

1887
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REVI-
SIONAL
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12 B. 161.

It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he has cognizance, to refer the complainant to a police officer. He is bound, when the circumstances giving him jurisdiction exist, to receive the complaint, and deal with it according to law. A different course would foster abuses, and defeat the purpose of the law, which is to give to persons, who have been injured, an access to justice independent of the police.

The Magistrate, therefore, will take the examination of the complainant, and proceed thereon according to law.

Proceedings set aside.

12 B. 164.

[164] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice and
Mr. Justice Nanabhai Haridas.*

HORMUSJI NAVROJI (*Original Applicant*), *Appellant v. BAI DEANBAIJI, JAMSETJI DOSABHAI AND OTHERS (Original Caveators), Respondents.** [17th August, 1887.]

Will—Letters of administration—Citation—Defective citation—Revocation of letters of administration—Probate, nature and effect of—Act V of 1881, ss. 16 and 50.

S., a Parsi, died, leaving a will, whereby he directed that after his death his estate should be managed by his widow Jivibai, and after her death by his sister-in-law Hirabai, and after Hirabai's death by the appellant, his adopted son Hormusji. On Jivibai's death the testator's brother Dosabhai applied for letters of administration, and issued a citation to the appellant Hormusji. Hirabai entered a caveat. No further proceedings were taken, and the matter remained pending. On Hirabai's death, Dosabhai applied for a fresh citation to the appellant Hormusji, but the District Judge held it to be unnecessary, and declined to issue it. Letters of administration were then granted to Dosabhai. The appellant Hormusji subsequently applied for probate of the testator's will. The respondents filed caveats, alleging that the will was void, on the ground of certain bequests contained in it. They further contended that as the appellant had been cited to appear when application was made by Dosabhai for letters of administration, he could not now apply to have letters of administration cancelled. *Held*, that the letters of administration granted to Dosabhai should be revoked, and that probate should be granted to the appellant. The only citation which had been issued to the appellant was in 1882, when Dosabhai commenced his proceedings to obtain letters of administration. At that time Hirabai, who was the executrix named in the will (the appellant Hormusji being only named as executor on her death), was still alive, and the citation did not, therefore, call on him to accept or renounce executorship. On Hirabai's death, however, which took place before the actual grant of administration was made to Dosabhai, such a citation was necessary under s. 16 of Act V of 1881, before the grant could be legally made. In default of such a citation the proceedings were defective in substance—a circumstance which constituted good cause for the revocation of the letters of administration, under s. 50 of Act V of 1881.

Held, also, that the District Judge was wrong in refusing probate of the will, on the ground that the bequests contained in it were illegal and void. Probate is only conclusive as to the appointment of executors and the validity and contents of the will; and in an application for probate it is not the province of the Court to go into the question of title with reference to the property of which the will purports to dispose, or the validity of such disposition.

* Appeal No. 52 of 1885.

[Appr., 19 A. 458 (462); 28 B. 644=6 Bom. L. R. 966; 34 B. 589=12 Bom. L. R. 694=7 Ind. Cas. 944; R., 18 B. 749; 26 B. 792; 15 C.P.L.R. 101; 10 Ind. Cas. 130=20 P.R. 1912=141 P.L.R. 1911=9 N.L.R. 152.]

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APPEL-
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12 B. 166.

THIS was an appeal against an order of E. T. Candy, District Judge of Surat, in application No. 11 of 1884, under Act X of 1865.

[165] By his will, dated the 10th September, 1877, one Shapurji, a Parsi, left the management of his estate to his wife, and after her death certain others of his relatives.

The material portion of the will, as stated by the District Judge in his judgment, was to the following effect:—"After the testator's death, his wife Jivibai should manage his estate, and from its revenue she should, according to testator's religion, defray the entire expenditure incurred on account of the anniversaries of the deceased parents of the testator and Jivibai and of the *dosla* and *gambhar* of the dead. During her life, Jivibai was to be the sole owner of the estate; on her death, Hirabai, wife of testator's brother Navroji, was to manage the estate and defray Jivibai's funeral expenses, as mentioned above, together with all the expenses on account of the anniversaries, *doslas*, &c. On Hirabai's death, Hormusji, son of testator's brother and adopted son of testator, was to manage the entire estate and defray the above expenses. On his death, his wife Dosibai and his sons Sorabji and Kharsedji were to be the managers, as above described, and defray all the said expenses." On Jivibai's death, in 1882, Dosabhai, the testator's brother, applied for letters of administration, and the appellant Hormusji, the nephew and adopted son of the testator, was cited, but he failed to appear. Hirabai, however, who was then alive, entered a caveat, and the matter remained pending till the death of Hirabai, which took place in February, 1884.

On the death of Hirabai, Dosabhai applied to the District Judge for a fresh citation to the appellant Hormusji, which the Judge thought was unnecessary, and he then granted letters of administration to Dosabhai.

The appellant Hormusji having now applied for probate of the will, the respondents Dhanbaiji and Jamsetji, who were the children of another brother of the testator and his brother Dosabhai, filed caveats, impeaching the will as void by reason of certain provisions therein. The caveators contended (*inter alia*) that the letters of administration which had already been granted to Dosabhai should be cancelled before probate could be granted to Hormusji, and Dosabhai further contended that the appellant's [166] application for probate could not now be heard, as he had already been twice cited, and had omitted then to apply for probate. The District Judge held the will void, and refused to grant probate.

Hormusji thereupon appealed to the High Court.

Gokuldas Kahandas, for the appellant, relied on *Behary Lall Sandyal v. Juggo Mohun Gossain* (1), and contended that the Judge was wrong in entering into the question of the validity of the will, which had been proved.

Jardine, (*Manekshah Jehangirshah* and *Motilal Mugutlal Munshi*, with him), for the respondents:—The appellant's omission to appear when he was cited on previous occasions disentitles him now to probate. The present application of the appellant is rather one for the revocation of the letters of administration than for probate. A person who has been cited, and fails to appear at the time probate is granted, cannot afterwards get it cancelled.—*In re Pitamber Girdhar* (2). See also ss. 16 and 50 of Act V of 1881.

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JUDGMENT.

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SARGENT, C.J.—The question in this case arises upon a refusal of the District Judge to grant probate of the will of one Shapurji Nasarwanji to Hormusji Navroji, on the ground that the bequests contained in it are illegal and void. The probate is only conclusive as to the appointment of executors and the validity and the contents of the will—Williams on Executors, p. 452 (4th ed.); and on the application for probate it is not the province of the Court to go into the question of title, with reference to the property of which the will purports to dispose, or the validity of such disposition—*Behary Lall Sandyal v. Juggo Mohun Gossain* (1).

But it has been contended that as Hormusji was cited on Dosabhai's second application for letters of administration in 1882, the grant of administration to him cannot now be revoked. It appears, however, that when those proceedings were commenced, and when Hormusji was cited, Hirabai, who was the executrix named in the will (Hormusji being only named in the will as executor on her death), was still alive, and the citation did not, therefore, call on him to accept or renounce executorship. [167] On Hirabai's death, however, which took place before the actual grant of administration to Dosabai, such a citation was imperatively required by s. 16 of Act V of 1881 before the grant could be legally made, and, therefore, in default of such citation, the proceedings were defective in substance—a circumstance which constitutes good cause for the revocation of the letters of administration, as provided by s. 50 of the above Act. We must, therefore, discharge the order, and direct that the letters of administration granted to Dosabhai be revoked, and probate be granted to Hormusji, in accordance with his application.

The applicant to have his costs here and in the Court below.

12 B. 167.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

In Re HOWARD.* [25th August, 1887.]

Defamation—Republication of defamatory matter already published—Indian Penal Code (Act XLV of 1860), s. 499—Dismissal of complaint—Criminal Procedure Code (Act X of 1882), s. 203.

A complaint was filed, under s. 499 of the Indian Penal Code, against the proprietors, editor, and printer of a newspaper for publishing matter alleged to be defamatory. The Magistrate, before whom the complaint was lodged, found that the publication complained of was a mere reproduction or republication of what had been previously printed and published in another newspaper. He was, therefore, of opinion that, unless and until criminal proceedings had been taken in respect of the earlier publication, a charge of defamation could not properly be brought with regard to the later publication. He, therefore, dismissed the complaint, under s. 203 of the Code of Criminal Procedure (Act X of 1882).

Held, that the order of dismissal was improper. The Indian Penal Code (s. 499) makes no exception in favour of a second or third publication as compared with a first. If the complaint is properly laid in respect of a publication which

* Criminal Revision ; Application No. 172 of 1887.

(1) 4 C. 1.