PRIVY COUNCIL.

KAMAWATI (PLAINTIFF) *v.* DIGBIJAI SINGH (DEFENDANT).

[On appeal from the High Court at Allahabad.]

P. C.* 1921 June, 21.

Indian Succession Act (X of 1865), sections 2, 331—Hindu convert to Christianity—Law governing succession—Absence of power to elect—Pardanishin—*Undue influence.*

Succession to the estate of a Hindu convert to Christianity who dies a Christian and intestate is governed by the Indian Succession Act (X of 1865). Since the passing of that Act a person ceasing to be a Hindu cannot elect to continue to be governed by Hindu law in matters of succession. *Abraham* v. *Abraham* (1) distinguished.

Deed executed by a *parda-nishin* lady relinquishing, substantially without consideration, her right of succession to a share in the estate of a deceased person in favour of one who, or whose representative, had submitted the prepared document to her and obtained her signature, held to be invalid. In such circumstances the *onus* on those relying on the deed is to prove by the strongest and most satisfactory evidence that the transaction was a real and *bonâ fide* one, and fully understood by the executant.

Sajjad Husain v. *Wazir Ali Khan* (2) applied.

Judgment of the High Court reversed.

APPEAL (No. 2 of 1920) from a judgment and decree of the High Court (January 30, 1917) reversing a decree of the Additional Subordinate Judge of Moradabad (August 12, 1915).

The suit was instituted by the appellant as the sister's daughter of one Kunwar Randhir Singh, deceased, to recover from the respondent a one-twelfth share of the estate of the deceased. She claimed as one of the next-of-kin of the deceased under the Indian Succession Act (X of 1865) on the ground that the deceased had died a Christian, and intestate, and that that Act regulated the succession to his estate. The respondant was in possession of the estate as surviving brother of the deceased. The appellant, who was *parda-nishin*, also claimed to set aside a deed, dated the 29th of April, 1912, by which she had agreed to relinquish all her rights of succession to the deceased in consideration of a monthly payment of Rs. 50. The respondent by his written statement denied that the Indian Succession Act, 1865, governed the succession, and contended that the deed was binding.

Present:—Lord SHAW, Lord PHILLIMORE, and Mr. AMEER ALI.

(1) (1868) 9 Moo., I. A., 199. (2) (1912) I. L. R., 34 All., 455: L. R., 39 I. A., 156.

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The Additional Subordinate Judge made a decree in favour of the appellant. He held that the deed of the 29th of April, 1912, was not binding upon her; he found that the deceased died a Christian and that the succession in his estate was governed by the Indian Succession Act, 1865.

On appeal the High Court set aside the decree of the trial judge. The learned Judges (RICHARDS, C.J., and BANERJI, J.) held that the deed was binding upon the plaintiff; in their view it was merely a ratification of a family arrangement made in 1908 as a compromise, and had been thoroughly understood and willingly executed by the plaintiff. The finding of the trial judge that the deceased died a Christian was not differed from; but the view that the deed was binding made it unnecessary to consider whether the Act applied.

1921, May 6, 9, 10.—Dube for the appellant contended that on the facts the deed of the 29th of April, 1912, was invalid, the respondent not having satisfied the *onus* upon him. Reference was made to *Sajjad Husain* v. *Wazir Ali Khan* (1).

E. B. Raikes for the respondent. The Indian Succession Act did not apply to this case. It was laid down in *Abraham* v. *Abraham* (2) that a Hindu converted to Christianity may, if he think fit, continue to be bound by Hindu Law, although he has renounced the Hindu religion; see also *Sri Gajapathi Radhika Patta Maha Devi Garu* v. *Sri Gajapathi Nilamani Patta Maha Devi Garu* (3). The evidence in the present case showed that the deceased wished to live as a Hindu although he had renounced the Hindu religion. It is conceded that there is a series of decisions of the Madras High Court, commencing with *In re Joseph Vathiar* (4) and including *Tellis* v. *Saldanha* (5), which are contrary to the respondent's contention. Those cases were followed by the Bombay High Court in *Dagree* v. *Pacotti San Jao* (6). But a contrary, and, it is submitted, a correct view, was taken by that court in *Francis Ghosal* v. *Gobri Ghosal* (7). The whole question is, what is the meaning

(1) (1912) I. L. R., 34 All., 455; L. R., 39 I. A., 156.
(2) (1863) 9 Moo., I. A., 199, 241.
(3) (1870) 14 W. R. (P. C.) 33.
(4) (1872) 7 Mad., H. C. Rep., 121.
(5) (1886) I. L. R., 10 Mad., 69.
(6) (1895) I. L. R., 19 Bom., 783.
(7) (1906) I. L. R., 31 Bom., 25.

of "Hindu" in s. 2 and s. 331 of the Indian Succession Act, 1865? In *Rani Bhagwan Kuar* v. *Jogendra Chandra Bose* (1) the Board held that Sikhs were included in the term. The policy of administration of justice in India is to secure to all people in that country the rights which they have enjoyed for generations; these rights are preserved to Hindus who became Christians.

[Reference was also made to *Lopes* v. *Lopes* (2)].

On the question of the validity of the deed, it is submitted that the High Court rightly held upon the evidence that the appellant thoroughly understood the transaction. The absence of independent advice is only an element for consideration, and not fatal to validity: *Kali Bakhsh Singh* v. *Ram Gopal Singh* (3).

Dube was not called upon to reply.

June, 21.—The judgment of their Lordships was delivered by Lord SHAW.

This is an appeal from a judgment and decree, dated the 30th of January, 1917, of the High Court of Judicature for the North-Western Provinces at Allahabad, which reversed a judgment and decree of the Additional Subordinate Judge of Moradabad, dated the 12th of August, 1915.

The suit was instituted by the appellant, as the sister's daughter of one Kunwar Randhir Singh Sahib, deceased, to recover from the respondent (who, as his surviving brother, was in possession of his estate) a one-twelfth share of that estate. To this one-twelfth share the appellant would be entitled to succeed under the provisions of the Indian Succession Act. This would be so, Kunwar Randhir Singh having died a Christian, and the Act accordingly regulating the succession to his estate. An argument will be hereafter noted which challenges this proposition and alleges that in the circumstances of Randhir and his family it must be concluded that the Indian Succession Act does not apply to his case, and that the succession to his property is governed by the Mitakshara Law.

The defendants, however, substantially found their case upon the existence of a deed, dated the 29th of April, 1912, whereby the plaintiff is alleged to have relinquished all her rights in

(1) (1903) L. R., 30 I. A., 249. (2) (1868) 5 Bom., H. C. (O. C. J.), 172.
(3) (1913) L. R., 41 I. A., 23.

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respect of her inheritance. It is part of the plaint accordingly to have this deed declared invalid. Its annulment was decreed by the Subordinate Judge, but the High Court have upheld it.

The deed is short, and is in the following terms:—

"We, Kameshar Nath, son of Chaudhri Bhagwan Singh, Taga by caste, old resident of Saharanpur, at present residing in Tajpur, district Bijnor; Bibi Kamawati, wife of Kishore Singh, Taga by caste, resident of Alauddinpur, district Bijnor; and Bibi Bhagwati, widow of Sher Singh, deceased, Taga by caste, at present residing in Tajpur, district Bijnor, declare as follows:—

"As regards the property left by Kunwar Randhir Singh, deceased, 'rais' of Sherkot, district Bijnor, there was a dispute between his own brother, Kunwar Digbijai Singh and Musammat Hira Dei. The matter was amicably settled and a compromise was written on the 27th of October, 1908, and registered in the office of the Registrar of district Moradabad, on the 31st of October, 1908. Under it monthly allowances were also fixed for us, the executants, out of the estate of Kunwar Randhir Singh. Now, there is again a dispute about his (Kunwar Randhir Singh's) estate between the aforesaid two persons. And it is alleged on behalf of Musammat Hira Dei that we, too, have a right in the estate of Kunwar Randhir Singh. Therefore, admitting the compromise, dated the 27th of October, 1908, we, the executants, while in a sound state of mind, and without being tutored or induced by anyone, willingly and voluntarily covenant and write that except the monthly allowances of Rs. 50 assigned to each of us, executants Nos. 1 and 2, and the monthly allowance of Rs. 100 assigned to me, executant No. 3, by Kunwar Digbijai Singh, of his own accord, accordingly to the custom of the family, out of the estate of Kunwar Randhir Singh, deceased, under that aforesaid compromise, we have no kind of claim of inheritance, etc., in the estate of Kunwar Randhir Singh. Kunwar Digbijai Singh is the owner of the entire estate of Kunwar Randhir Singh, 'rais' of Sherkot, district Bijnor. We have, therefore, executed this deed of relinquishment in respect of every kind of property left by Kunwar Randhir Singh, that is, in respect of zamindari property and houses, etc., in order that it may be of use in time of need. If any of our representatives brings any claim at any time it shall be false.

"Dated the 29th of April, 1912. By the pen of Abdul Karim, scribe."

The deed is signed—

"Kameshar Nath Sinha.

"Kamawati, in autograph.

"Bhagwati, in autograph."

It will be observed that the sole consideration for this relinquishment by the appellant of her share in the estate is a monthly allowance of Rs. 50, which is said to be "by Kunwar Digbijai Singh, of his own accord, according to the custom of the family."

It is abundantly proved that during the life-time of the deceased, and since his death, there was according to custom given this trifling maintenance allowance to this lady, and the insertion of it in the deed was simply the insertion of the only possible item that was available which would stand as the semblance of a consideration for the document.

It is essential in such cases to consider what was the relation in which the parties stood to each other, because, for the reason so clearly pointed out (especially in the judgment of Viscount HALDANE) in *Nocton* v. *Ashburton* (1) there may, quite apart from any question of fraud or of conduct partaking of the quality of fraud, arise from these relations an obligation by the one party towards the other, the failure to fulfil which obligation will be a ground for rescission of the contract and for the consequent remedies.

The point is clear and need not be laboured. In Lord HALDANE'S language:—

"Such claims raise the question whether the circumstances and relations of the parties are such as to give rise to duties of particular obligation which have not been fulfilled."

Their Lordships hold this doctrine to be imbedded in the law both of this country and of India. It is, however, an interesting question to see how the essentially equitable principle which it expresses applies to the relations of parties in the present case.

So far as the appellant is concerned, one outstanding fact to begin with is that she is a *parda-nishin* lady, and the deed was signed within the *parda*. In the second place, she is married, but her husband was not communicated with when her signature was obtained, nor were the merits or expediency of any such transaction discussed with him. In the next place, the lady, while relinquishing her entire share in a valuable estate (her twelfth being estimated at roughly between Rs. 20,000 and Rs. 30,000), had no separate advice in the transaction whatsoever. Finally, the deed was framed by or by the authority of Digbijai Singh, a co-heir in the property and also the possessor of the whole of it, and Digbijai took no steps or precautions in the direction of having independent advice of any kind

(1) (1914) A. C., 932.

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furnished to the lady who was relinquishing all her property in his favour.

The deed, in short, is a deed substantially without any consideration by a donor of her entire property in favour of a donee who, or whose represensatives, submit the prepared document to her and obtain within the *parda* her signature. It is the established law of India in these circumstances that the strongest and most satisfactory proof ought to be given by the person who claims under a sale or gift from them that the transaction was a real and *bonâ fide* one, and fully understood by the lady whose property is dealt with. The cases upon the subject were discussed and the law as thus cited was repeated in *Sajjad Husain* v. *Wazir Ali Khan* (1).

When; however, the law is that the lady must fully understand the transaction, this is but a secondary way of saying that it is the obligation of the donee in any transaction proceeding from her to see that she does so understand it. The relations of parties demand that this duty be performed, and when Courts of Law declare that the *onus* rests upon the donee of showing that he did so, that, of course, is founded upon the fundamental fact that it was his duty to do it. If accordingly this obligation thus arising out of the relations of the parties be not fulfilled, the case for rescission and consequent remedy is clear.

These principles applied to the present suit, while leaving the case important, very largely remove all difficulties from it, and had it not been for the judgment of the High Court, to which allusion will presently be made, it would have been unnecessary for their Lordships to deal with the subject in more than a few further words.

The potent consideration which assists the mind in this case is that the appellant whose deed is under challenge not only is not proved to have had explanations in the full sense required by law of the effect and purport of the deed, but it seems also to be beyond question that she had no knowledge whatsoever of the extent of the property to which she was relinquishing all right. The Board inclines to the view that all that

(1) (1912) I. L. R., 34 All., 455 ; L. R., 39 I. A., 156.

was ever given as an explanation of her being asked to sign the deed was that it was said to be required in order to make her sure of always getting her Rs. 50 a month. But the fact that Randhir Singh was a Christian, and that, consequent upon that, his intestate estate fell to be distributed under the Indian Succession Act, and that—further consequent upon that—she was entitled in her own right to one-twelfth of that wealthy person's estate—not one of these facts was ever brought home to her mind or even suggested. It is quite unnecessary to pursue the details, because this outstanding feature of the case makes it impossible to sustain a transaction in which the duty of disclosure resting upon the donee was clearly not discharged. This deed of relinquishment was taken from her when in point of fact she did not know what she was giving away.

There are many other elements in the narrative which would produce points of attack upon the deed: but their Lordships content themselves with holding that in substance they are in agreement with the judgment of the learned Subordinate Judge who has analysed the case with great patience and reached upon it what, in the view of the Board, is a sound conclusion.

With regard to the judgment of the High Court, it would rather appear that the learned Judges would have been entirely of the same opinion with regard to the deed in issue, viz., that of the 29th of April, 1912, had it not been that they were in their view compelled to a different conclusion by reason of occurrences four years earlier. They say, in short:—

"We think that if nothing happened prior to the 29th of April, 1912, the plaintiff would have been entitled to far more time for reflection and to independent advice before she could be called upon to execute a deed relinquishing her rights. The learned Judge seems to have approached the consideration of the case having regard only to what occurred in 1912. If this is the proper point of view from which to approach the consideration of the case we think that the decision of the Court below might be correct."

It is necessary accordingly to consider what had happened in the year 1908. In the opinion of the Board there is not sufficient justification for the reflection made upon the Subordinate Judge by the High Court that he has approached the consideration of the case without having taken fully into view what had happened in that earlier year. On the contrary, in view of this

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reflection, their Lordships have carefully considered the judgment of the Subordinate Judge and have been struck with the careful review which he gives of all the circumstances which occurred in that year leading up to and including the preparation of a deed of relinquishment. Their Lordships agree with that analysis. That deed of relinquishment was, equally with the one under consideration (viz., that of 1912), the subject of the obligations of disclosure, independent advice, and the like, which have already been alluded to; and, as in the later case, there is no trace of the obligation having been fulfilled or even regarded. Furthermore, neither she nor her husband signed it. Her name appears upon it as that of an attesting witness, but she denies her signature.

The deed of October, 1908, was the subject of discussion in the judgment delivered by Sir JOHN EDGE on this Board on the 21st of May, 1917. It appears that a copy of it was alleged to have been made upon stamped paper:—"It has been traced to the possession of the defendant, who has given no satisfactory explanation as to what has become of it," and strong observations were made as to the untrustworthiness of Digbijai's account.

So far as the effort made in 1908 was concerned it failed, and the interests of the wife of Kunwar Randhir Singh were separately compromised. So far as the sister, Bibi Bhagwati, was concerned, she refused to be a party to it or to execute it, and so the transaction fell through.

In these circumstances the Board is somewhat at a loss to understand the view of the High Court that the deed of 1912 was a ratification of the transaction of 1908. Instead, however, of the Subordinate Judge having ignored that transaction, he has in several pages of his judgment given, in their Lordships' opinion, a full and sufficient analysis of the evidence regarding it, and it appears plain that it could never be relied upon as having either been the means of conveying the requisite information to the appellant of her rights or of extracting from her any relinquishment thereof. Probably if the attention of the High Court had been more fully directed to those parts of the Subordinate Judge's opinion which have just been alluded to,

his judgment on the whole case might have been affirmed. In the Board's opinion that judgment was right.

It is only necessary in a few words to allude to an argument submitted to the Board by the learned counsel for the respondent, the object of which seemed to be to suggest that, even accepting the view that the deceased was a Christian, still he had by his acts made such an indication as the law would respect, to the effect that his succession was not to be governed by the Indian Succession Act. Their Lordships can give no countenance to such a principle. It is unavailing to quote the cases of *Abraham* v. *Abraham* (1) or *Sri Gajapathi Radhika Patta Maha Devi Garu* v. *Sri Gajapathi Nilamani Patta Maha Devi Garu* (2). These cases preceded the Indian Succession Act and cannot modify or interpret it.

By Section 2 of that Act it is enacted:—

"Except as provided by this Act, or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession."

This is the general rule, and the exception which bears upon the present case is section 331, which says that:—

"The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu . . . ."

If, accordingly, the late Randhir Singh had remained in or become a convert to Hinduism, the exception would apply.

The question accordingly is, Was the late owner of this estate, or was he not, a Hindu? If he was, the Mitakshara law would apply. If he was a Christian, the Succession Act rules would apply. The matter has been fully investigated. Among other things, for instance, in the words of the Subordinate Judge:—

"The plaintiff has proved the baptisms, marriage and burial certificates of the deceased; *vide* evidence given by the Chaplains Father J. Chrysostom and Father Angelo and by F. O'Neill, barrister-at-law. The above evidence proves beyond doubt that Kunwar Randhir Singh in his latter portion of life was a Christian and died as a Christian."

It is unnecessary to dwell upon the subject, because in a former litigation the respondent himself admitted these facts.

But the argument is that, notwithstanding this, the Hindu law of succession shall apply to this deceased's estate. A

(1) (1863) 9 Moo., I. A., 195. (2) 14 W. R. (P. C.), 33.

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situation of nothing but confusion could be thus produced. The plain law of the Succession Act would be eviscerated, and in each case inquiry might have to be entered upon as to whether a deceased subject of the Crown wished or by his acts compelled that the law of the land should not apply to his case. A particular subject can settle that in India, as in other parts of the Empire, by exercising—whatever be his religion—his power of testacy, and definitely declaring how he desires his affairs to be regulated so far as his own individual property is concerned. In this case Kunwar Randhir Singh did not do so, and it is not for a Court to enter upon an examination of his conduct so as to prevent the Indian law of intestate succession getting its full and proper application.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the judgment of the Subordinate Judge should be restored, and that the respondent should pay the costs of the appeal.

Appeal allowed.

Solicitor for appellant:—*H. S. L. Polak.*

Solicitors for respondent:—*T. L. Wilson & Co.*

APPELLATE CIVIL.

Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

GHISIAWAN PANDE (PLAINTIFF) *v.* MUSAMMAT RAJ KUMARI AND OTHERS (DEFENDANTS)*.

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March, 9.

Hindu law—Hindu widow—Alienation by widow—Consent of the then nearest reversioner not sufficient to validate the alienation if there is no legal necessity.

Where it is found as a fact upon the evidence that a transfer of her husband's property made by a Hindu widow is not a transfer for valid legal necessity, the fact that the next reversioner has joined the widow in making the transfer does not render it valid and binding as against the remoter reversioners. *Bajrangi Singh* v. *Manokarnika Bakhsh Singh* (1) and *Rangasami Gounden* v. *Nachiappa Gounden* (2) referred to.

THE facts of this case are thus stated in the following order of remand.

* First Appeal No. 118 of 1917 from a decree of Muhammad Shafi, Subordinate Judge of Gorakhpur, dated the 11th of January, 1917.

(1) (1907) I. L. R., 30 All., 1. (2) (1918) I. L. R., 42 Mad., 523.