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the pre-emption money. It does not direct the execution of any sale deed by the vendee in favour of the pre-emptor. Moreover the old view as now incorporated in section 24 of the Pre-emption Act makes all transfers made by the vendee subsequent to his purchase voidable at the option of the decree-holder. If the latter were a representative of the vendee it would be difficult on principle to hold that he is not bound by the previous transfers. We therefore think that it is not possible to hold that a pre-emptor is a person deriving his title through the vendee within the meaning of section 19 of the Indian Limitation Act so as to make an acknowledgment of the vendee, made in his written statement filed after the claim for pre-emption has been brought, an acknowledgment of his predecessor in title binding upon the pre-emptor. It is to be noted that there was no acknowledgment of this mortgage made by the vendor Abdus Salam in his sale deed. The plaintiff relies exclusively on the acknowledgment made by the vendee Narain Das in his written statement. That in our opinion does not help him. The appeal is accordingly dismissed with costs.

Before Justice Sir Lal Gopal Mukerji and Mr. Justice Bennet.

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June, 16.

GRESHAM LIFE INSURANCE SOCIETY, LTD. (DEFENDANT) *v.* COLLECTOR OF ETAWAH (PLAINTIFF).*

Succession Act (XXXIX of 1925), sections 214, 233 and 370—Life insurance policy—Claim by heir—Production of probate or Letters of Administration or succession certificate necessary.

A Life Insurance Company can insist on the production, as proof of title of the person who claims the insurance money as the heir of the deceased person, of either a probate or Letters of Administration or a succession certificate; and a suit by the claimant against the company for recovery of the money cannot be decreed except on the production of one of these documents.

*First Appeal No. 26 of 1929, from a decree of Tufail Ahmad, Subordinate Judge of Etawah, dated the 17th of September, 1928.

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A term in the policy of insurance that the money under the policy would be paid only to the assured or to his assign or to his executor or administrator is a good contract which binds not only the assured but also anybody claiming title under him.

Messrs. *B. E. O'Conor* and *Ram Nama Prasad*, for the appellant.

Messrs. *U. S. Bajpai* (Government Advocate) and *G. S. Pathak*, for the respondent.

MUKERJI and BENNET, JJ. :—This appeal raises a question which is of great importance to companies doing life insurance business.

It appears that a gentleman named Raja Hukum Pratap Singh took out a policy of insurance on the 15th of August, 1917, which was payable either when the Raja attained the age of 40 or on his death. The Raja died on the 17th of May, 1925. One day previous to his death he adopted a minor, who subsequently became Raja Maha Bindeshwari Pratap Singh, and he also executed a will in favour of the adopted son. The proprietor of the estate being a minor, the Court of Wards took over superintendence and management of the estate. The policy having become payable on the death of the assured, the Court of Wards called upon the appellant to pay the sum of Rs. 15,000 to the Court of Wards as represented by the Collector of Etawah. The company asked for proof of title and stated that they were ready to pay the money as soon as they were satisfied as to the title of the claimant. Their letter stated: "Kindly now submit us the probate of the will of the deceased as mentioned in the court's decree, when we shall be pleased to give instructions for the final discharge." The Court of Wards was advised by the Government Pleader of Etawah that there was no necessity for taking out a probate of the will, as it would be a costly affair and without any legal necessity. The company having

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refused to pay without what they called proof of title, the suit out of which this appeal has arisen was instituted. The suit was decreed by the court below with costs and future interest. The decree however grants interest during the pendency of the suit.

In appeal it has been contended by the learned counsel that under the terms of the policy granted to the late Raja the company were entitled to insist on the production of either a probate or Letters of Administration. It was also contended that under the law for the time being in force the appellant was entitled to insist on the production of either a probate or Letters of Administration or at least a succession certificate, and, therefore, no decree should have been made against the company without production of any one of these documents.

It appears that after the decree was made by the court below, the company paid the decretal amount in court under protest and filed this appeal. Two questions arise for determination in this case: (1) whether the contract of policy by which the assured agreed that the money would be paid to either himself or to his assign or to his executor or administrator is a binding contract, and (2) whether, if it is not, the defendant can insist on the production of either a probate or Letters of Administration or a succession certificate.

We shall take the second point first. As the suit is based on the ground that the young Raja Maha Bindeshwari Pratap Singh succeeded to the property of his adoptive father by virtue of the adoption and also by virtue of the will, this is, therefore, a case where there is no allegation that the family was a joint one. It may be mentioned casually that if the family be a joint one, the will would be invalid in law and the right to obtain the property would be by survivorship and not under the will.

The claim being, therefore, by one who claims to be the heir of a deceased creditor, we have to see what rule

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of law applies. Section 214 of the Indian Succession Act, 1925, lays down that "No court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person, except on the production by the person so claiming of either a probate or Letters of Administration . . . or a succession certificate granted under part X and having the debt specified therein, etc." This is a case in which the plaintiff claims by right of succession the effects of a deceased person and wants that the debt due to the deceased should be paid to the plaintiff. In the circumstances there is no escape from the provision of section 214 of the Succession Act, and the plaintiff must supply either a probate or Letters of Administration or a succession certificate.

In the case of a will executed by a person who is neither a Muhammadan nor a Hindu nor a Buddhist nor a Sikh nor a Jaina, mentioned in section 57 of the Act, it cannot be insisted that a probate shall be taken out (section 213). But there is no prohibition against Letters of Administration being taken out in the case of the estate of a deceased Muhammadan, Buddhist, Sikh or Jaina, vide section 218. Where the testator has not appointed an executor, as in this case, section 232 of the Indian Succession Act permits Letters of Administration being granted to the plaintiff who claims as the sole legatee.

In any case there is no bar whatsoever to the grant of a succession certificate under section 370 of the Succession Act. A succession certificate is permissible to be issued in the case of even a particular debt. It is thus a comparatively less costly matter than taking out Letters of Administration to the entire estate.

On a consideration of the law on the subject we are, therefore, of opinion that the appellant can insist on the production by the claimant of either a probate or

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Letters of Administration or a succession certificate in order to be satisfied that the person to whom it would pay the money was really the person entitled to it.

It was argued by the learned Government Advocate that the production of any of these documents has become unnecessary by the fact that the plaintiff has established his title by the suit and the company must pay to him. This argument, however, is not sound. A decree between the parties does not bind people who are no parties to it, and therefore if there be any claim for the money by any other person, the decree would be no answer for the defendant to such a claim. It is only a probate or Letters of Administration or a succession certificate which grants a complete immunity to the debtor who pays off his debt to the holder of any one of these documents. These are called judgments *in rem* and have force as against all possible claims. We hold, therefore, that the defendants were entitled to succeed.

On the first point we are of opinion that the defence is equally strong. There is nothing in law to prevent a company from entering into a contract with a proposer for life assurance that the company would pay the money only to him or his assign or to his executor or administrator. The law of succession varies in different parts of the country, and it cannot be expected of a company doing life insurance business to know the law obtaining in different parts of the country, nor can it be expected that it would undertake an investigation into the title of a claimant or of claimants in general and to decide for itself who is the person best entitled to the money. In the circumstances an agreement that the money under the policy would be paid only to the assured or to his assign or to his executor or administrator is a good contract which must bind not only the assured, but also anybody claiming title under him. In this view also the defendant was entitled to insist

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on the production of any of the three documents mentioned above. It may be pointed out that even a successor to a property by right of survivorship may take out a succession certificate; see *Banwari Lal* v. *Maksudan Lal* (1).

In the result, the appeal must succeed. The law does not contemplate the dismissal of a suit where a suit has already been instituted. All that it provides against is the passing of a decree without the production of any of the title deeds. In the circumstances, it would not be desirable to dismiss the suit altogether. We should grant the plaintiff respondent some time in order to enable him to produce either a probate or Letters of Administration or a succession certificate, in which last case the debt in question may be specifically mentioned.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji.

SAID AHMAD (OBJECTOR) *v.* RAZA HUSAIN AND ANOTHER (DECREE-HOLDERS).*

1933 *June*, 17.

Civil Procedure Code, section 47; *order XXI, rules* 97, 98, 103—*One defendant exempted from suit but his name not struck off—"Party to the suit" for purpose of section* 47—*Resistance to execution by him—Section* 47 *as well as order XXI, rules* 97 *and* 98, *applicable to such dispute—Civil Procedure Code, section* 128(1)—*Conflict between section and rule.*

A defendant was exempted from the suit, but his name continued to be on the record and appeared in the decree, though it was noted that he had been exempted. In execution of the decree the plaintiff sought possession of a house which this particular defendant had claimed to be his own and in respect of which he had been exempted, and the decree-holder was resisted by him. The decree-holder complained to the execution court, and in a summary proceeding that court found that the resistance was made without any

*Appeal No. 53 of 1931, under section 10 of the Letters Patent.

(1) (1929) I.L.R., 52 All., 252.