÁ ANANDRA'V ..... *Plaintiffs.*

LAKSHMIBA'I, widow and executrix of the last Will and Testament of BHAGVANTRA'V VENKA'JI, deceased, NA'NIBA'I, SUNDRA'BA'I, and SOKA'BA'I ..... *Defendants.*

*Hindu Law—Succession—Widow's Right to succeed to Son's Property—Sisters—Moveable and Immoveable Property—Parents—Brethren—Marriage of Sisters not Cause of Exclusion from Inheritance.*

A Hindú, an inhabitant of Bombay, entitled to separately acquired moveable and immoveable property, died leaving a widow, an infant son, three daughters, and a brother. The son died in infancy, and without having married.