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The High Court came to a different conclusion. They point out that the Subordinate Judge's explanation is a mere theory without evidence. Their Lordships add that it is against the evidence of the defendant and his pleader. Their case throughout has been that the gift was complete on the 5th of March 1885. Both were examined closely upon the circumstances of the endorsement, and both asserted an absolute gift divesting the General of all interest in the notes. From beginning to end, neither in pleading nor in evidence, do they give a hint of the very peculiar, and very vague, bargain now suggested. The case actually made has in the judgment of both Courts broken down. It is hardly right to invent a new case when the judgment comes to be delivered. At all events there is no material evidence except such as has been stated above. In their Lordship's judgment the conduct of the parties after the endorsement removes every doubt which might otherwise have affected that transaction, and leaves it certain that the General remained the true owner of the notes.

Their Lordships will humbly advise Her Majesty to dismiss this appeal and affirm the decree of the High Court.

Appeal dismissed.

Solicitors for the Appellant—Messrs. *Barrow* and *Rogers*.

BITTO KUNWAR (APPELLANT) AND KESHO PRASAD MISR (RESPONDENT).

[On appeal from the High Court at Allahabad]

1896 *December* 4*th*, 1897 *February* 6*th*.

Act No. II of 1882 (*Indian Trusts Act*), *sections* 63, 64—*Trust not established*—*Civil Procedure, section* 13—*Res judicata not made out.*

A claim made for a share of property by inheritance from a deceased relation who had been in joint possession of it with the defendant, was met by the defence that the estate had been jointly held for religious and charitable purposes under a will, the deceased having had no beneficial, or heritable, interest. The defendant alleged that the original owner of the property had bequeathed the property in trust for these purposes. The claimant alleged a revocation of the will, and denied that there was such a trust.

The judgment of the High Court, decreeing the claim, observed that, even assuming that there had been a trust under the will, recognised by the deceased and the defendant, the property which had come into their possession had been

Present: LORDS HOBHOUSE, MACNAGHTEN and MORRIS, and SIR R. COUCH.

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by them appropriated, from the first, to their own purposes, and had been so long held by them adversely to the trust title, that the defendant could not now allege that there was no beneficial interest transmissible by inheritance. Upon this the Judicial Committee pointed out that no trustee could have actually acquired a title, by such an appropriation against the trust. Indian Trusts Act, 1882, sections 63 and 64. They added that, at the same time, the judgment of the High Court had come to the right conclusion, for the will, and the trust alleged, had not been established.

One of the contentions upon this appeal was that the plaintiff was estopped from denying the existence of a trust by there having been a judgment of the High Court, in a prior suit, between the present defendant and the widow of the deceased, that judgment having stated that the trust had been recognised by him who was now defendant.

Held, that this was not within section 13, Civil Procedure, the matter not having been tried and determined in that suit.

Held, also that another prior judgment, in a suit brought by others interested in the trust, which judgment found the will to have been revoked, was admissible, though not conclusive, evidence against him.

APPEAL from a decree (6th June 1889) of the High Court, affirming a decree (10th December 1887) of the Subordinate Judge of Benares.

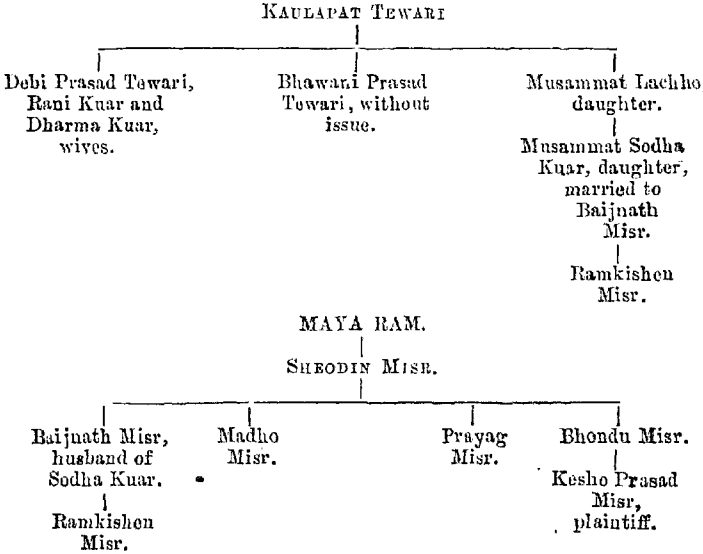
In this suit (24th March 1886) the present respondent sued Sheodial Tewari, also called Bachcha Tewari, and so named in the judgment, who died on the 12th June 1895, pending this appeal, and who was now represented by his widow, Bitto Kunwar. A co-defendant, Raja Ajit Singh, was a purchaser of some of the property in suit. The claim, valued at Rs. 54,000, was that the plaintiff, on the death of Mitho Kuar, widow of his cousin Ram Kishen Misr, had inherited a half-share of revenue-paying villages in the Jaunpur, Azamgarh, Gházipur, and Benares districts, with houses in Benares. That share had been held by Ram Kishen Misr at his death and was now in the possession of the defendant Bachcha Tewari. The whole had been acquired by Ram Kishen's maternal grandfather, Bhawani Prasad Tewari, conjointly with his brother Devi Prasad Tewari. The brother died before Bhawani, who died in 1842, leaving no legitimate offspring.

The principal question raised on this appeal was whether or not the share sued for was subject to a trust for religious and

charitable purposes, under a will made by Bhawani in 1842. If so subject, there would have been no transmissible right in Ram Kishen.

The plaintiff made title thus:—Baijnath Misr, father of his first cousin Ram Kishen Misr, had married a wife, of the Tewari family, Sodha Kuar, daughter of Lachho, sister of Bhawani Prasad Tewari. Ram Kishen Misr was their son. Thus Ram Kishen was on his mother's side, great nephew of Bhawani.

The relationship is thus shown:—



The defendant Bachcha Tewari was the grandson of Hemnath Tewari, brother to Kaulapat Tewari, father of Bhawani; to whom, therefore, Bachcha Tewari was first cousin, once removed.

After the death of Bhawani, his brother's, Debi Prasad's widows, Rani Kuar and Dharma Kuar, together with his sister's grandson, Ram Kishen Misr, possessed the property, keeping up a temple to Mahadeo, and a bhandara, or rest-house for devotees, both of which Bhawani Prasad had founded. Disputes having arisen, as to the right to inherit the estate, between those persons and Bachcha Tewari, an agreement was arrived at, and executed on

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the 4th January 1850. The agreement recited that, on the death of Bhawani Prasad, his brother's two widows had adopted Ram Kishen, and made over all the zemindari documents to him, and that, on Dharma Kuar's death, Rani Kuar had her own and the name of Ram Kishen entered, and they were in possession; that a dispute had arisen with this appellant, a cousin of Bhawani Prasad, and to avoid further quarrels they had settled the matter by agreeing that Ram Kishen should be the owner of one-half and this appellant of the other half of all the property; that the name of Ram Kishen should continue as the lambardar; and the name of this appellant should be substituted for that of Rani Kuar; the management of the ilaka remaining with Ram Kishen. "He "should manage the ilaka either by direct management or by a "lease, and after paying the Government revenue meet the family "expenses, the bhandara expenses, the expenses of the servants and "others as fixed since the time of the deceased Tewari, our com-"mon ancestor."

This appellant contracted not to transfer his half-share; alleged that there had been no mismanagement on the part of Ram Kishen; "as the expenses, &c., have been fixed by our ancestor" with reference to the produce of the ilakas; in future, too, Ram Kishen was not to be called upon to render accounts.

Also the agreement stipulated:—"We further agree that Lala "Avadh Lal, who is an old agent appointed by our ancestors, "shall continue to help us, and manage the estate, as he has been "doing since the time of the Tewari Sahib, and we shall manage "the house and the estate with his advice. Should there be any "difference among us, we shall be guided by the advice of the "said Lala, and shall not disobey him."

Ramkishen died on the 22nd of January 1870, being at that time the recorded joint proprietor with Bachcha Tewari. Musammat Mitho, his widow, succeeded for her widow's estate to Ramkishen's share. She died in 1884. On her death Kesho Prasad Misr claimed in this suit, as cousin of Ramkishen, to be entitled as reversioner to the half share held by him.

The plaint alleged that the will of 1842 had been revoked by the testator; and that the widows and Ramkishen, who lived as a joint family, had obtained proprietary possession, keeping up the temple, but taking the surplus income. The plaintiff's construction of the agreement of 4th of January 1850 was that Ram Kishen and Bachcha Tewari were to be the proprietors, holding possession in equal shares.

The written answer of the defendant was to the effect that the will had *not* been revoked, but had been acted on. The appointment of Avadh Lal to be the executor was insisted on, and the recognition of his authority by the agreement of the 4th of January 1850, as constituting a recognition of the trust.

The issues raised the principal question, what right had Ram Kishen possessed? Was the will revoked?

At the hearing several records, of which the principal were the following, were put in evidence:—

The decision of a Division Bench was given on the 27th of February 1878 as follows:—

"The agreement recognised the will of Bhawani Prasad Tewari, 'vested the estates in Ramkishen and Bachcha Tewari as trus-'tees to carry out the provisions of the will, and secured to Ram-'kishen the management of the property, including the right to 'raise the necessary funds by *zar-i-peshgi* (mortgage); but there 'was no provision either that the right of management or the right 'of mortgage should devolve on his heirs. Consequently, Mus-'ammat Mitho Kuar was not competent to charge the estate, and 'the appellant is entitled to the relief claimed by him," and so allowed the appeal with costs.

A suit was brought in 1880 by the managers of the temple, founded by Bhawani Prasad Tewari, against Bachcha Tewari and a mortgagee from him, to set aside the mortgage.

Bachcha Tewari did not appear to defend.

The Judge found that the suit was collusive and that the will had been revoked. A majority of the Judges of the Bench which considered this case, after a difference of opinion between the

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Judges of a Division Bench on the case, found that the will had not been proved to have been in existence at the death of the alleged testator. The particulars fully appear in their Lordships' judgment.

In the present suit the Subordinate Judge found that Bachcha Tewari and Ram Kishen Misr had been in possession of the estate left by Bhawani in equal shares.

He was of opinion that the agreement did not recognise the will, and did not constitute Ram Kishen a trustee. He held that the plaintiff was not estopped by the decree of February 27th, 1878, the High Court having in a later suit decided against the will.

The High Court (EDGE, C. J. and TYRRELL, J.) on appeal, affirmed this decision, giving judgment as follows:—

"It appears to us that, in 1850, when Ram Kishen and the defendant took this property and executed the deed of the 4th of January 1850, they were plainly taking the property for their own purposes, and not for the purposes of the trust, and that they never had any intention of acting as trustees, or holding the property otherwise than as adversely to the trusts of the will. The deed of 1850, although it alludes to some expenses which were to be met as theretofore, was a deed by which those two, as far as they could, appropriated the trust property to their own private uses.

"There is ample evidence on this record that those parties never intended to deal with the property as trust property, and that they were from a very early period acting adversely to the trusts of the will. We may refer to the petition of the present defendant of February 4th, 1856 (document No. 352 on the record), as an example. That was a petition for partition, and there the present defendant represented that he was entitled to a moiety of the property in his own right, and that Ram Kishen was entitled to the other moiety. He says, as one ground for his request to have the property partitioned, that as the mahál was joint there was generally a risk of its being sold by auction or farmed out. Here we have one of the so-called trustees, asking

for a partition of the trust property on account of the inconvenience which arose from its being held jointly with his co-trustee. We are of opinion, unless we are bound by the judgment of February 27th, 1878, that Ramkishen and the defendant never held or volunteered to hold in any sense as trustees, and that in fact their holding was from the first adverse to the trust title. Does then the judgment of February 27th, 1878, conclude this question? It appears to us, for two reasons, that it does not. That was a suit in which the present defendant sued Musammat Mitho and her mortgagees for a declaration that she had no right to mortgage, and that the mortgages were invalid. Looking at his plaint and his supplementary statement, we find that he did allege that the will of 1842 had been executed, and that he did so set up that will with the object only of showing that under it Musammat Mitho had no power to mortgage—a contention which was perfectly correct, independently of any question of trusteeship. He did not there raise any question of trust property or trusteeship. He went on to set up what was, on paper at least, the foundation of his title; that was the deed of January 4th, 1850. He could not have set up the foundation of his title, the will of 1842, because his title and his enjoyment were in violation of the terms of that will. Apparently, the will was alluded to, either as a matter of history, or to show that the annuitants under that will had no power to assign. So far as the will was concerned, the defences of the defendants put the will aside, either as a document which was immaterial, or as a will which had been revoked. That is the effect of the pleadings in that suit, so far as is material. The Subordinate Judge framed six issues in that suit. The sixth issue, which was 'whether the will made by Bhawani Prasad was in force, or whether he revoked the deed in his life-time,' was the only issue which apparently referred to the will. That issue does not suggest any question in relation to trust or trusteeship, and obviously from his judgment, Rai Bakhtawar Singh, the then Subordinate Judge, did not consider that any question of trusteeship was before him. He looked at the will to see whether

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the widows of Bhawani Prasad and Debi Prasad were entitled or forbidden to transfer. From the decree in that suit the present defendant, Sheo Dial, appealed. There was nothing in his grounds of appeal to suggest any question of trust or trusteeship, and so, as far as we can see, no question of that kind was raised in the suit until the Judges of this Court construed the deed of 1850 as a deed which vested the estate in Ram Kishen and the present defendant as trustees to carry out the provisions of the will. The real question before them was whether, under the deed of 1850, Musammat Mitho, as the childless widow of Ram Kishen, could mortgage the property, or any part of it. The deed of 1850 certainly does not purport to vest the estate in Ram Kishen and the now defendant as trustees to carry out the provisions of the will, nor did it purport on the face of it to recognise the will of 1842. We are of opinion that the finding as to trusteeship of this Court in the judgment of February 27th, 1878, was not an issue which the parties had raised or intended to raise; that it was not raised in the Court of first instance, and, if raised at all, was raised for the first time when those learned Judges were delivering their judgment. Under these circumstances, we are of opinion that the judgment of February 27th, 1878, has not concluded this matter. It is possible that this question of trusteeship was introduced into the judgment owing to the fact that, on January 21st, 1876, one of those Judges had considered that Musammat Mitho Kuar and the now defendant could not, by the deed of 1850 alone, destroy the trust created by Bhawani Prasad. We have been pressed with certain cases, *viz. Katama Natchier* v. *The Raja of Shivagunga* (1); *Nand Kumar* v. *Radha Kuari* (2); and *Brammoye Dassee* v. *Kristo Mohun Mookerjee* (3). These cases would, of course, only apply if the finding of February 27th, 1878, was a finding upon a matter in issue in that suit. The cases to which we have been referred were all prior to the passing of the Specific Relief Act of 1877, and section 43 of that Act is the second ground on which we hold that the finding

(1) 9 Moo. I. A., 543. (2) I. L. R., 1 All., 282.
(3) I. L. R., 2 Calc., 222.

of the 27th February 1878 is not binding as between the parties here. We have said that the plaintiff here does not claim through Musammat Mitho at all. He claims through her husband an estate which, he says, he became entitled to on her death. We have not thought it necessary, and indeed the points were not argued at any length before us, to consider whether the alleged will of 1842 ever was revoked. The majority of a Full Bench of this Court has found against it, and the defendant himself executed a mortgage, which was in issue in another suit, and in which he alleged it was waste-paper. We dismiss the appeal with costs."

On this appeal, preferred by Bachcha Tewari and continued by his widow,

Mr. C. W. Arathoon, for the appellant, argued that there was error in the decisions below, and that it should have been decided that Ram Kishen Misr and Bachcha Tewari were not competent, if even they had ever intended—a fact which was wrongly found below—to appropriate the property and bring the trust to an end. The agreement of 1850, on its true construction, recognised that the property had been rendered subject to a trust, and on their taking possession they had become bound by the requirements of that trust. Moreover, the appellant could rely upon the decision of the 27th of February 1878, as well as on an earlier judgment, that the will was in operation, and that the property was subject to the trust. The judgment of the High Court in 1878 constituted the matter to be *res judicata*. The decision, which was adverse to the appellant, at which a majority of the Judges of the Bench had arrived in 1885 was passed in a suit which the Subordinate Judge had found to be collusive, and upon which the present appellant's husband had not appeared to defend. The latter decision was in no way binding upon the appellant. It was, further, a strong point in favour of the existence of the trust that there was no evidence of the revocation, or the alleged destruction of it, by the testator himself. It had been set up by Ram Kishen, as well as others, and the evidence went far to show that some at least of its provisions had been carried out.

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The respondent did not appear. On a subsequent day, February 6th, their Lordships' judgment was delivered by SIR R. COUCH:—

The present appellant is the widow and heir and legal representative of Sheo Dial *alias* Bachcha Tewari, the original appellant. On the 24th of March 1886 the respondent brought a suit against him and Raja Ajit Singh, a purchaser from him, to recover possession of property, consisting of houses and lands in the districts of Benares, Jaunpur, Azamgarh, and Gházipur, of which he was in possession. The respondent in his plaint alleges that on the death of Bhawani Prasad Tewari, the owner of the property in suit, who died in November 1842 without issue, Rani Kuar and Dharma Kuar, the widows of his deceased brother, Debi Prasad Tewari, and Ram Kishen Misr, the son of the niece of Bhawani, who lived in commensality with him, obtained proprietary possession of the property left by him. They performed the services and managed the affairs of a temple which had been built by him, and of a bhandara attached to it, and after payment of the expenses of these institutions enjoyed the rest of the income of the property. Some time afterwards, a dispute arose between them and the appellant as to the right of heirship to the deceased; the dispute was settled by an agreement, dated the 4th of January 1850, to the effect that Ram Kishen and the appellant should be the proprietors and should hold possession in equal shares. Ram Kishen was accordingly in joint proprietary possession and enjoyment with the appellant during his life. He died on the 22nd of January 1870 without issue, and his widow, Mitho Kuar, succeeded to the possession of the property as his heir. She died on the 26th of September 1884, and on her death the respondent was the lawful heir to the estate of Ram Kishen. In 1875, in a suit brought by Mitho Kuar against the appellant for half of the profits of one of the *manzas*, the appellant set up a will, dated the 7th of August 1842, made by Bhawani, but torn up in his lifetime, and not in existence at the time of his death. The case of Bachcha Tewari in his written statement, so far as it is now material,

is that, by the will Bhawani appointed one Avadh Lal to be his executor and entrusted him with the whole estate for charitable and religious purposes, and fixed salaries for the support of his heirs; that Bhawani never tore up or destroyed the will; and that Rani Kuar and Dharma Kuar and Ram Kishen always admitted its existence and validity.

It was not disputed before their lordships that the respondent is the heir of Ram Kishen. Of the issues settled by the Subordinate Judge, only two are now material: (4) "Of what right had Ram Kishen Misr been in possession?" and (5) "Did Bhawani Prasad Tewari revoke the will which he had made during lifetime, and was it acted upon after his death?" A copy of a will of Bhawani, dated the 27th of August 1842, and registered on the 30th of that month, was filed in the suit. Bhawani having died in November 1842, the only evidence upon these issues was documentary.

It appears in the judgment of the Subordinate Judge that it was contended before him on behalf of the defendants that the agreement of the 4th of January 1850 recognised the will and constituted Ram Kishen a trustee of the property for certain trusts created by the will, and that the respondent was estopped by a decision of a Division Bench of the High Court dated the 27th of February 1878 from averring that the property was Ram Kishen's own. This decision was in a suit by Bachcha Tewari against Mitho Kuar and three others (two of them mortgagees and the third a purchaser at a sale in execution) to have a mortgage of the property made by her declared invalid, and a sale in execution of a decree thereon cancelled. From the judgment of the Subordinate Judge in the suit Bachcha Tewari appears to have alleged that, under the agreement of January 1850, Ram Kishen was declared proprietor of one-half of the property and he of the other half, the estate being kept joint, and that Mitho Kuar, exceeding her power, had mortgaged the property contrary to the will of the ancestor and the interest of the plaintiff. The 6th issue in the suit was:—"Whether the will made by Bhawani Prasad was enforced or

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"whether he revoked the deed in his lifetime?" The Judge did not decide this issue, saying that as Ramkishen transferred half of the share to Bachcha Tewari and he had made certain transfers to Babu Balgobind, he had no right to say that under the will the heir of Ram Kishen had no power to transfer. A decree was made in favour of Bachcha Tewari for a half share only of the house and villages in dispute. He appealed to the High Court, which decreed the appeal on the ground that the agreement recognised that the will of Bhawani Prasad Tewari vested the estates in Ram Kishen and Bachcha Tewari as trustees to carry out the provisions of the will, and secured to Ram Kishen the management of the property, including the right to raise the necessary funds by mortgage, and consequently that Mitho Kuar was not competent to charge the estate. The question whether the agreement had this effect had not been raised either in the Lower Court or in the grounds of appeal, and there was no issue upon it. This statement is therefore not within section 13 of the Code of Civil Procedure.

The parties to the agreement, Rani Kuar, Ram Kishen, and Bachcha Tewari are described in it as heirs of Bhawani, and it purports to be made upon a dispute in respect to the property owing to the claim of Bachcha Tewari as cousin of Debi Prasad Tewari, the husband of Rani Kuar and in direct lineal descent with him, and to avoid the property being wasted by litigation. It contains no reference to any will of Bhawani or to any trusts under such a will. The property is to be held by Ram Kishen and Bachcha Tewari in equal shares, but is to remain joint, and the provisions are naturally such as would be made in that case. Their Lordships are of opinion that the agreement does not recognise any trust.

There is another suit which has a very material bearing upon the question in this case. In 1880 a suit was instituted by two persons, who are described in the plaint as managers of the Chetr Bhandara of the late Bhawani Prasad Tewari, against Balgobind Das and Bachcha Tewari, which is described in the

judgment of the Judge of Jaunpur as a claim for a declaration of right by removal of unlawful possession of debts by annulment of a miscellaneous order of the Subordinate Judge. It appears that on the 4th of September 1877 Bachcha Tewari had made a mortgage of the property now in dispute to Balgobind who had obtained a decree upon it, and had the property put up for sale in execution of the decree. The 1st and 2nd of the issues in that suit were—"(1) Was the property in suit bequeathed for "public charitable purposes? (2) Was the will revoked by the "testator in his lifetime?" Upon these the Judge found that the estate was not bequeathed for charitable purposes and that the will was revoked. The plaintiffs appealed to the High Court at Allahabad and the Divisional Bench of two Judges by whom the appeal was first heard differing in opinion, it was heard by a Full Bench consisting of the Chief Justice and four Judges, the majority of whom affirmed the judgment of the Lower Court and dismissed the appeal. This decision is not conclusive against Bachcha Tewari, as the suit was not between the same parties as the present suit, but their Lordships agree with the Subordinate Judge that it was admissible as evidence against him.

The Subordinate Judge with this evidence before him having found on the 4th and 5th issues in the present suit that Ram Kishen had been in possession as proprietor by virtue of the agreement of 1850 and that the will of Bhawani was revoked by him in his lifetime made a decree for the plaintiff. The respondent and the defendant Bachcha Tewari appealed to the High Court. They dismissed the appeal. Their Lordships upon the evidence which has been referred to agree in that result as if Bhawani left no will, the property was not proved to be subject to any trust. But they feel called upon to make some observations upon the judgment of the High Court, in order that it may not be thought that they agree in the reasons given by the learned Judges. The Subordinate Judge having found that the will was revoked by Bhawani, the issue whether it was revoked was the first that should have been decided as it went to the root of the defence. Instead

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of deciding this issue the learned Judges begin by saying: "Assuming without deciding the question that that will was really made "and was not revoked, Bhawani Prasad by it bequeathed certain "annuities and created trusts for religious and charitable purposes "and devoted property to those purposes," and, after stating some facts not now material, they say it had been contended on behalf of the appellant that Ram Kishen and he took the property in question, that it was trust property, and having taken with notice and without having given any consideration for it to the trustee or to any person entitled to deal with it, they must be held to have voluntarily taken upon themselves the trust created by the will of 1842, and that the question of trusteeship was concluded by the judgment of 27th February 1878. Then they say: "It appears "to us that in 1850 when Ram Kishen and the defendant took this "property and executed the deed of 4th January 1850, they were "plainly taking the property for their own purposes and not for "the purposes of the trust, and that they never had any intention "of acting as trustees or holding the property otherwise than as "adversely to the trusts of the will. The deed of 1850, although "it alludes to some expenses which were to be met as theretofore, "was a deed by which those two gentlemen so far as they could "appropriated the trust property to their own private uses. There "is ample evidence on this record that those parties never intended "to deal with the property as trust property, and that they "were from a very early period acting adversely to the trusts "of the will." Further on they say: "We are of opinion "unless we are bound by the judgment of February 27th, 1878, "that Ram Kishen and the defendant never held or volunteered "to hold in any sense as trustees, and that in fact their holding "was from the first adverse to the trust title." They then proceed to consider that judgment and decide that they were not bound by it. Their Lordships are of the same opinion upon this question.

A judgment of the High Court of the 21st January 1876 was relied upon in the present appeal for the appellant. It does not

appear to have been considered by either of the Lower Courts, and clearly does not decide the question whether there was a trust.

The learned Judges of the High Court appear to their Lordships to have been of opinion that assuming that there was a will, and it was not revoked, Bachcha Tewari and Ram Kishen could appropriate the trust property to their own private uses, and that they did so and held adversely to the trust title and themselves acquired a title. At the end of their judgment they say: "We have not "thought it necessary and indeed the points were not argued at any "length before us to consider whether the alleged will of 1842 "ever was revoked." Their Lordships can only understand their thinking thus by supposing they were of opinion that although there might be a trust, Bachcha Tewari and Ram Kishen might acquire a title by having possession of the property and appropriating it to their own use. The learned Judges appear not to have had in their minds the statement of the law in sections 63 and 64 of the Indian Trusts Act, 1882. They have refrained from considering the fundamental question in the case, whether there was a trust, but having, though by an erroneous process, arrived at the right conclusion and dismissed the appeal before them, their Lordships will humbly advise Her Majesty to affirm their decree and to dismiss this appeal.

Appeal dismissed.

Solicitors for the appellant—Messrs. *T. L. Wilson & Co.*

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February 9.

Before Sir John Edge, Kt., Chief Justice.

IN THE MATTER OF THE PETITION OF GUDAR SINGH.*

Criminal Procedure Code, sections 110, 117—*Security for good behaviour*—*Transfer*—*Criminal Procedure Code, section* 526.

Where a Magistrate instituting proceedings against a person under section 110 of the Code of Criminal Procedure has "acted" within the meaning of section 117 of the Code, no order can be made subsequently under section 526 of the Code transferring the case from his Court.

* Criminal Miscellaneous No. 8 of 1897.