

they had reasonable evidence. Ahmed, being out of possession, might have brought a suit to recover it, and to have it declared that the formal title vested in Afzulun Nissa and her successors was only *benami* for himself. From such evidence as their Lordships have of his wishes, he never would have done so, but, however that may be, the time for bringing a suit began to run in his life, and after twelve years became an absolute bar to him and his heirs.

Their Lordships will humbly advise Her Majesty to affirm the decree appealed from and to dismiss the appeal with costs.

*Appeal dismissed.*

Solicitors for the appellant : Messrs. *T. L. Wilson & Co.*

Solicitor for the respondent : *Mr. J. F. Walker.*

C. B.

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## REFERENCE UNDER COURT FEES ACT.

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*Before Sir W. Comer Petheram, Knight, Chief Justice.*

IN THE GOODS OF J. T. FROESCHMAN (DECEASED),

*Court Fees Act (VII of 1870), Schedule I, art. 11—Ad valorem duty on Probate—Parties married and holding property under the Code Napoleon—Law of France—Trust property.*

1883  
May 22.

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The deceased *F* was a European subject of the German Empire. He married a lady of Solingen in Rhenish Prussia, where the Code Napoleon is in force. There, in contemplation of the marriage, the parties entered into a contract whereby it was provided that "there should be and rule, universal community of his and her present and future moveable and immoveable property," which contract placed the parties under the law of France respecting community of property between husband and wife. Under that law, a husband and wife have an equal interest in the property comprised in the community; on the death of either, the property is divided into two parts, of which one part goes to the survivor, and the other to the heirs, or to donees under a testamentary disposition. *Held*, that on the death of *F* only one-half of the property was chargeable with the *ad-valorem* duty payable under art. 11 of schedule I of the Court Fees Act: the other half being trust property, which should, under the provisions of section 19 D of that Act, be exempted from payment of such duty.

1888

IN THE  
GOODS OF  
FROESCH-  
MAN.

THIS was an application for probate, the facts of which are stated as follows in the reference of the case by the Taxing officer to the Chief Justice:—

“The deceased was a European subject of the German Empire. He married a lady of Solingen in Rhenish Prussia, where the Code Napoleon is in force. There, in contemplation of the marriage, the parties entered into a contract, whereby it is provided that “there should be and rule, universal community of her and his present and future moveable and immoveable property.” This contract, which is confirmed by the will of the deceased, placed the parties under the law of France respecting community of property between husband and wife.

“Under that law a husband and wife have an equal interest in the property comprised in the community. So long as both live, the community remains; but upon the death of either, the property is divided into two parts, of which one part goes to the survivor, and the other to the heirs [Floyd’s Succession Laws, p. 45], or to donees under a testamentary disposition—Code Napoleon, Book III, chapter 11, translation by Richard, p. 382.

“As the result, only half the property left by the deceased belonged to him, the other half belonged to his wife, and is trust property which should, under the provisions of section 19 D of the Court Fees Act, 1870, be exempted from the payment of the *ad-valorem* fee prescribed by article 11 in schedule I of that Act. This question, as connected with the law of France, has now arisen for the first time, and, as a question of general importance, I am required by section 5 of the Court Fees Act, to refer it to the final decision of the Chief Justice.

“I would call attention to the case of a Hindu in whose name alone the joint property stood, but who was entitled only to half. On his death the surviving brother’s share was treated as trust property—*In the goods of Brindaban Ghose (1)*.”

The opinion of the Chief Justice was as follows:—

PETHERAM, C.J.:—I agree with the Taxing officer that only half the property of the deceased is chargeable with the *ad-valorem* duty payable under art. 11, schedule I of the Court Fees Act.

Attorneys for the petitioner, Messrs. Carruthers, & Co.

J. V. W.