APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and Buckland J.

FLOSSIE O. COHEN

v.

OBEDIAH AARON COHEN.*

1931

Mar. 13, 26.

Will—Condition restraining marriage in the lifetime of the life-tenant, if contrary to law or morality—Indian Succession Act (XXXIX of 1925), s. 127.

Under his will, C devised all his immovable property to his son "to be held and enjoyed by him for the term of his natural life *** and after his death to my son's sons, namely, *** and my son's daughter, Flossie O. Cohen in equal shares absolutely, provided that, if the said Flossie O. Cohen should be married before the death of my son***, then and in such case she will not take any interest under my will."

Held, the condition attached to the bequest to the son's daughter is not contrary to law or morality and, therefore, not void.

In re *Lanyon, Lanyon* v. *Lanyon* (1) not followed.

APPEAL by the plaintiff.

The facts of the case appear sufficiently from the judgment.

S. N. Banerji (with him *Kumud Basu*) for the appellant. In this case, section 134 of the Indian Succession Act does not apply; the operative sections are 131 and 127.

Under the English law, a restraint of marriage is illegal.

[BUCKLAND J. But look at illustration (*iv*) to section 134.]

[RANKIN C. J. Section 127 deals with a condition precedent.]

Section 133 shows that this is a condition precedent to the gift over.

*Appeal from Original Decree, No. 6 of 1931, in Suit No. 1645 of 1930.

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[Buckland J. This is not an absolute restraint on marriage. In fact, it cannot be called a restraint at all.]

I shall show that it is sufficient restraint to make it illegal. I rely on *In re Lanyon, Lanyon* v. *Lanyon* (1).

[BUCKLAND J. Is there any section in the Succession Act, which deals with public policy?]

Not in the Succession Act, but there are two sections of the Contract Act.

[BUCKLAND J. How are you going to import that into this case?]

Public policy applies to all persons, Hindus, Mahomedans, *etc.* Law encourages marriage and, therefore, section 127 applies.

[RANKIN C. J. Here, the fulfilment of the condition is not contrary to law or morality.]

The lady will have to remain celibate and that is opposed to law.

F. S. R. Surita for the respondents. Unless the condition comes within section 127, there is nothing in the Act which restricts the rights of the testator.

Cur. adv. vult.

RANKIN C. J. This is an appeal from the judgment of my learned brother, Mr. Justice Panckridge, upon an originating summons taken out to decide certain questions raised under the will of one Aaron Obediah Cohen, whereby he devised all his immovable property to his son, Obediah Aaron Cohen, "to be held and enjoyed by him for the term "of his natural life, without impeachment for waste, "and from and after his death to my son's sons, "namely, Charlie O. Cohen, Seamantobe O. Cohen and "Solomon O. Cohen and my son's daughter, Flossie O. "Cohen, in equal shares absolutely, provided that if "the said Flossie O. Cohen should be married, before

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"the death of my son, the said Obediah Aaron Cohen, "then and in such case she will not take any interest "under this my will." Upon that provision, the question was argued before the learned Judge whether or not the provision that if the lady should be married before the death of her father then she should take no interest under the will was not a condition that was bad so that the effect of the will would be that she would take her share after her father's life-interest unconditionally so far as this stipulation was concerned. The contention before us was that the condition operated as an unreasonable condition in restraint of marriage and we were referred to a decision of Mr. Justice Russell *In re Lanyon, Lanyon* v. *Lanyon* (1) as an authority for the proposition that a condition of this sort might be void even although it was not a complete restriction on marriage. The learned Judge has taken the view that, under the Indian law, the only section upon which it could be contended that the condition was void is section 127 of the Succession Act—"A bequest upon a condition, "the fulfilment of which would be contrary to law or "to morality, is void"—and the learned Judge points out that, under no reasonable construction of this clause, it can be said that it would be contrary to law or morality, if the lady was not married at the date of her father's death. It seems to me that it is very necessary in such a matter, having regard to the careful provisions of the Succession Act, that the Court should find in the words of the statute authority for holding such provision to be void. No doubt the testator thought, as many people in India think, that it would be the recognized duty of his son to see to the marriage of his daughter in a suitable fashion during his lifetime. He may have thought that, if that was done, that would be a sufficient provision for her. Consequently he may have given to her an interest to be defeated if she was married upon the footing, not that he had any desire or

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intention to prevent her getting married, but upon the footing that it was in his view the most reasonable disposition of his property. In such a case, it may or may not be said that the condition is unreasonable in that it tends to penalize her marriage in a sense, but it cannot be said that the provision is hit by section 127 and I can find no basis under the Indian law for departing from that section and applying such a principle, as was applied, in England, in the case decided by Mr. Justice Russell. In my judgment, the observations of the learned Judge are correct and the appeal must be dismissed with costs.

BUCKLAND J. I agree.

Appeal dismissed.

Attorneys for appellant: *R. M. Chatterjee & Co.*

Attorney for respondents: *G. C. Moses.*

S. M.