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when such an obvi medy as binding down the five persons who are said to have atened Domi Lall and his labourers was ready to his hand." We think, too, that the proper course for the Magistrate to have followed in this case was to bind down such of the persons as were likely to disturb the peace under section 107 of the Code.

We accordingly discharge the order of the Magistrate, and direct that the rule be made absolute.

S. C. B. *Rule made absolute.*

PRIVY COUNCIL.

P. C.* 1896 *February* 22.

NORENDRA NATH SIRCAR AND ANOTHER (PLAINTIFFS) *v.* KAMALBASINI DASI (DEFENDANT.)

[On appeal from the High Court of Judicature at Fort William in Bengal.]

Hindu Law—Will—Construction of—Contingent executory bequest over—Period of distribution of property bequeathed—Succession Act (X of 1865), section 111—Codifying, object of.

The object of codifying a particular branch of the law is that on any point specifically dealt with, the law should thenceforth be ascertained by interpreting the language used in that enactment, instead of, as before, searching in the authorities to discover what may be the law, as laid down in prior decisions.

The language of such an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before.

Bank of England v. *Vagliano* (1) referred to.

A Hindu at his death left three sons, the eldest of full age and the other two minors. In his will were the directions: "My three sons shall be entitled to enjoy all the moveable and immoveable properties left by me equally. Any one of the sons dying sonless, the surviving sons shall be entitled to all the properties equally."

Held, that these words gave a legacy to the survivors contingently on the happening of a specified uncertain event, which had not happened before the period when the property bequeathed was distributable, that period of

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

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distribution being the time of the testator's death, it would be impossible to decide that the period was postponed by reason of the personal incapacity of some of the beneficiaries.

Therefore, under section 111 of the Succession Act, 1865, applicable under the Hindu Wills Act, 1870, the legacy to the surviving brothers could not take effect, and the original gift to the testator's three sons was absolute to each in equal shares and indefeasible on his death.

APPEAL from a decree (30th August 1882) of the High Court, modifying a decree (7th October 1890) of the Subordinate Judge of the 24-Pergannas.

On this appeal questions were raised on the construction of the Will of the deceased, Hara Nath Sircar, a Hindu of Sripur, near Calcutta, executed by him on the day of his death, the 14th January 1882. He left three sons, Jogendra Nath, who was at that time of full age, and Norendra Nath and Surendra Nath, who were then, and down to the commencement of this suit, minors. The family was subject to the law of the Dayabhaga.

The earlier part of his Will, to which the present question relates, was as follows :—

"This Will is executed by Hara Nath Sircar, of Sripur, at present of Kalighat. Being seriously ill, I execute this Will, providing as below for the preservation and management of my properties, moveable and immoveable, after my death.

"1. My three sons shall be entitled to enjoy all the moveable and immoveable properties left by me equally. Any one of the sons dying sonless, the surviving sons shall be entitled to all the properties equally."

Other paragraphs related to powers given by the testator to Jogendra Nath, his eldest son, whom he appointed to be his executor. As to the remaining paragraphs no question arose.

Jogendra Nath managed the property under this Will, until his death on the 2nd December 1886. He left a widow, the present respondent, and six daughters, but no male issue.

The question now raised was whether, on Jogendra Nath's death without his leaving a son, his surviving brothers became entitled, in addition to their original two-thirds of their father's estate, to the one-third which their deceased brother had in his lifetime; or whether the widow became entitled to the one-third, which had belonged to her husband.

This depended on the construction and application of section 111

of the Succession Act (X of 1865), which was made applicable to the Will of a Hindu testator by the second section of the Hindu Wills Act, 1870.

A further question was also raised: whether the provisions of the Will were valid as a contingent bequest, carrying over Jogendra Nath's share on his death, without male issue, to his brothers.

On the 11th April 1887 a certificate to collect debts was granted under Act XXVII of 1863 to Saodamini Dasi, widow of the testator, as guardian of the minor sons, and to Kamalbasini, as widow of Jogendra Nath.

On the 9th September 1889 these minors, by Saodamini as their guardian, sued Kamalbasini in the present suit, alleging that she had taken possession of one-third of the estate of the late Hara Nath without any right thereto, and claiming a declaration that they were entitled to it. The defendant filed her written statement on the 17th November following, alleging that the testator could not be understood to have given to each son a life-interest merely in the estate, and any provisions to that effect would not be valid, according to the prevailing law and the *shastras*.

The section of the Succession Act, 1865, is set forth in their Lordships' judgment on this appeal.

The Subordinate Judge was of opinion that Jogendra Nath, by surviving the testator, did not take an absolute indefeasible interest in the one-third share bequeathed to him. The Judge pointed out that in *Soorjeemoney Dossee* v. *Denobundoo Mullick* (1), which was decided in 1862 by the Judicial Committee, it had been held "that there was not anything contrary to the principles of Hindu law in allowing a testator to give property whether by way of remainder or (to borrow terms from the law of England) by way of executory bequest, contingently upon an event which was to happen, if at all, immediately upon the close of a life in being." And as the Judicial Committee had supported in that case a clause in a Will, under which the share of a son, who died sonless, passed to the surviving sons, and not to the widow of their deceased brother, the Judge held that

(1) 9 Moore I. A., 123.

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down to the passing of the Hindu Wills Act in 1870, which extended section 111 among others of the Succession Act (X of 1865) to the Wills of Hindus, the law was that such an executory bequest as the present one would take effect in favour of the surviving brothers. The Judge said :—

"It appears to me that the case of *Soorjeemoney Dossee* is in accordance with the second rule laid down in *Edwards* v. *Edwards* in 1852, and approved of by the House of Lords in O'Mahoney's case in 1874. *Bowers* v. *Bowers* was decided in appeal in 1870. Thus the rule laid down in *Soorjeemoney Dossee's* case in 1862 was the law in England down to the year 1874. The Succession Act was passed in 1865 and the Hindu Wills Act was passed in 1870."

After referring to *Edwards* v. *Edwards* (1), and to *O'Mahoney* v. *Burdett* (2), *Bowers* v. *Bowers* (3) and to *Smith* v. *Stewart* (4) as supporting his view that the English law would allow such a bequest as the present one, in the case of an English testator, the Subordinate Judge said :—

"The question now is whether section 111 of the Succession Act, 1865, has made any change in the law.

"Section 111 says that the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

"There is nothing in this section to show that the period of distribution would necessarily be the time of the testator's death. In fact, there are many cases where the period of distribution may happen after the death of the testator [as illustration (*a*).]

"In illustration (*a*), under section 112, the period of distribution is the testator's death, as in *Cripps* v. *Walcott* (5). In illustration (*b*) under section 112, the period of division is the death of the tenant for life.

"In the case of *Tarokessur Roy* v. *Soshi Shikhuressur Roy* (6), and in that of *Kristoromoni Dasi* v. *Narendro Krishna* (7), the case of *Soorjeemoney Dossee* was referred to and discussed, but was not dissented from, and it would seem was followed.

"Probably the period of distribution would be, in a case like the present, the death of the first taker. The period of distribution would not be the time of the testator's death. Illustration (*b*) probably goes beyond the section, and has not the same force as the enacting part of the section.

(1) 15 Beav., 357.
(2) L. R., 7 H. L., 388.
(3) L. R., 8 Eq., 283.
(4) 4 De. Gex. & Sm., 253.
(5) 4 Madd., 11.
(6) I. L. R., 9 Calc., 952.
(7) I. L. R., 16 Calc., 383.

"I think, though not without much hesitation, that the case of *Soorjeemoney Dossee* is still the law of the land, and that Jogendra Nath, by simply surviving the testator, did not take an absolute indefeasible interest in the one-third share of Hara Nath's property."

The High Court (PETHERAM, C. J., and MACPHERSON, J.) reversed that decision, giving their reasons as follows: —

"Sir *G. Evans*, for the defendant, contended that under the first clause of the Will the period contemplated for the death of either of the sons sonless was in the lifetime of Hara Nath, and that even if this were not clear from the words used, all doubt as to the effect of the clause was removed by the enactment in section 111 of the Succession Act (X of 1865), as explained by illustration (*b*.)

"Mr. *Woodroffe* contended that each of the three sons took an estate, which was defeasible in the event of death without male issue at any time, and that upon the death of Jogendra Nath in 1293, his share passed to his brothers, to the exclusion of his wi ow. Many English cases were cited by Mr. Woodroffe in support of his view, and there is apparently no doubt that the law in England at the present time is in accordance with his contention, but the law here is not the same, it being enacted by section 111 of the Succession Act, which, we think, applies to bequests of all descriptions of property and is not confined, as Mr. Woodroffe contended, to bequests of money; as there is no difference in this country between real and personal property, and there is no apparent reason why the Legislature should provide that bequests of immoveable should be construed differently to bequests of moveable property. This being the case, we think that the present bequest falls within that section as explained by the illustration; the specified uncertain event in this case is the death of either of the three sons sonless. The legacy which is to take effect on the happening of the uncertain event is the gift to the survivors; and the section, if applicable to immoveable property, enacts in so many words that, unless the uncertain event happens before the fund is payable, *i.e.*, in this case, before the death of the testator, the legacy, *i.e.*, the legacy to the survivors, shall not take effect. In our opinion, then, as Jogendra Nath survived his father, a legacy to his surviving brothers in the event of his death without male issue would not take effect, and it follows that his widow, the defendant, is, as his heiress, entitled to his one-third share of his father's estate, and that the decree of the Subordinate Judge on this point must be varied."

The Judges further expresed their opinion that there was a doubt whether "the intention of Hara Nath was to do anything more than to provide that the estate should be managed by Jogendra Nath, leaving it to devolve according to the provisions of the Hindu law."

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As the result of their judgment the decree of the High Court declared that the present appellants were entitled to two-thirds of the testator's estate and the respondent to one-third.

The brothers Norendra Nath and Surendra Nath appealed.

Mr. *Crackanthorpe*, Q.C., Mr. *R. V. Doyne*, and Sir *W. H. Rattigan* for the appellants.—The decision of the High Court was wrong and should be reversed. On the due construction of the Will the testator's intention was that the share of any son, dying at any time after the death of the testator without leaving a son, should go over to the brothers surviving him. The introductory words of the Will that the testator was providing for the preservation and management of his property after his death were important, and supported the view that he contemplated a period after his death during which his eldest son should manage for the benefit of his brothers. This was in accordance with the law relating to executory bequests, until in 1870 the Hindu Wills Act extended the 111th section of the Succession Act of 1865 to the wills of Hindus; and it could hardly be a correct construction and application of that section which would compel a Court to construe a Will in a manner contrary to the intention of the testator, whose disposition was, as this was, according to Hindu law. The argument was that section 111, and the illustration, which was part of it, had no application to the facts of the present case, or the construction of this Will. It was, however, only on the strength of that section being applied that the gift over could be held to fail; for there was no ground for the doubt thrown out by the judgment below that the testator did not intend to do anything more than provide that the estate should be managed by Jogendra Nath, leaving it to devolve according to the Dayabhaga. The opposite intention was apparent, and the testator intended that the estate should devolve by survivorship. On the words themselves of section 111 the present case did not come within it. The period of distribution, under this Will, was by no means necessarily at the death of the testator. The period in this case might be at the termination of the minority of the younger sons; and the application o

section 111 might be understood to be limited to the cases where an intention, contrary to the proposition of law which the section laid down, did not appear in the Will.

Reference was made to *Soorjeemoney Dossee* v. *Denobundoo Mullick* (1), *Edwards* v. *Edwards* (2), *Farthing* v. *Allen* (3), *Smith* v. *Stewart* (4), *O'Mahoney* v. *Burdett* (5), *Ingram* v. *Soutten* (6).

Mr. *J. D. Mayne* for the respondent.—The judgment of the High Court is right. It is clear that the 111th section of the Succession Act of 1865 was applicable, and that upon the language of this Will, read with that section, each of the sons must take an absolute estate, unless, before the period of distribution, he should have died without leaving a son. This contingency, the sons having or not having a son, was, in this case, the specified uncertain event within the meaning of the section; and that it did not occur before the period of distribution is equally clear. The period of distribution was at the death of the testator. There was no foundation for holding that the date to be regarded was that of the termination of minority of either of the younger sons. There could be no question here of the application of the principles, sometimes called the rules, but really not the latter, laid down in *Edwards* v. *Edwards* (2). The first three, the fourth having been overruled by the House of Lords in *Ingram* v. *Soutten* (6), were principles of construction of dispositions applicable in England, where the contrary intention did not appear in the Will. But section 111 of the Succession Act of 1865 left no room for making exceptions in India. This enactment harmonized with the general tendency of the Hindu law in regard to dispositions to take effect in the future. That tendency was that property disposed of by a testator should not be delayed for an indefinite time in getting into the hands of those in whose possession it would be permanent estate, and that the possession should not continue in a state of suspense. As to the period when the estate of Hara Nath became distributable that could be at no

(1) 9 Moore I. A., 123.
(2) 15 Beav., 357.
(3) 2 Madd., 310; 2 Jarman on Wills.
(4) 4 De. Gex. & Sm., 253.
(5) L. R., 7 H. L., 388.
(6) L. R., 7 H. L., 408.

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other time than at his death, distribution including, in the case of immoveables, participation. Reference was made to *Bowers* v. *Bowers* (1), *Olivant* v. *Wright* (2), *Besant* v. *Cox* (3), *Ellokassee Dossee* v. *Durponarain Bysack* (4).

Mr. *M. Crackanthorpe*, Q.C., in reply, cited *Koylash Chunder Ghose* v. *Sonatun Chung Baroole* (5), and *Nanak Ram* v. *Mehin Lal* (6), as to the force to be allowed to illustrations in an Act such as those in Act X of 1865. *Raikishori Dasi* v. *Debendra Nath Sircar* (7) as to the dispositions in a Will, allowed or disallowed, affecting the testator's general intention, and *Rai Bishenchand* v. *Mussumat Asmaida Koer* (8) were also referred to.

The judgment of their Lordships was delivered by—

LORD MACNAGHTEN.—In this case there is a question as to the effect of the Will of Hara Nath, a Hindu gentleman, who died on the 14th of January 1882. Hara Nath left three sons. The eldest Jogendra Nath had attained majority at the time of his father's death. The other two, who were children by a junior wife, were then infants of tender age.

The Will, which was made on the day on which the testator died, disposed of his property in the following manner :—

> My three sons shall be entitled to enjoy all the moveable and immoveable properties left by me equally. Any one of the sons dying sonless, the surviving son shall be entitled to all the properties equally."

Jogendra Nath was appointed sole executor with powers of management during the minority of his brothers. On their attaining majority he was directed to "make over charge of their properties to them."

Jogendra Nath proved the Will, and took upon himself the management of the testator's estate. He died on the 2nd of December 1886. He left a widow, but died sonless.

In these circumstances a contest arose as to the destination of Jogendra Nath's share. The surviving sons of Hara Nath by their

(1) L. R., 5 Ch., 244 ; L. R. 8 Eq., 283.
(2) L. R., 1 Ch. D., 346.
(3) L. R., 6 Ch. D., 604.
(4) I. L. R., 5 Calc., 59.
(5) I. L. R., 7 Calc., 132.
(6) I. L. R., 1 All., 487.
(7) I. L. R., 15 Calc., 409.
(8) I. L. R., 6 All., 560 ; L. R., 11 I. A., 164.

mother and next friend claimed it as theirs under the terms of the Will. On the other hand, Jogendra's widow, as his heir, contended that on the testator's death the executory gift over in the event of any of his sons dying sonless became incapable of taking effect, having regard to the provisions of section 111 of the Succession Act, 1865, which was made applicable to the Wills of Hindus by the Hindu Wills Act, 1870.

Section 111 of the Act of 1865 enacts that "where a legacy is given, if a specified uncertain event shall happen and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect, unless such event happen before the period when the fund bequeathed is payable or distributable." In the illustrations to that section the following case is given :—

"(*b*) A legacy is bequeathed to A and in case of his death without children to B. If A survives the testator or dies in his lifetime, leaving a child, the legacy to B does not take effect."

The Subordinate Judge referred to several text-writers and cited a number of authorities to prove that, according to the law still in force in England, and according to the law as administered in India before the date of the Succession Act, 1865, an executory gift, such as that contained in the testator's Will, would have effect, in the event of the first taker dying sonless, at any time. Then turning to the Act he held with some hesitation that it was not the intention of the Legislature to alter the law in India by departing from the law of England. The learned Judges of the High Court on appeal reversed the decision of the Subordinate Judge. They held that the Act of 1865 had altered the law, and that according to section 111 of that Act as explained by illustration (*b*) the original gift to the three sons in equal shares became indefeasible on the testator's death.

It is hardly necessary for their Lordships to do more than express their concurrence with the judgment of the High Court. But they think it may be useful to refer to some observations in a recent case before the House of Lords as to the proper mode of dealing with an Act intended to codify a particular branch of the law. "I think," said Lord Herschell in the *Bank of England* v. *Vagliano* (1), "the proper course is in the first instance to examine

(1) 1891, A. C., 107.

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the language of the Statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a Statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions . . . ."

The learned Judges of the High Court have taken the line which was approved in the House of Lords. The Subordinate Judge followed exactly the opposite course. His judgment with much display of learning and research is a good example of the practice which Lord Herschell condemns and the mischief which the Succession Act, 1865, seems designed to prevent. To construe one Will by reference to expressions of more or less doubtful import to be found in other Wills is for the most part an unprofitable exercise. Happily that method of interpretation has gone out of fashion in this country. To extend it to India would hardly be desirable. To search and sift the heaps of cases on Wills which cumber our English Law Reports in order to understand and interpret Wills of people speaking a different tongue, trained in different habits of thought, and brought up under different conditions of life seems almost absurd. In the Subordinate Courts of India such a practice, if permitted, would encourage litigation and lead to idle and endless arguments. The Indian Legislature may well have thought it better in certain cases to exclude all controversy by positive enactment. At any rate in regard to contingent or executory bequests the Succession Act, 1865, has laid down a hard and fast rule, which must be applied, wherever it is applicable, without speculating on the intention of the testator.

Two points were urged by the learned Counsel for the appel-

lants, which do not seem to have been argued in the Courts below. In the first place, it was suggested that in section 111 of the Act of 1865 the qualification or proviso, "unless a contrary intention appears by the Will," is to be understood. In some sections of the Act those words are to be found. Full effect must be given to them where they occur. But, where the qualification is not expressed, there is surely no reason for implying it. The introduction of such a qualification into section 111 would make the enactment almost nugatory. Then it was argued that in the present case the fund is not "payable or distributable" within the meaning of the enactment, until the testator's younger sons attain their majority. But in their Lordships' opinion that is not the effect of the Will. The period of distribution is the death of the testator. It would be impossible to hold that that period is to be postponed by reason of the personal incapacity of some of the beneficiaries.

The view of the High Court that section 111 applies to bequests of all descriptions of property, there being no difference in India between real and personal property, was not impugned in the argument before their Lordships.

Their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed. The appellants will pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellants: Messrs. *T. L. Wilson & Co.*
Solicitors for the respondent: Messrs. *Barrow & Rogers.*

C. B.

ORIGINAL CIVIL.

Before Mr. Justice Sale.

MADHUB LALL DURGUR (PLAINTIFF) *v.* WOOPENDRANARAIN SEN (DEFENDANT.)

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Summons, Date of service of—Sheriff's return—Civil Procedure Code (Act XIV of 1882), Chapter XXXIX, section 78.

In a suit under Chapter XXXIX of the Civil Procedure Code the defendant obtained an *ex-parte* order on 9th January 1896 for leave to appear and defend the suit.