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THE BENGAL BANKING CORPORATION v. MACKERTICH.

The question, therefore, raised in the case is the plaintiffs' right, in virtue of this document, to follow the sum of Rs. 13,000 in the hands of the Administrator-General, and render it liable for the debt which the joint and several promissory note created.

I think that what was said in the Court below, and has just been said by my lord, makes it clear that it is only by treating this document as a mortgage and investing it with all the effects of a mortgage that we could do what the plaintiffs ask, and as I think we are precluded by the Registration Act from allowing it to have this effect, I agree in thinking that the appeal must be dismissed.

Appeal dismissed.

Attorneys for appellants: Baboo *Gonesh Ch. Chunder.*

Attorney for respondent: Mr. *Carruthers.*

PRIVY COUNCIL.

P. C.*
1883.
June 20, 21.
July 11.

ISRI DUT KOER AND OTHERS (PLAINTIFFS) *v.* HANSBUTTI KOERAIN AND OTHERS (DEFENDANTS).*

[On appeal from the High Court at Fort William in Bengal.]

Declaratary decree, Suit for—Civil Procedure Code (Act VIII of 1859), *s.* 15—*Hindu widow's control over savings of the income of her limited estate.*

A suit brought during the life of a Hindu widow by the presumptive heir, entitled on her death to the possession of the property in which she held her limited estate, to have an alienation by her declared to operate only for her life, is among the exceptions to the general rule established by decision upon Act VIII of 1859, s. 15, *viz.*, that, except in certain cases, a declaratory decree is not to be made unless the plaintiff shows a title to, though he does not ask for, consequential relief.(1)

Held, that although to grant a declaratory decree under the above section, was discretionary with a Court, yet in a suit of this class, known to the law, and in many cases the only practical mode of enforcing the presumptive heir's right to interfere with the widow's alienation, the grounds for the discretionary refusal of the decree should be strong. In this case, the difficulty of the question raised, and the expense of the litigation, which had been referred to as grounds for refusing it, were insufficient reasons.

* *Present:* Lord WATSON, Sir B. PEACOCK, Sir R. P. COLLIER, Sir R. COUCH, and Sir A. HOBHOUSE.

(1) *Kattama Natchiar* v. *Dora Singa Tever*, L. R. 2 I. A. 169; S. C. 15 B. L. R. 83.

A widow's savings from the income of her limited estate are not her *stridhan*; and if she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose. But it is not always possible to fix the line which separates accretions to the husband's estate from income held in suspense in the widow's hands, as to which she has not determined whether or not she will spend it. Where, however, both the family property, and property purchased by the widow out of savings from her income, were alienated by her, with the object of changing the succession, *held*, that accretion was clearly established, and that the after-purchases were inalienable by her for any purpose that would not justify alienation of the original estate.

A daughter, obtaining a transfer from her deceased father's widows of their interests in his estate, does not acquire thereby an estate valid against the title of the father's collateral heirs, expectant on the deaths of the widows.

APPEAL from a decree (24th June 1879) of the High Court of Bengal, reversing a decree (17th September 1877) of the First Subordinate Judge of Tirhoot.

The question raised on this appeal related to a gift made by the two widows of a deceased Hindu to the daughter of one of them, comprising property in which the widows held their limited estate, and also property purchased by the widows out of the accumulated income from the same source. As to whether a declaratory decree, under Act VIII of 1859, s. 15, should have been made in favour of the presumptive heirs of the deceased husband, declaring that the gift operated only for the lives of the widows, the judgment of the High Court (1) differed from that of the Court of first instance.

The appellants, the plaintiffs in the suit, were the sons of the brothers, with other near sapindas, of Budnath Koer, the husband, who died in 1857, leaving a daughter, Dyji Ojhain, in whose favor the widows made the gift in question by deed dated 21st December 1873. This daughter afterwards died, herself leaving a daughter, with whom the widows were defendants in the suit, and now respondents.

By the deed of 21st December 1873, the widows gave to the daughter, with immediate possession, the property which had belonged to their deceased husband, consisting of shares in village lands specified in a schedule to the deed. Also other village lands

(1) See *Hunsbutti Kerain* v. *Ishri Dutt Koer*, I. L. R. 5 Calc. 512.

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described in another schedule as "mahsoob khas," or property of which they had the entire control. A third schedule comprised other interests in land of which the owners were to retain possession during their lives without power of alienation.

The object, generally stated, of the suit brought by the presumptive heirs of Budnath Koer was to have this deed of gift, so far as it might control the inheritance after the widows' deaths, declared invalid against them. They alleged that the properties in the second schedule had been bought by the widows out of income, and were subject to the same rule of inheritance as the parent estate. The defence (amongst other things) denying, that the property in the second schedule could be claimed as belonging to the estate of the deceased husband, maintained that the plaintiffs, showing no title to relief, before the deaths of the widows who were alive, could obtain no such declaration.

The Subordinate Judge of Tirhoot, Mr. W. DeCosta, found that the property in the second schedule had been purchased by the widows out of the income of the family estate, to which he, therefore, held it to be an accretion. Referring to all the property, he held that there was no principle of Hindu law permitting a gift by a widow to her daughter, next in the line of succession, to defeat the rights of the presumptive heirs; and that to allow the donee's daughter to take as heir an estate of inheritance, through her mother, would be to change the legal course of descent, and was inadmissible. He therefore made a decree declaring that the deed of 1873 could not defeat the plaintiffs' right to succeed, on the deaths of the widows, to the family estate; and that the properties purchased by the widows were an increment to the estate, and subject to the same rule of succession.

The High Court (AINSLIE and BROUGHTON, JJ.) confirmed the finding that the property in the second schedule had been acquired out of savings from the income of the widows' limited estate. But, on a review of the decided cases relating to the widows' power over accumulations, they observed that it had not been precisely determined what that power was. The authorities were rather in favour of her being able to alienate the proceeds of her own savings. If the Court had been bound to make a decree, it would have made a reference to a Full Bench in regard to the conflict be-

tween the cases of *Grose* v. *Amirtamoyi Dasi* (1) and *Puddamoni Dossee* v. *Dwarkanath Biswas* (2). They held it expedient to refuse a declaratory decree, having a discretion to do so. The judgments of both Judges are reported in the Indian Law Reports, 5 Calc. p. 512.

On this appeal—

Mr. *C. W. Arathoon*, for the appellants, argued that the grounds given by the High Court for withholding a declaratory decree were insufficient. In the first place, without dealing with the question of the accumulations, a suit by the reversioners would lie at once to set aside so much of the widows' transfer of the family estate as would, if undisputed, operate to deprive them of the succession. Such a suit was mentioned in Act IX of 1871, Sch. II Art. 124, and in Act XV of 1877, Art. 125, where the period of limitation, twelve years from the date of the alienation, was fixed for it. This class of suit was also expressly exempted in the judgment in *Katama Natchiar* v. *Dora Singa Tever* (3) from the general rule requiring that the plaintiff seeking a declaratory decree should be in a position to claim consequential relief, and referred to in the words of the judgment:—The right of a reversioner to bring a suit to restrain a widow, or other Hindu female, in possession, from acts of waste, although his interest during her life is future, and contingent suits of that kind, form a very special class, and have been entertained by the courts *ex necessitate rei.*" Again, in *Gobindmoni Dasi* v. *Shamlal Baisakh* (4) it had been decided that the reversionary heir might, during the life of the widow who had alienated the family estate, commence his suit to protect his title to the future possession after her death. It was necessary as soon as possible, in many cases, to question the widows' act; and this class of suit was not open to objection, although brought by heirs entitled only in expectancy, whose interests might never take effect.

Secondly.—On the question whether by Hindu law the widow could dispose of the invested accumulations, and also whether she

(1) 4 B. L. R. O. C. 1.
(2) 25 W. R. 335.
(3) L. R. 2 I. A. 169; S. C., 15 B. L. R. 83.
(4) B. L. R., Sup. Vol. 48.

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could by releasing to a daughter confer an absolute estate on the latter, no such power existed.

The profits of her limited estate were not the widow's *stridhan*; but unless they were, she could not dispose of them in the manner attempted. The daughter could not acquire an absolute estate by taking a transfer from the widows, nor could she transmit such an estate to her heir. A daughter's estate is not *stridhan*, *Chotaylall* v. *Chunnolall* (1). The Mitakshara, which governed the parties, admitted no right on the part of women holding limited estates to make separate estate out of them.

Mr. *J. H. W. Arathoon*, for the respondents, argued that the deed of gift of 1873, on its true construction, conferred only an estate for the lives of the widows in the corpus of the family estate. This the widows had power to transfer; and so far there could be no ground for claiming a declaratory decree. On the question of the accumulations, which was the second point, the judgment of the High Court, withholding the decree on grounds of discretion, was correct. He cited *Sreenarain Mitter* v. *Kishensundari Dasi* (2); *Tekait Doorgapersad Singh* v. *Tekaitni Doorga Koonwari* (3); *Ramanand Koer* v. *Raghunath Koer* (4).

Should it, however, be necessary, in order to show that there was no ground for a declaratory decree, to rely on the widow's power to dispose of the accumulations, the inclination of the Judges' opinions, stated in the judgments, was in accordance with the Hindu law. The widow could make a gift of accumulated income. He referred to the decision in *Puddamoni Dossee* v. *Dwarkanath Biswas* (5), that a purchase having been made by a widow out of the income of her limited estate, it was competent to her to alienate such purchase, in whole or in part, or convert it back into money. He cited also, *Soorjemoney Dossee* v. *Denobundhoo Mullick* (6); *Gonda Kooar* v. *Kooar Oodey Singh* (7).

Mr. *C. W. Arathoon* in reply referred to the judgment of MITTER, J., in *Kery Kolitani* v. *Moneeram Kolita* (8) at page 8 of the report

(1) L. R. 6, I. A. 15; S. C. I. L. R., 4 Calc. 744.
(2) 11 B. L. R. 171.
(3) L. R. 5 I. A. 149.
(4) I. L. R., 8 Calc. 769.
(5) 25 W. R. 335.
(6) 9 Moore's I. A. 123.
(7) 14 B. L. R. 159.
(8) 13 B. L. R. 1.

in 13 B. L. R.; also to *Bhugwandeen Doobey* v. *Myna Baee* (1); *Chundrabulee Debia* v. *Brody* (2); *Nihalkhan* v. *Hur Churn Lal* (3); *Bhagbatti Daee* v. *Chowdry Bholanath Thakoor* (4); and from *Crose* v. *Amirtamayi Dasi* (5).

He cited the opinion of MACPHERSON, J., who said that, "although the theory of the Hindu law is that the income of the husband's estate shall go to the widow for her maintenance, and for the performance of pious duties, that theory by no means necessarily embraces the large lump sum of accumulations. According to all the older authorities on Hindu law, accumulations should be treated in the same way as the corpus; and I think they should be so treated now, in the absence of any distinct authority to the contrary."

He also cited Elberling on Inheritance, Chapter V; Strange's Hindu Law, Vol. I, Chap. I, paras. 2 and 3; Dayabhaga, Chap. IV, s. 1; Mitakshara, Chap. II, s. 11.; Vyavastha Darpana, 44; Vivada Chintamoni, on separate property of women.

Their Lordships' judgment was delivered on a subsequent day (July 11th) by

SIR A. HOBHOUSE.—This is a litigation concerning the succession to the estate of one Budnath Koer, a Hindu who died towards the end of the year 1857. He left two widows, Hansbutti and Chunderbutti, who are still living; and one child the daughter of Chunderbutti, who was named Dyji Ojhain, and who has since died, leaving only a daughter. On the death of Dyji the collateral male relatives of Budnath became his presumptive heirs, subject to the interest of the widows. They are the plaintiffs and the appellants. The defendants and respondents are the two widows, and Bachni the daughter of Dyji.

On the 21st December 1873 the widows executed a deed, whereby, after stating that with the exception of Dyji, there was no heir of their husband or of themselves, they made a gift to her of certain lands and villages, only retaining to themselves a life inter-

(1) 11 Moore's I. A. 487.
(2) 9 W. R. 584.
(3) 1 Agra H. C. 219.
(4) L. R., 2 I. A. 256; S. C. I. L. R., 1 Calc. 104.
(5) 4 B. L. R., O. C., 1.

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est in part of them. Some of the property is described as mouzahs exclusively acquired by the widows out of their own fund, and the rest is described as having been left by their husband Budnath.

Dyji died in the year 1875, and in the course of the next year the plaintiffs brought their suit. The material parts of the prayer are for a decision that the deed of December 1873 is null and void as regards the reversionary interests of the plaintiffs, and for a declaration that the properties acquired by the widows are part and parcel of their husband's estate.

By their written statements, and by the mouth of their pleader, the three defendants set up in substance the same defence. They say first, that the plaintiffs having only a contingent interest cannot maintain the suit; secondly, that if a widow releases her interest to her husband's heir presumptive, which Dyji was, the absolute interest becomes at once vested in such heir, and therefore the inheritance devolved on Bachni; thirdly, that at least the properties which were purchased by their own money either received from their parents or given to them by Budnath during his lifetime formed no part of Budnath's estate.

In the month of September 1877 the case was heard and decided by the Subordinate Judge of Tirhoot. He found that the properties purchased by the widows were so purchased out of the profits of Budnath's estate, and were accretions to that estate. He held that the conveyance to Dyji did not vest the inheritance in her, because she was heir only to a woman's estate, and the prescribed course of inheritance would be changed if she took an estate transmissible to her own heirs. And he gave the plaintiffs the decree they asked.

The defendants appealed to the High Court, and in June 1879 the case was heard by a Divisional Bench, consisting of Justices Ainslie and Broughton, who reversed the decree below and dismissed the suit with costs. From that decree the plaintiffs bring the present appeal.

The learned Judges think that the first part of the plaintiffs prayer cannot be entertained, because it is clearly competent to the widows to convey their own interest; because as regards Budnath's original property it is not necessary to construe the deed of 1873 as doing more; and because as regards the after-purchases

the widows only convey such legal interest as they believe themselves to hold. Their Lordships are unable to follow this reasoning, even when confined to Budnath's original estate. The defendants have not met the plaintiffs by saying that by the conveyance Dyji got nothing more than the widows' interest; they have contended that by coalition with Dyji's inheritance it gave her an estate transmissible to her own heirs. If then the true construction of this transaction be that it passes only the widows' interest, it materially concerns the plaintiffs to have that construction established. In this part of their prayer they ask nothing more favourable to themselves, and as between themselves and the defendants who allege an adverse construction, they are clearly entitled to as much, unless they are excluded by the rules relating to declaratory decrees.

The after-purchases fall under the same observations; and with respect to them two other substantial questions are raised, one of fact and one of law. First, the defendants deny that they were made out of the proceeds of Budnath's property, and this issue has been decided against them in both Courts, and is no longer a matter of dispute. Secondly, they contend that such purchases are not to be treated as accretions to the property from the proceeds of which they were made, but belong to the widows who made them.

The learned Judges below do not treat the latter question as unimportant to the plaintiffs; but they consider it to be one of great difficulty, unsettled by authority, and requiring reference to a Full Bench. In their judgment therefore the case is not a proper one for a declaratory decree. Mr. Justice Ainslie states the principle of their decision as follows:—

"It seems to me that we ought not to allow this suit to be protracted and great additional expense to be incurred, when it is quite possible that the widows or one of them may survive the plaintiffs, so that the estate may never vest in them and the decision arrived at may prove no bar to further litigation.

"For the purposes of this appeal it is sufficient to say that the Court will not, in a declaratory suit, decide intricate questions of law, when no immediate effect and possibly no future effect can be given to its decision, and when the postponement of the decision to the time when there may be be-

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fore the Court some person entitled to immediate relief (if the decision is in favor of the plaintiff) will not prejudice his rights in any way."

This suit was instituted before the passing of the Specific Relief Act, and its propriety must be tried by the law as it stood under s. 15 of the Procedure Code of 1859. That section does not confer any right to declaratory relief in any given case, but merely enacts that no suit shall be liable to objection on the ground that a merely declaratory decree is sought, and that it shall be lawful for the Civil Courts to make binding declarations of right without granting consequential relief.

It is true that the apparently wide door here opened for declaratory suits is greatly narrowed by the decision that, as a general rule, the Court shall not make a declaration except in cases in which the plaintiff could if he chose seek some consequential relief. That doctrine was clearly laid down in the case of *Kattama Natchiar* (1), but it was there stated to be subject to exceptions. Their Lordships think, and here they agree with the learned Judges below, that such a suit as the present falls among the exceptions.

It is laid down, and in their Lordships' opinion correctly, in Shama Churn Sircar's Vayavastha Darpana, that "if a widow, without consent of her husband's heirs, dispose of his property for purposes not sanctioned by law, they are entitled to interfere and prevent any such wrongful alienation by her." (2) Yet it is clear that a widow may alien her own interest. If then she executes a conveyance valid for her own interest but purporting to convey a larger interest to the grantee, it is difficult to see how the reversioner can get any relief except a declaration that the conveyance is void *pro tanto*. He cannot set the deed aside, because it is partly valid; nor can he affect the possession, which the widow has a right to keep or to give up to another. Such suits as the present one would seem to be, at least in many cases, the only practical mode of enforcing the heirs' right to interfere with a widow's alienation. That they are known to the law is clear, for Act IX of 1871, Art. 124 prescribes the time for bringing a "suit during the life of a Hindu widow by a Hindu entitled to the posses-

(1) L. R. 2 I. A. 169; S. C. 15 B. L. R. 83.

(2) Vayavastha Darpana, Vayavashta 44.

sion of land on her death, to have an alienation made by the widow declared to be void except for her life." That is precisely the first part of the plaintiffs' prayer in this suit. And the person "entitled" must mean the presumptive heir who would be entitled if the widow died at that moment.

It is true that the foregoing considerations do not settle the case, for there remains a discretion in the Court, which may find it, as the High Court has found it, inexpedient to grant the relief asked. But their Lordships think that a strong case of inexpediency should be shown for refusing declaratory relief to classes of persons expressly recognized by the law as suitors for such relief. They do not say that there may not be such a case, but they cannot find it here.

The only reason assigned for refusing relief on the ground of discretion is that part of the case raises a difficult point of law, the decision of which, though involving expense and delay, may after all not be binding upon the actual reversioners. That may be a reason more or less weighty according to circumstances. In this case it does not apply to the original estate of Budnath, as to which the plaintiffs are clearly right and the defendants clearly wrong in their contention. Nor is it readily conceivable that the decision will be fruitless; because the question of law is of such a nature that its decision, though not binding as *res judicata* between the widows and a new reversioner, would be so strong an authority in point as probably to deter either party from disputing it.

Moreover, it is to be observed that objections resting on the difficulties of the dispute are of much more weight in a preliminary stage than in a Court of Appeal. If the defendants had in the first instance objected to declaratory relief and had taken the opinion of the Subordinate Judge on that point, there would then have been more ground for refusing relief in order to save expense and litigation. But they did not do that. They disputed the whole case of the plaintiff. An important issue of fact, and two important issues of law, were decided by the first Court in the plaintiff's favour. After all this it comes very late for the Court above to reverse the action of the Court below on the ground of discretion and in order to save further litigation and expense.

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For the above reasons their Lordships think that they are bound to decide the issues raised in this case.

So far as regards the contention of the defendants that Dyji could by the conveyance take an absolute estate transmissible to her heirs, the High Court have not expressed any opinion adverse to that of the Subordinate Judge, and their Lordships need do no more than express agreement with him.

The difficult question of the after-purchases is very ably discussed by the learned Judges below, who would probably, if compelled to decide, have decided against the plaintiffs. The difficulty is enhanced, if not created, by the later current of decision, which gives to the widow a more free and complete usufruct of her husband's property than is accorded to her by the texts and earlier decisions; a modification of the law which is strongly illustrated by the conflicting opinions of Mr. Justice Dwarkanath Mitter and his colleagues in the case of *Kery Kolitani* (1).

The question was argued at the bar as though it were necessary to divide all the property of a widow into two classes; one being her *stridhan*, and the other her husband's estate over which she has the widow's right and no more. But the very question is, whether, having regard to the widow's freedom in enjoying her husband's property, and to her established right to alienate her own interest in it, she has not a kind of property the nature of which must remain undecided till her disposal of it or her death. It is impossible to read Mr. Justice Ainslie's forcible argument, without feeling that it is difficult to specify the point of time at which the widow loses her control over the unexpended portion of her income from her husband's estate. If she may spend or give away the whole, may she not put some by? If she saves one year or month, may she not spend those savings the next year or month? If she may save and spend again may she not place her savings so as to get some income from them? And so on through all the steps of the *sorites*.

To decide this question it is necessary to examine the authorities, which are by no means in accord. But their Lordships do not treat as authorities on this question the numerous cases cited at the bar, to show that a widow's savings from her husband's

(1) 13 B. L. R., 1.

estate are not her *stridhan*. If she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose. The dispute arises when the widow, who might have spent the income as it accrued, has in fact saved it and afterwards attempts to alienate it. And the existing conflict of opinion upon it makes it desirable to pass the authorities briefly under review.

The earliest case which is relied on as an authority for the widow's power of alienation was decided by this Board in the year 1862, *viz.*, *Soorjeemony Dossee* v. *Dinobundhoo Mullick* (1). The case, however, was of a different sort. A Hindu testator's estate was under administration, and there was dispute as to the interests taken by some of the parties. One of them died during the litigation, leaving a widow. He was ultimately declared to be entitled to an absolute interest in a share of the property, and the question then arose, how the income which had accrued from his share should be disposed of. The Supreme Court held that both the income which accrued during his life and that which accrued after his death should be held by his widow in that character. On appeal that decree was varied, and it was declared that, so far as regarded the accumulations after the death of the legatee, his widow was entitled to them absolutely in her own right. Here then the widow had not saved the income in question; she had never had the option of saving or spending it; and all that was done was to recognize her right to the full usufruct and control over it.

In the year 1866 the High Court of Agra expressly decided the point in question. A Hindu widow purchased property and afterwards alienated it. The Court first found that it was purchased with the proceeds of her husband's property, and then held that it was ancestral and the alienation invalid (2).

In the case of *Grose* v. *Amirtamayi Dasi* (3) Mr. Justice Macpherson held, while saying that he had formerly thought the contrary, that accumulations ought to follow the corpus. In that case however, the accumulations accrued before the widow recovered the estate, and the opinion expressed by Mr. Justice Macpherson

(1) 9 Moore's I. A. 123.

(2) *Nihal Khan* v. *Hur Churn Lal*, 1 Agra H. C. 219.

(3) 4 B. L. R. O., 1.

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seems to be at variance with the decision in *Soorjeemoney Dossee* v. *Dinobundhoo Mullick*.

In the case of *Bholanath* v. *Bhagabatti*, (1) decided in 1871 the Calcutta High Court (Jackson and Ainslie, J.J.) held that a Hindu widow could not alienate property acquired by her out of the income of the husband's estate, but that she could make valid gifts to her daughter and grand-daughter by buying property in their names. This case came before the Privy Council in 1875, when it was held that the widow held the husband's estate not in her capacity of widow but as taker of a life interest under a settlement. But in their judgment the Board said: "If she took the estate only of a Hindu widow, one consequence no doubt would be that she would be unable to alienate the profits, or that at all events whatever she purchased out of them would be an increment to her husband's estate." (2)

In the year 1874, before the appeal in the last case was heard, another case in which the point was discussed had come before the Board, *Gonda Koer v. Koer Oodey Singh* (3). In that case there was no alienation by the widow, and the Board treated the point thus: "It therefore becomes unnecessary to decide what might have been the effect of a distinct intention on her part, if it had been proved, to appropriate to herself and to sever from the bulk of the estate such purchases as she had made with the view of conferring them on her adopted son." As the case stood, the widow's purchases accrued to her husband's estate.

In 1876 the point came again before the Calcutta High Court. The Division Bench, consisting of Judges Jackson and Macdonell, thought that their decision might be rested on other grounds, but expressed themselves as prepared to base their decision on the ground that a Hindu widow, having purchased land with the money derived from the income of her husband's estate, is competent afterwards to alienate her right and interest in whole or in part to reconvert the land into money, and to spend it if she chooses (4).

(1) 7 B. L. R., 93.

(2) *Bhabut Dass* v. *Chowdhry Bholanath Thakoor*, L. R. 2 I. A. 256.

(3) 14 B. L. R., 159.

(4) *Puddomonee Dossee* v. *Dwarkanath Biswas*, 25 W. R. 335.

This is the state of the authorities, and their Lordships, differing from the learned Judges below, think it must be taken as adverse to the claim made on behalf of the widow. They do not rest on what was said by them in *Bholanath's case* as decisive of this case, for the observation must be taken as applied to the then pending case, and it was, moreover, extra-judicial, and is fairly open to the qualifications with which Mr. Justice Ainslie reads it. Nor do they think it possible to lay down any sharp definition of the line which separates accretions to the husband's estate from income held in suspense in the hands of the widow, as to which she has not determined whether or no she will spend it. As before said, they feel the force of Mr. Justice Ainslie's reasoning on this point.

In this case the properties in question consist of shares of lands, in which the husband was a shareholder to a larger extent. They were purchased within a short time after his death in 1857. No attempt to alienate them was made till 1873. The object of the alienation was not the need or the personal benefit of the widows, but a desire to change the succession, and to give the inheritance to the heirs of one of themselves in preference to their husband's heirs. Neither with respect to this object, nor apparently in any other way, have the widows made any distinction between the original estate and the after-purchases. Parts of both are conveyed to Dyji immediately, and parts of both are retained by the widows for life. These are circumstances which, in their Lordships' opinion, clearly establish accretion to the original estate, and make the after-purchases inalienable by the widows for any purpose which would not justify alienation of that original estate.

The result is that, in their Lordships' opinion, the decree of the High Court should be reversed, and that of the Subordinate Judge restored, and that the respondents should pay the costs incurred in the High Court and the costs of this appeal. They will humbly advise Her Majesty in accordance with this opinion.

Appeal allowed.

Solicitor for the appellants: Mr. *T. L. Wilson.*

Solicitors for the respondents: Messrs. *Henderson & Co.*