

1892 Rs. 500, and on default further rigorous imprisonment for six months.

MADAN
MOHAN
BISWAS
v.
QUEEN-
EMPRESS.

I very much regret that I am unable to concur in the judgment which has just been pronounced by the Chief Justice. I have read very carefully the whole of the evidence on the record, and that evidence, if true, seems to me to warrant the conviction under section 374. Two Courts have believed that evidence. It stands uncontradicted, and I see no reason for discrediting it. On the evidence on the record, I have come to the conclusion that these three persons never did give their full and free consent to work and labour for the accused. In my opinion, therefore, the conviction in this case was right, and this rule ought to be discharged.

BEVERLEY, J.—I have nothing to add to my former judgment.

A. F. M. A. R.

Conviction set aside.

ORIGINAL CIVIL.

Before Mr. Justice Trevelyan.

1892
June 17.

IN THE GOODS OF SHOSHEE BHUSAN BANNERJEE, DECEASED.

Practice—Hindu Will—Universal Legatee not entitled to probate—Letters of Administration with the will annexed, Grant of to universal legatees—Probate and Administration Act (V of 1881), s. 19.

A universal legatee is not entitled to probate, but only to letters of administration with the will annexed.

In the goods of Radhika Mohan Sett (1) not followed.

THIS was an application in Chambers for probate of the will of one Shoshee Bhusan Bannerjee made on the 16th June by an attorney on behalf of Srimati Kamini Dabi, the widow of the deceased and the universal legatee under the will.

No executor was appointed by the will, the material portion of which was as follows:—

“Accordingly I make regular provision in respect of whatever properties, immoveable, moveable, and buildings, &c., I am possessed of. I give the same to my wife, Srimati Kamini Dabi,

Application in Chambers.

(1) 7 B. L. R., 563.

absolutely. She will be competent, at her own free will and pleasure, to dispose of the same by gift or sale. To this none of my heirs have, and will have, any claim or demand."

The judgment of the Court (TREVELYAN, J.) was as follows:—

Yesterday an application was made to me for probate of a will. The applicant was not named as executrix. It was contended before me that as universal legatee she was executrix according to the tenor of the will, and in support of that argument the decision in the case of *In the goods of Radhika Mohan Sett* (1) was cited. Although I desire to speak with every respect for the learned Judge who passed the order in that case, still I am unable to follow that decision. That decision, if it were right at the time, is inconsistent with the intention of the Legislature as shown by section 19 of the Probate and Administration Act (2). Under this Act a universal or residuary legatee is entitled to letters of administration with the will annexed. I must take it that by that expression the Legislature intended that they are to be excluded from probate. The decision in the case of *In the goods of Radhika Mohan Sett* (1), as far as I can find, has never been followed. Mr. Belchambers, the Registrar of the Court, has referred me to other cases. I find that in 1889 (3) Mr. Justice Wilson refused probate to a universal legatee, and granted letters of administration with the will annexed. There have also been other cases (4). I must follow the practice which has been in force for the last 20 years, *i.e.*, ever since that decision was passed. I decline to grant probate, but grant letters of administration with the will annexed.

*Application for Probate refused
and Letters of Administration
with will annexed granted.*

Attorney for the applicant: Mr. Jogen C. Dutt.

A. A. C.

(1) 7 B. L. R., 563.

(2) Act V of 1881; See the Indian Succession Act (X of 1865) s. 196.

(3) *In the goods of Monmohiney Dossee* (November 30th, 1889, Wilson, J.).

(4) *In the goods of Jane Porter* (March 21st, 1883, Norris, J.). *In the goods of Kadumbiney Dabee* (May 11th, 1887, Trevelyan J.).

Reporter's Note.—See *In the goods of Oliphant*, 1 Sw. and Tr., 525; Belchambers' Practice, 431.

1892

SHOSHEE
BHUSAN
BANNERJEE,
DECEASED,
IN THE
GOODS OF.