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TILAK CHANDRA SARKAR v. BAISAGOMOFF.

Having regard to the circumstances of this case, we are unable to say for the petitioners that there has been any failure of justice in this case by reason of the omission of the Assistant Magistrate in recording a judgment before pronouncing sentence, and that there has been no fair trial in this case, so as to render a fresh trial necessary.

We accordingly discharge the rule.

S. C. B. *Rule discharged.*

ORIGINAL CIVIL.

1896
March 12.

Before Mr. Justice Sale.

P. G. HILL (PLAINTIFF) *v.* ADMINISTRATOR-GENERAL OF BENGAL (DEFENDANT).

Domicile—Marriage—Husband and wife—Succession to property—Succession Act (X of 1865), section 4, section 44.

A person with an English domicile marrying a wife with an Indian domicile is on her death entitled to inherit the whole of her moveable property to the exclusion of the next of kin.

Sections 4 and 44 of the Succession Act do not affect the law of succession, but relate to the immediate effect of marriage on moveable property belonging to either of the married persons and not comprised in an antenuptial settlement.

THIS suit was instituted to ascertain what share, if any, the plaintiff was entitled to in the moveable property of his deceased wife. The plaintiff, whose domicile was English, was married to his wife, whose domicile was Indian, in the Punjab in 1872. The wife was entitled to a certain fund, subject only to a life interest therein on the part of her mother. She died in 1879 at Rawalpindi, leaving as her next of kin her mother and a brother. The Administrator-General administered her estate and obtained possession of the Government securities which constituted the fund to which the wife was entitled. The plaintiff claimed the whole of the securities to the exclusion of the wife's next of kin, and contended that the succession to the wife's moveable property was governed by the English law of distribution, under which the husband took the whole. It was contended on behalf of the Administrator-General that the succession was governed by the

law of distribution under the Succession
husband took half of the moveable property
the other half. Half the full amount of the mo
had already been paid over to the plaintiff, who now
remainder.

Mr. *Hill* (Mr. *Henderson* with him) for the plaintiff.—Und
section 15 of the Indian Succession Act the wife on marriage
acquired the domicile of her husband, which was English.
Therefore under section 5 the succession to her moveable property
is regulated by the law of England. Section 4 of the same Act
enacts that no person shall by marriage acquire any interest in the
property of the person whom he or she marries; but that refers
only to rights *inter vivos* and not to rights arising upon death.
The rights acquired by marriage are quite distinct from rights of
succession. It is not the marriage that gives the right of succes-
sion, but it is the law that gives that right, where it finds the
relation of husband and wife. Section 4 applies only to cases
where both parties are domiciled in British India. Section 44
enacts that, if a person whose domicile was not in British India
married in British India a person whose domicile was in British
India, neither party should acquire by the marriage any rights in
respect of any property which he or she would not have acquired,
if both were domiciled in British India at the time of the
marriage. That section made the same provision in cases, in
which one of the parties was domiciled in British India as was
done by section 4 in the case where both parties were domiciled
in British India.

The last words of section 44 relate to section 4; for that is
the only section to which those words could relate, and as section
4 related only to rights *inter vivos*, section 44 did the same. To
hold that section 44 related to rights of succession would be to
abrogate sections 5 and 15.

Mr. *Zorab contra.*—Section 4 refers to rights arising upon
death as well as to rights *inter vivos*. The words are wide enough
to cover both classes of rights. The section is contained in an
Act, the sole object of which is to amend and define the rules
of succession. It has therefore to be construed primarily with

estion of succession and so as to include
n. Section 4 is necessary for the purposes of
plain object of the Act is to get rid of the rules of
which formerly existed and to substitute others in
ace. To do that it was necessary to enact that the rights
n formerly arose should arise no longer. This was done
y section 4. For the purposes of succession it is far more important to abrogate the rights which formerly arose upon death than to abrogate rights *inter vivos*. The reason is clear. The latter rights only very remotely affected the question of succession. They did not affect it any more than the right which a person had to dispose of property during his lifetime could be said to affect it. If the husband had continued to be entitled to take the chattels of his wife absolutely during her lifetime, the only result would have been that on the death of the wife the chattels would not have been available for distribution, but no question of succession could possibly have arisen with reference to them, as they had ceased to be the wife's property. The acquisition of rights *inter vivos* only reduced the amount of the property distributable at death, but did not affect any question of succession. But rights which arose upon death were directly and interminably connected with the question of succession; unless they were abrogated they would continue to exist, and would clash with the new rules of succession intended to be introduced. Hence it was necessary to abolish the husband's courtesy and the wife's dower. [SALE, J.—But were the rights of courtesy and dower rights which arose upon death?] They were rights which took effect upon death. It was necessary to get rid of rights which took effect upon death, as well as of rights which arose upon death. How can it then be said that section 4 refers only to rights *inter vivos*? [SALE, J.—Section 4 speaks of rights acquired by marriage. Is a right of succession a right acquired by marriage?] It was found that the husband and wife actually had certain rights of succession. That was the practical result of marriage, and that result had to be got rid of. The intention was to lay down practical rules for the distribution of property, and it dealt with rights which actually arose. If therefore section 4 relates to rights of succession, then according to the argument on the other

side so does section 44. But whether section 4 does so or not, section 44 does so. If it were intended by section 44 to abrogate only rights *inter vivos*, and if it were true that rights acquired by marriage included only rights *inter vivos*, then the section would have stopped at the words "previous to marriage." Moreover, the last words of section 44 clearly show that in cases falling within its purview, it must be assumed that both parties had at the time of marriage an Indian domicile. If so, what becomes of section 15? The wife's domicile was not changed, for it must be assumed that the husband had at the time of marriage an Indian domicile. Sections 5 and 15 lay down a general rule, but that is subject to an exception in cases falling within section 44.

The *dicta* in *Miller* v. *Administrator-General* (1) support the defendant's contention.

Mr. *Hill* in reply.—Section 4 cannot refer to rights of succession, because the Act subsequently gave the husband and wife certain rights of succession. The result would be that the Act would be contradictory. The effect of regarding section 44 as an exception to sections 5 and 15 would be that the succession to the moveable property would, in a case like the present, be regulated by two different systems of law—one so far as the husband was concerned, and another so far as the wife's next of kin was concerned; whereas under section 6, for the purpose of succession to moveable property, a person can have only one domicile.

SALE, J.—The plaintiff in this case claims the balance of a fund which belonged to his wife, and which is now in the hands of the defendant, the Administrator-General, as representing her estate, and he bases his claim upon his right of succession under the English law. It appears that the plaintiff and his wife were married in British India in 1872. The plaintiff then had, and still has, an English domicile. The wife was entitled to a certain fund, subject only to a life-interest therein on the part of her mother. In 1879 the wife died, leaving as her next of kin her mother and her brother, both of whom are now dead, and their estates are represented in this suit. Subsequent to the death of the mother

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payment of the fund was made to the defendant, the Administrator-General, as representing the estate of the wife. On the plaintiff preferring his claim to the entirety of the fund the Administrator-General made a payment to him on account of and in part satisfaction of a half share, but reserved the remaining half share, the question having arisen as to whether that half share ought to go to the plaintiff or to the next of kin of the deceased wife. On the assumption that at the date of the marriage the wife had a British Indian domicile, it has been contended on the part of the Administrator-General that the case is governed by section 44 of the Succession Act, and that under that section the balance of the fund is payable to the next of kin of the wife and not to the plaintiff. The sections of the Succession Act relevant to the question, and to which sections it will be convenient to refer in groups, are the following:—

Sections 4 and 44 of the Act form the first of these groups. Section 4 provides: "No person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried."

Section 44 provides: "If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage."

The next group, sections 27 and 43, relate to the rights of succession as between husband and wife. Section 27 provides: "Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow and the remaining two-thirds shall go to his lineal descendants according to the rules herein contained. If he has left no lineal descendants, but has left persons who are of kindred to him, one-half of his property shall belong to his widow and the other half shall go to those who are of kindred to him in the order, and according to the rules herein contained. If he has left none who are of kindred to him, the whole of the property shall belong to

his widow." Section 43 provides that "the husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate."

It is, I presume, under sections 27 and 43 that the right of the husband to succeed to a half share has been admitted by the Administrator-General.

Sections 5, 15 and 283 are the next group of sections to which it is necessary to refer. Section 5 provides that "succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death."

Section 15 provides that "by marriage a woman acquires the domicile of her husband, if she had not the same domicile before."

Section 283 provides that "if the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled."

In the case of *Miller* v. *The Administrator-General* (1) it was held that section 4 lays down a general rule as to the effect of marriage in respect of moveable property where both the married persons have an Indian domicile, and that section 44 lays down a special rule to govern a particular case. In that case the applicability of these sections was considered in connection with the question of domicile, but the particular question now raised whether sections 4 and 44 in any way affect rights of succession though suggested in argument, does not appear to have been dealt with as necessarily arising in the case, and the Court expressed no opinion thereon. There are two obvious and serious objections to the contention that sections 4 and 44 should be read so as to include or be applicable to rights of succession. In the first place, rights of succession to a person's estate do not arise upon the marriage, but upon the death of that person. In the next place this conten-

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tion, if correct, would bring these sections into direct conflict with sections 5 and 15, 27 and 43 of the Act, which recognise and regulate rights of succession as between husband and wife. It seems impossible to adopt a construction which would create the anomaly of rights which are abolished or prohibited from arising by certain sections of the Act being treated as existing rights by other sections. In my opinion therefore sections 4 and 44 read together should be understood as laying down a general rule as to the immediate effect of marriage in respect of moveable property belonging to each or either of the married persons not comprised in an ante-nuptial settlement, and not as laying down a rule intended to affect the law of succession. The result is that I must hold that section 44 has no application to the present claim, and that the plaintiff is entitled to the whole of the fund.

Attorneys for the plaintiff: Messrs. *Morgan & Co.*

Attorneys for the defendant: Messrs. *Dignam & Co.*

C. E. G.

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Gordon.

1896
March 11.

CHUNDRABATI KOERI (PETITIONER) *v.* MONJI LAL AND ANOTHER (OBJECTORS.) *

"Family," Meaning of—Married daughter of lunatic—Maintenance—Hindu family—Act XXXV of 1858, section 13.

The word "family" in section 13 of Act XXXV of 1858 (which provides for the maintenance of the lunatic and his family) does not include a married daughter of the lunatic living with her husband apart from her father, but includes only persons living with the lunatic as members of his family and dependent on him for their maintenance.

ISRI PERSHAD, an inhabitant of the District of Bhagalpore, was a lunatic, so found under the provisions of Act XXXV of 1858. His wife Brijabati died on the 11th March 1894. He had two daughters, named Lagan Dai Koeri and Mussumut Chundrabati Koeri, the latter being the petitioner in this case.

* Appeal from Original Order No. 139 of 1895, against the order of W. J. Badcock, Esq., District Judge of Bhagalpore, dated the 4th of March 1895.