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there is no presumption of that kind, then you must look to the facts of the case to ascertain what the intention of the parties was with regard to this fund.

Mr. Justice Trevelyan, in his examination of the evidence in this case, has come to the conclusion that there is nothing to indicate an intention on the part of Badam Kumari to invest these monies for any one's benefit but her own. There is nothing from what took place, to indicate that she intended to hold this money for the benefit of any other person, or to give up the control of it by herself. In my opinion, that view is a correct view of the evidence in this case. I think that the conduct of Badam Kumari during these years shows that she had no intention of accumulating this fund for any one's benefit but her own or that she ever intended to give up the power of disposing, spending, and dealing with it any way, and, as in this case it does not seem to me that the presumption that the money, *prima facie*, was supposed to be accumulated for the benefit of the husband's estate arises, I think that the conclusion to which Mr. Justice Trevelyan came was correct, and that this appeal must be dismissed with costs.

T. A. P.

Appeal dismissed.

Attorneys for the appellant : Messrs. *Remyry and Rose*, Baboo *Ashutosh Dhur*.

Attorneys for the respondents : Messrs. *Watkins and Co.*

APPELLATE CIVIL.

Before Mr. Justice Beverley and Mr. Justice Banerjee.

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 April 11.

KHUDIRAM MOOKERJEE (OBJECTOR) v. BONWARI LAL ROY
 (PETITIONER).*

Hindu law—Guardian—Right to guardianship of Hindu widow—Grant of certificate of administration under Act XL of 1858.

The relations of her deceased husband are entitled to be the guardians of a Hindu widow in preference to her paternal relations. A certificate of administration, under Act XL of 1858, was therefore granted to one of the former in preference to the latter.

* Appeal from Order No. 25 of 1889, against the order of R. F. Rampini, Esq., Judge of Burdwan, dated the 12th of January 1889.

THIS was an application for a certificate of administration to the estate of a female minor under Act XL of 1858. The applicant, Bonwari Lal Roy, was the brother of the minor. The application was opposed by Khudiram Mookerjee, the sister's son of the husband of the minor, who was a reversionary heir to the property of the minor's deceased husband. The father of the minor was alive, but it appeared that he did not wish to take out the certificate himself, and that he consented to its being granted to the applicant. It also appeared that a certificate of administration of the minor's property had been previously granted to the mother of the minor's deceased husband, and that this certificate was recalled under the provisions of s. 21 of the Act, because her advanced age rendered her unfit to manage the property.

The Judge granted the application.

Khudiram Mookerjee appealed to the High Court.

Baboo *Monmotho Nath Mitter* for the appellant.

Mr. *R. E. Twisdale* for the respondent.

The judgment of the Court (BEVERLEY and BANERJEE, JJ.) was delivered by

BANERJEE, J.—This is an appeal against the order of the District Judge of Burdwan, appointing the respondent as the guardian of a minor Hindu widow; and the only question raised before us is whether the respondent, who is the brother of the minor, or the appellant, who is her husband's sister's son, and the reversionary heir, has the preferential right to the certificate.

It appears that a certificate had been granted to the minor's mother-in-law, which was subsequently recalled by reason of her unfitness to manage the property owing to her extreme old age; and the only reason assigned by the learned Judge for giving preference to the minor's paternal relations seems to be the fact of a certificate having once been granted to one of her husband's relations and of its having been subsequently recalled.

That in our opinion would be no good reason for passing over the claims of other relations on her husband's side, if no other reason is made out against them, and if under the Hindu law they are entitled to the certificate in preference to the widow's paternal relations.

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Now under the Hindu law, we think that the relations of her deceased husband are entitled to be the guardians of a Hindu widow in preference to her paternal relations. This is clear from the text of Nareda, Chapter XIII, *verses* 28, 29, cited in the Dayabhaga, Chapter XI, s. 1, paragraph 64. That text runs thus:—
“When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property and care of herself as well as in her maintenance they have full power. But if the husband's family be extinct, or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a *sapinda*.”
This text has been followed in three cases, one to be found in Macnaghten's Principles and Precedents of Hindu Law, Volume II, page 203; another, *Kishen Mohan Mitter v. Khettermoni Dassi* (1); and a third, the case of *Bai Kisar v. Bai Gunga* (2).

This, we think, is ample authority in support of the appellant's contention, and the certificate in this case ought therefore to be granted to the appellant against whose fitness nothing has been said.

The result is that the appeal will be allowed with costs.

J. V. W.

Appeal allowed.

Before Mr. Justice Wilson and Mr. Justice Tottenham.

AKSHAYA KUMAR DUTT (DEFENDANT) v. SHAMA CHARAN PATI-TANDA (PLAINTIFF).*

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March 21.

Enhancement of rent—Settlement of a Government Khas Mehal—Regulation VII of 1822—Bengal Act III of 1878—Bengal Act VIII of 1879, ss. 10—14.

In order to make the enhanced rent, stated in a *jummabundi*, settled under Regulation VII of 1822, binding upon a tenant, there must be either an assent to that enhancement, or else a compliance with the provisions of the rent law, with reference to enhancement of rent, in force at the time of such enhancement.

* Appeal from Appellate Decree No. 1057 of 1888, against the decree of C. B. Garrett, Esq., Judge of 24-Pergunnahs, dated the 14th of March 1888, affirming the decree of Baboo Srinath Pal, Munsiff of Diamond Harbour, dated the 21st of April 1887.

(1) 2 Hay, 196; Marsh, 318.

(2) 8 Bom., A. C., 31.