1896.
September 17.

In the Matter of the Estate of the late SINNE TAMBY POOTHEPILLAI.

D. C., Jaffna (Testamentary), 702.

Probate by foreign Court—How far it is binding on Courts in Ceylon—Civil Procedure Code, s. 533—Objections to application for probate—Framing of issues.

Although a District Court is not bound, as a matter of course, to follow the decision of a foreign Court as to grant of probate of the will of a deceased person, yet it will and ought to do so, unless good reason is shown to the contrary. Where probate has been granted by the foreign Court, it is bound to presume, in the absence of any evidence to the contrary, that the foreign Court satisfied itself that the will was the will of the testator, and had been duly executed.

In the case of an application for probate, before the Court frames issues as provided for in section 533 of the Civil Procedure Code, it must be satisfied that a *primâ facie* case against granting the application has been made out. It is not sufficient for the Court to be satisfied that somebody objects, or for somebody to get up and say that the will is a forgery: something more is necessary from which the Court can infer that a substantial case against the application has been made out.

THE facts of the case appear in the judgment of BONSER, C.J.

Ramanathan, S.-G., with *Sampayo* and *Jayawardene*, for appellant.

Wendt, for respondent.

17th September, 1896. BONSER, C.J.—

This is an appeal against an order of the District Judge of Jaffna, who has rejected an application, which was made by a widow, for letters of administration to the estate of her late husband, and granted the counter application of the son and brother of the deceased that probate should be granted to them, the first and second respondents, as executors of his last will. It appears that the deceased had for many years past lived in Madras, where he carried on the business of a broker. The petitioner was his second wife, and lived separate from him at Jaffna, where the deceased had formerly lived himself, and had a considerable amount of property. He died on the 24th September, 1895, at Madras. The widow at once took steps to obtain administration of her husband's estate as upon an intestacy. On the 28th of September last she presented a petition to the District Court of Jaffna, as the Court having jurisdiction, praying that letters may be granted to her. On the 7th of January, 1896, an order *nisi* was made and citation issued to the son and the other next of kin. Upon this citation the son and the two brothers of the deceased appeared and filed their ground of objection to the order *nisi* being

made absolute, the grounds being that the deceased had left a will, and that probate of that will had been duly granted to them by the High Court of Madras. With their ground of objections they combined an application for grant of probate to themselves as executors of the will. This was on the 6th of March, 1896. The counsel for the petitioner was present in Court. Thereupon the District Judge, instead of making an order *nisi* for grant of probate and directing it to be served on the petitioner, which he would have done had she not been represented in Court, dispensed with that formality and set the case down for hearing on the 10th April. But before that day arrived application was made by both parties for a postponement, on the ground that they were negotiating for a settlement. Ultimately the parties being unable to agree to a settlement, the case came on for hearing on the 3rd August. On that day the petitioner's counsel submitted that the issues in the case were :—

(1) Whether the domicile of the deceased S. Poothepillai was Jaffna or Madras.

(2) That if Madras be proved to be the domicile of the deceased, whether the will has been duly proved there.

After some argument the District Judge made his order. He began by stating that it was not necessary to enter into the question of domicile. He referred to sub-section (*c*) of section 539 of the Code, which provides that, where a will has been duly proved out of the Island, probate may be granted on a proper exemplification of the foreign probate. He said that that condition had been satisfied, and that he therefore declined to embark upon any investigation as to domicile, or with regard to the genuineness or otherwise of the will itself. He stated that the petitioner alleged that the will was a forgery, but held that the Court was not competent to review the authenticity of the will or the wisdom of the High Court of Madras in granting probate. Therefore he ordered that the application of the petitioner be rejected, and that probate be granted to the executors named in the will. In my opinion that was a right order to make under the circumstances, although I am unable to accede entirely to the view that the District Judge takes of the authority of a foreign Court. In my opinion this Court is not bound, as a matter of course, to follow the decision of a foreign Court as to probate ; but though it is not bound to do so, yet it will, and ought to do so, unless good reason is shown to the contrary. It is bound to presume, in the absence of any evidence to the contrary, that the foreign Court did satisfy itself that the will was the will of the testator, and was duly executed. Section 533 of our Code provides that " if on the

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"day to which it may have been duly adjourned, the respondent "or any person upon whom the order *nisi* has been directed to be "served, or any person then appearing to be interested in the "administration of the deceased's property, satisfies the Court that "there are grounds of objection to the application, such as ought "to be tried on *vivâ voce* evidence, then the Court shall frame the "issues which appear to arise between the parties." * * * Now, that does not mean, in my opinion, that it is sufficient if the Court is satisfied that somebody objects. It means that the Court must be satisfied that there is a *primâ facie* case made against granting the application. It is not enough that somebody gets up and says that the will is a forgery; something more is necessary from which the Court can infer that a substantial case against the application has been made out. In the present case I am not satisfied that the petitioner ever intended to raise the question of forgery. Her counsel submitted two issues—one as to domicile, and one as to due proof of the will. I notice that it is recorded that counsel on the other side replied that the authenticity of the will was not disputed, and I do not find that counsel for the petitioner disputed that. The only reference to this question which it is now desired to raise is contained in the order of the Judge, in which it is stated parenthetically that the petitioner states the will to be a forgery. From that I would infer that it was not seriously intended to raise the question as to the genuineness of the will, and that it was only when the petitioner's advocate found himself in difficulties that he clung to this last straw in the hope of being able to delay the proceedings. In my opinion, as I said before, on the materials before the District Judge, he was quite right in the order he made. As he pointed out, this order will not affect the construction of the will or the rights of the parties, nor indeed would it prevent the widow from applying to the High Court of Madras to have the will proved in solemn form.

WITHERS, J.—

I agree in affirming the judgment. As at present advised I think the District Judge had jurisdiction to try and determine the question whether the will was not a genuine document, had that issue been properly raised and settled. This probate it is to be observed is in common form, and the administration is limited to the assets in the jurisdiction of the High Court of Madras. His finding the will a forgery would not of itself affect the Madras grant of probate. But in this case there was no objection of the kind open to him to consider. Mr. Solicitor suggested that the

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Judge ought to have decided the question of the genuineness of the will as an issue for him to try and determine. He wrote down, it was urged, only two issues, and omitted to introduce this third one. Supposing he had introduced this issue as suggested, the Judge would have had no power to determine it because that issue had no proper foundation. The Court has not been satisfied by evidence that there was a *primâ facie* case for suspicion against the genuineness of the document. Without such evidence the Court could not frame the issue, much more determine it.

There is nothing to prevent the petitioner, if so advised, from taking steps to apply to the Madras Court to have the will proved in solemn form.