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WILLIAM RENNIE, *In the goods of.*

FLETCHER J.

receipts and discharges in the name of or on behalf of the donor of the power. He would give receipts as the constituted legal personal representative in British India. It seems to me that the words in this power are not sufficient to make a grant of Letters of Administration, and I must therefore refuse the application.

Application refused.

Attorneys for the petitioner: *Orr, Dignam & Co.*

J. C.

INSOLVENCY JURISDICTION.

Before Mr. Justice Fletcher.

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May 30.

In re JEWANDAS JHAWAR*

Insolvency—Adjudication, effect of order of—Property situate at Delhi attached by order of District Court of Delhi—Title of Official Assignee—Presidency Towns Insolvency Act (III of 1909), ss. 17, 126—Auxiliary aid—Provincial Insolvency Act (III of 1907), s. 50.

Under section 17 of the Presidency Towns Insolvency Act, on the making of an order of adjudication by this Court, the property of the insolvent situate in every part of British India vests in the Official Assignee of Bengal.

Official Assignee, Bombay v. *Registrar, Small Cause Court, Amritsar* (1) followed.

Where prior to the order of adjudication by this Court, certain properties at Delhi belonging to the insolvent, were attached under decrees of the District Court of Delhi, and the subsequent application of the Official Assignee of Bengal for realisation of the insolvent's assets so attached was refused by the District Judge, and the properties were thereafter sold in execution, and the sale proceeds brought into the District Court:

An order was made under section 126 of the Presidency Towns Insolvency Act, requesting the District Judge of Delhi to act in aid under section 50 of the Provincial Insolvency Act.

*Insolvency Jurisdiction No. 13 of 1912.

(1) (1910) I. L. R. 37 Calc. 418; L. R. 37 I. A. 86.

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Jewandas Jhawar was a merchant carrying on business in piece-goods in Calcutta and Delhi under the name of Assaram Jhawar. Certain suits were instituted against him in the Court of the District Judge of Delhi in respect of his Delhi business, amongst others the suit of *Nidharmull Naidarmul* v. *Assaram Jhawar*. Decrees were made in these suits, and in execution of the decrees, certain properties belonging to Jewandas Jhawar at Delhi, as well as his books of account of his Delhi business, were attached.

Subsequent to the attachment, on the 19th January 1912, Jewandas Jhawar was adjudicated an insolvent by order of the Insolvent Court in Calcutta, on the petition of certain Calcutta creditors, and on the 12th February the Official Assignee of Bengal applied to the District Judge of Delhi in the suit of *Nidharmull Naidarmull* v. *Assaram Jhawar* for an order that the attachment directed in that suit be withdrawn, and that the properties which had been so attached should be made over to himself.

On the 15th April 1912, this application was rejected, on the grounds that section 17 of the Presidency Towns Insolvency Act of 1909 did not apply to mofussil Courts, and that inasmuch as the properties had been attached previous to the order of adjudication, they could not vest in the Official Assignee.

On the 17th April, all the properties at Delhi which had been attached in the several suits were sold by order of the District Judge, and the sale-proceeds as well as the books of account were brought into Court.

Thereupon, the Official Assignee of Bengal applied to the Insolvent Court in Calcutta under section 126 of the Presidency Towns Insolvency Act of 1909 "to request the District Judge's Court of Delhi to act under section 50 of the Provincial Insolvency Act of

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1907, and to make over the said sale-proceeds as well as the said books of account of the insolvent's Delhi business to this Court, such assets to be held and applied by this court in such manner as it may think fit."

Mr. S. C. Mookerjee, for the petitioner. On the order of adjudication being made by this Court, all the property of the insolvent, wherever situate, including his assets at Delhi, vested in the Official Assignee of Bengal under section 17 of the Presidency Towns Insolvency Act. The District Judge of Delhi was in error in refusing the petitioner's application and in continuing with the proceedings in execution. The assets now in the custody of the Delhi Court should be made over to, and be held by, the Official Assignee for the benefit of the general body of the creditors of the insolvent. This Court has ample jurisdiction under section 126 of the Presidency Towns Insolvency Act of 1909 to make the order prayed for.

FLETCHER J. This is an application under section 126 of the Presidency Towns Insolvency Act of 1909 asking for an order that under section 126 and section 50 of the Provincial Insolvency Act of 1907 the District Court of Delhi should be asked to act as provided by those sections and to make over the sale proceeds of certain properties attached at Delhi to the Official Assignee. It appears that the Additional District Judge is of opinion that section 17 of the Presidency Towns Insolvency Act does not apply to the mofussil. In my opinion the Additional District Judge is clearly in error in that opinion. The Presidency Towns Insolvency Act is an Act of the Legislative Council of the Governor-General, and purports to vest the property of the insolvent wherever situate in the

Official Assignee. Clearly, therefore, section 17 vests the property of the insolvent in any part of British India in the Official Assignee. The wording is substantially the same as that of the Imperial Statute which was repealed by the present Act. The matter is covered by authority; for the Privy Council in the case of *Official Assignee, Bombay v. Registrar, Small Cause Court, Amritsar* (1) held that the effect of that Act was to vest the property in the Official Assignee notwithstanding the local legislation of the Punjab Council. It is clear that the assets in the Delhi Court belong to the Official Assignee. Why the Additional District Judge refused to follow the clear words of section 17, I do not understand. Perhaps if he is asked to act in aid under section 50 of the Provincial Insolvency Act and section 126 of the Presidency Towns Insolvency Act, he will see his way to make over the assets to the Official Assignee, who alone can grant a discharge therefor. The application is allowed, and an order to act in aid is made under section 126 of the Presidency Towns Insolvency Act, and section 50 of the Provincial Insolvency Act.

Application allowed.

Attorney for the petitioner: *S. C. Mukerjee.*

J. C.

(1) (1910) I. L. R. 37 Calc. 418; L. R. 37 I. A. 86.

APPELLATE CIVIL.

Before Justice Sir Cecil Brett and Mr. Justice N. R. Chatterjea.

SHASHI BHUSHAN LAHIRI

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May 17.

v.

RAJENDRA NATH JOARDAR.*

Hindu law—Stridhan—Inheritance—Half-sister's son of Hindu widow—Probate, application for—Daughter's son of the great-grandson of the great-great-grandfather of the testatrix' husband whether preferential heir to half-sister's son.

Under the Dayabhaga School of Hindu law a half-sister's son of a widow is heir to her *stridhan* property, in preference to the daughter's son of the great-grandson of the great-great-grandfather of her husband, and that therefore the latter has no *locus standi* to oppose an application for probate by the former, of a will alleged to have been executed by the said widow in regard to such property.

Dasharathi Kundu v *Bipin Behary Kundu* (1) and *Bholanath Roy* v. *Rakhal Dass Mukherji* (2) referred to.

Chatoo Kurmi v. *Rajaram Tewari* (3) distinguished.

APPEAL by the opposite party (defendant), Sashi Bhushan Lahiri.

This appeal arose out of an application for probate of a will of one Adya Sundari Debi, deceased. The application was made on behalf of three persons, viz., Rajendra Nath Joardar, Jogendra Nath Joardar and Charu Chunder Chowdhury, who, it was alleged, were appointed executors by implication, and to whom the testatrix bequeathed her properties. Charoo Chunder was related to her as her half-sister's son. One Shashi

* Appeal from original decree, No. 173 of 1909, against the decree of H. E. Ransom, District Judge of Nuddea, dated Feb. 6, 1909.

(1) (1904) I. L. R. 32 Calc. 261. (2) (1884) I. L. R. 11 Calc. 69.
(3) (1909) 11 C. L. J. 124.

Bhushan Lahiri, who was the daughter's son of the great-grandson of the great-great-grandfather of Adya Sundari's husband, citation having been issued upon him, appeared and put in a petition of objection stating that the will was a forgery, and that the estate did not belong to Adya Sundari but to her husband. The learned District Judge held that he was not entitled to oppose the grant of probate, and, after taking evidence of the execution of the will, granted probate to the applicants. Against this decision Shashi Bhushan Lahiri appealed to the High Court.

Mr. B. L. Lahiri (with him *Babu Norendra Kumar Bose*, *Babu Upendra Nath Bagchi* and *Babu Hira Lal Sanyal*), for the appellant. The Court below was wrong in holding that Shashi Bhushan had no *locus standi* to oppose the grant of probate. The property bequeathed belonged to the husband of the testatrix, but assuming that it was her *stridhan* property, yet the appellant, according to Hindu law, was the preferential heir to the half-sister's son, and as such he had a *locus standi* to oppose the application for probate. Rival wife's son is expressly mentioned as a son in the Dayabhaga (Chapter IV, section III, verse 32), and that if it had been meant to include the son of a sister of the half-blood in the expression "sister's son," it would have been so expressly stated. That being so, half-sister's son is not on the category of heirs, and therefore the appellant being the heir, could oppose the grant of probate. Moreover, citation was issued upon him; on that ground also he had a *locus standi*: *Chatoo Kurmi* v. *Rajaram Tewari*(1).

Babu Golap Chandra Sarkar (with him *Babu Sachindra Prosad Ghose*), for the respondents, was not called upon; but in the course of the argument of the learned counsel for the appellant, he referred to the

(1) (1909) 11 C. L. J. 124.

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cases of *Dasharathi Kundu* v. *Bipin Behari Kundu*(1) and *Bhola Nath Roy* v. *Rakhal Dass Mukherji* (2).

Cur adv. vult.

N. R. CHATTERJEA J. This appeal arises out of an application for probate of the will of one Adya Sundari Debi who bequeathed her properties to the three respondents who were her paternal relations and appointed them executors, one of them, Charu Chunder, being related to her as her half-sister's son. The appellant, Shashi Bhushan Lahiri, was the daughter's son of the great-grandson of the great-great-grandfather of Adya Sundari's husband, Ram Kanai Moitra. The appellant had applied for letters of administration to the estate left by Adya Sundari before the application for probate of her will was made by the respondents.

Therefore, in the proceedings on the application for probate citation was issued upon the appellant, and he put in a petition of objections contesting the genuineness and validity of the will, and also alleging that the estate belonged to Adya Sundari's husband which she had no power to dispose of by will. The learned District Judge held that he was not entitled to oppose the grant of probate, and, after taking formal evidence of the execution of the will, granted probate to the respondents. Shashi Bhushan has appealed to this Court.

Before Shashi Bhushan can contest the will, he must show that he has an interest in the estate of Adya Sundari. If the estate dealt with by the will belonged to her husband, the grant of probate of the will executed by her cannot affect the rights of the heir of her husband, and the Court of Probate of course has no power to go into the question whether the estate belonged to Adya Sundari or her husband.

(1) (1904) I. L. R. 32 Calc. 261. (2) (1884) I. L. R. 11 Calc. 69.

It has accordingly been contended on behalf of the appellant, Shashi Bhushan, in this appeal, *first*, that assuming that the estate belonged to Adya Sundari over which she had a disposing power, the respondent Charu Chunder, as the half-sister's son of the deceased, was not her heir in preference to him, and *secondly*, that citation having been issued upon him, the Court below is wrong in holding that he had no *locus standi* to oppose the grant of probate.

The question therefore arises whether Charu Chunder, as the half-sister's son of the testatrix, is the heir to the *stridhan* of Adya Sundari. If he is, then the appellant, Shashi Bhushan, has no *locus standi* to contest the will.

The parties are governed by the Dayabhaga School of Hindu Law. The Dayabhaga, in dealing with the succession to the separate property of a childless woman after enumerating certain heirs down to the husband, says as follows:—"On failure of heirs down to the husband, this rule is again provided which Vrihaspati thus delivers:—"The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the wife of an elder brother are pronounced similar to mothers; if they leave no issue of their bodies, nor son [of a rival wife], nor daughter's son, nor son of those persons, the sister's son and the rest shall take their property" (*see* Dayabhaga, Chapter IV, section III, verse 31).

The sister's son is expressly named as an heir in the above text of Vrihaspati, and the only question is whether a half-sister's son is included in the expression "sister's son." This question was raised in the case of *Dasharathi Kundu* v. *Bipin Behari Kundu* (1), and it was held in that case that "sister's son" includes a half-sister's son, and that under the

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Dayabhaga a step-sister's son is entitled to succeed to a woman's *stridhan* in preference to her husband's elder brother. That is a direct authority against the appellant's contention. In that case the learned Judges, with reference to the translation of the expression "sister's son" in Vyavastha Darpana as own sister's son, pointed out that the author probably used the words "own sister's son" as contradistinguished from the woman's husband's sister's son who is the next in order in the table of succession. In the case of *Bholanath Roy* v. *Rakhal Dass Mukherji* (1) it was held that under the Bengal School of Hindu Law sons of sisters of the half-blood are entitled to succeed equally with sons of sisters of the whole blood to the property of a deceased brother. That case, no doubt, related to the question of succession to a male owner, but it is an authority for the proposition that the expression "sister's son" includes a half-sister's son, and that there is no difference between the son of a sister of the whole blood and the son of a sister of half-blood.

It is pointed out, however, on behalf of the appellant, that the rival wife's son is expressly mentioned as a son in the Dayabhaga (Chapter IV, section III, verse 32), and that if it had been meant to include the son of a sister of the half-blood in the expression "sister's son," it would have been expressly so stated. But no argument can be based upon this ground. The word 'brother' in the well known text of Yajnavalkya relating to the succession of a male owner dying without male issue is applicable to a brother of the whole blood as well as to a brother of the half-blood. The fact of being a male offspring of one common parent makes one a brother (*see* Sreekrishna's Commentary on the Dayabhaga, Chapter XI,

(1) (1884) I.L.R. 11 Calc. 69.

section V, paragraphs 7—12). There is, no doubt, a distinction between brothers of the whole blood and those of the half-blood, but the former confers a greater amount of spiritual benefit.

In the case of a sister's son, according to some authorities (*see* Colebrook's Digest Book V, chapter 8. section I), there is no difference in the amount of spiritual benefit conferred by a full sister and a half-sister, respectively, and that therefore they inherit together; and, although a different view is taken by some other authorities, the above view is "respected and followed" (*see* Shyama Charan Sarkar's Vyavastha Darpana, 2nd edition, page 265). In the Dayakrama Sangraha, Chapter I, section X, verse I, in dealing with the question of succession to a male owner, Srikrishna Tarkalankar says :—"According to Acharjya Chudamoni, the son of the proprietor's own sister and the son of his half-sister have an equal right of inheritance." Srikrishna's recapitulation of the line of inheritance, in which a different view is alleged to have been taken, and the difference in the copies of the recapitulation were discussed in the case of *Bhola Nath Roy* (1) cited above, and it was there held that Srikrishna's opinion was the same as that of Acharya Chudamoni.

As already pointed out, it was held in the case of *Dasharathi Kundu* v. *Bipin Behari Kundu* (2) that the half-sister's son is entitled to succeed in preference to the husband's elder brother. Even if the half-sister's son does not stand in the same position as the full sister's son, he is entitled to succeed in preference to the appellant who is the daughter's son of the great-grandson of the great-great-grandfather of the deceased. The latter, accordingly, is not the heir of Adya Sundari and has no *locus standi*

(1) (1884) I. L. R. 11 Calc. 69. (2) (1904) I. L. R. 32 Calc. 261.

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to oppose the grant of probate. This disposes of the first contention.

The second contention also has no force. The mere fact that it was stated in the application for probate that the appellant had applied for letters of administration to the estate of the testatrix and that the Court had issued a citation upon him, would not entitle him to come in and oppose the grant of probate, if it is found that he has no interest in the estate of the deceased. The case of *Chatoo Kurmi* v. *Rajaram Tewari*(1), relied on by the appellant, has no application to the facts of the present case. There the relationship of the caveator with the testatrix was admitted, and the caveator would have succeeded if it had been proved that the testatrix was not a degraded woman. He wanted to cross-examine the witnesses for the petitioner for probate to show that the deceased was not degraded; his title to succeed depended upon the question whether the woman was degraded or not, he was a party to the proceeding and he had certainly a right to cross-examine the witnesses. In the present case Charu Chunder being the heir of Adya Sundari had she died intestate, the appellant had no interest in her estate and had no *locus standi* to contest the will.

The appeal accordingly fails and is dismissed with costs.

BRETT J. I agree.

S. C. G. *Appeal dismissed.*

(1909) 11 C. L. J. 124.