APPELLATE CIVIL.

Before Dawson Miller, C.J. and Foster, J.

STONEY

v.

STONEY.*

1923.

March, 8.

Letters of Administration—Sole grant preferred to joint grant—principle governing selection—Succession Act, 1865 (X *of* 1865), *sections* 201, 227 *and* 265.

In the absence of special circumstances a sole administrator should be appointed to the estate of a deceased person rather than joint administrators, even when the claimants are equal in degree of kindred to the deceased.

Nittyo Kali Dabea v. *Kedar Nath Chatterjee*(1), followed.

Principles governing the selection of an administrator discussed.

Warwick v. *Greville*(2), *Cordeux* v. *Trasler*(3), *Bell* v. *Timiswood*(4) and *Newbold*, In the Goods of(5), referred to.

Where a railway guard died intestate leaving an estate of Rs. 4,000, of which Rs. 1,480 was payable by the Railway Provident Institution to his nominee, *held*, that in the absence of a Will showing the intention of the deceased with respect to the sum in the Provident Fund, the nominee of the deceased was not entitled, merely by reason of the nomination, to a grant of separate letters of administration with respect to it under sections 227 and 228 of the Succession Act, 1865.

Appeal from an order granting letters of administration jointly to the two daughters of George Stoney, deceased. The facts of the case material to this report are stated in the judgment of Dawson Miller, C.J.

Baikuntha Nath Mitter, for the appellant.

B. C. Mitter and *Achalendra Nath Das*, for the respondent.

*First Appeal No. 232 of 1921, from an order of A. E. Scroope, Esq., District Judge of Manbhum, dated the 16th July, 1921.

(1) (1879) 5 Cal. L. R. 368.
(2) (1809) 1 Phill. 125.
(3) (1865) 4 Sw. and Tr. 48.
(4) (1812) 2 Phill. 22.
(5) (1866) L. R. 1 P. and D. 285.

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DAWSON MILLER, C.J.—This is an appeal on behalf of Miss Clara Katherine Helen Stoney, otherwise Kathleen Stoney, from an order of the District Judge of Manbhum, granting to the appellant jointly with her sister, Myrtle Stoney, letters of administration to the estate of their deceased father. The appellant, Kathleen contends that she alone ought to be appointed administratrix of the estate.

George Edwin Blackburn Stoney, the father of the parties, was a guard in the employment of the Bengal-Nagpur Railway Company and died intestate on the 30th December, 1920. He left a small estate valued at about Rs. 4,000. Rs. 1,480 of this represents the sum payable by the Railway Company to his nominees or representatives after his death from the Railway Provident Institution to which the deceased contributed during his lifetime. The balance consists of furniture and other movables and a small interest in immovable property. It appears from the evidence that the deceased, during his lifetime in December, 1914, presumably in conformity with the rules of the Railway Provident Institution, signed a nomination form addressed to the Railway Company declaring his daughter Kathleen, the appellant, to be the person who, in the event of his death, would be entitled to receive the sum due to him from the Provident Fund. The nomination paper was produced in Court, it having been obtained from the Railway Company direct by the District Judge himself. It was sent in a letter of the Railway Company to the District Judge. It was not strictly proved in evidence, if strict proof were required, but it was relied upon by the learned Judge referred to, and it has been suggested to-day for the first time that this document ought not to be accepted in evidence. There can, to my mind, be little to be gained by remitting the case for proper proof of this document and the learned Vakil, for the respondent, has not insisted upon the case going back for that purpose. I think he has exercised a very wise discretion.

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On the 16th March, 1921, the appellant, who appears to have resided with her father during his lifetime, at Chakradharpur, filed an application before the District Judge of Manbhum for letters of administration of her father's estate. In her petition she alleged that she was the sole heir to her father and that her sister Myrtle, whose address she gives as Jamshedpur, was an illegitimate daughter. It also appears from her petition that Myrtle, the other sister, had made some attempt to get hold of the deceased's property shortly after his death, and there can be no doubt that the relations between these two sisters is considerably strained. After the appellant's application for letters of administration was filed, namely, on the 5th April, 1921, the respondent, Myrtle Stoney, obtained an *ex parte* order from the Deputy Commissioner of Singhbhum for a succession certificate in respect to the assets of the deceased's estate. When the application for that succession certificate was made has not been disclosed; nor do I think it is material for the purpose of determining the matters in dispute in this case. The appellant was not served with notice of that application and on the 30th April, when she came to hear of it, she petitioned the District Judge of Manbhum to transfer the succession certificate case from the Court of the Deputy Commissioner to his own Court. The District Judge on the 2nd May consequently requested the Deputy Commissioner to withhold the certificate pending the disposal of the appellant's application for letters of administration. The Deputy Commissioner thereupon stayed further proceedings in that matter then before him and it does not appear that the succession certificate was actually issued. In fact the order granting a certificate was afterwards set aside on appeal. By that time the respondent had appeared in the letters of administration case and applied for an adjournment which was granted.

In due course the appellant's petition came on for hearing before the District Judge and on the 16th July

judgment was delivered. The respondent produced in support of her legitimacy, which had been challenged, a baptismal certificate showing that she was baptized on the 5th June, 1889, and she was therein stated to have been born on the 16th February, 1889. Her parents' names are also given. The marriage certificate of her parents was also produced showing that they were married at Lahore on the 16th August, 1885. The parents of both parties are, I understand, the same. The respondent also filed a petition, dated the 18th June, 1921, contending that she was entitled to a half-share in her father's estate and praying that letters of administration should be granted jointly to herself and the appellant.

The learned District Judge found that the certificates of baptism and marriage, the authenticity of which was not challenged, sufficiently proved the legitimacy of the respondent. He quite properly, in my opinion, refused to decide whether the nomination form signed by the deceased constituted a gift in favour of the nominee or merely gave her power to collect the money due after his death from the Provident Fund for whomsoever might be entitled to it, and what the effect of that document may be is a matter which cannot be determined in the present proceedings. The learned Judge considered, however, that the proper course was to make a grant in the name of the two sisters and ordered accordingly that letters of administration should be granted to both.

From this decision Miss Kathleen Stoney has appealed. It is contended on her behalf, in the first place, that the petition of the respondent of the 18th June is not an application made in conformity with section 246 of the Indian Succession Act, which requires certain particulars to be stated in the application. The learned District Judge considered that the respondent's application under the Succession Certificate Act which was before him and her objection petition of the 18th June, praying for joint adminis-

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tration, were a sufficient compliance with the section. Moreover there was already the petition of the appellant before the Court which gave the Court all the necessary particulars and the respondent was, I think, entitled to accept this and ask the Court to act upon it except in so far as she challenged the allegation as to her illegitimacy. In my opinion the appeal upon this ground fails.

It was next contended that separate letters of administration should, in any case, be granted to the appellant in respect of the Rs. 1,480 payable from the Provident Fund and in support of this contention sections 227 and 228 of the Indian Succession Act were relied upon. Had the deceased made a Will as to this part of his property and died intestate as to the rest the case might have required that letters of administration should be granted to the person legally entitled except as to the property dealt with in the Will. That might arise if an executor appointed under the Will was not legally entitled to the administration of the rest of the estate but there are not, in my opinion, any circumstances arising here which require that an exception should be made within the meaning of those sections.

It was lastly contended that special circumstances should be made out before granting joint letters of administration and, even where the claimants are equal in degree of kindred to the deceased, only one should be appointed according to the established practice. This contention is, in my opinion, well founded. It is well established according to the English cases that the Court should prefer a sole to a joint administration and even where several persons stand in the same degree of kinship to the deceased it is the rule to select one only, the selection being made according to certain recognized principles. The interest of the estate which has to be administered and the interests of the parties entitled thereto must be primarily looked to and, other things being equal, a person with business experience and capacity will be preferred to one who has none

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[see *Warwick* v. *Greville* (1)]. Again where two persons are equally entitled by consanguinity preference will frequently be given to the one chosen by the majority of those entitled to distribution of the assets although other considerations may be sufficient to overrule the wishes of the majority of those interested. A son as a rule will be preferred to a daughter and where none of the usual tests can be applied the Court frequently appoints the applicant who is first in the field [see *Cordeux* v. *Trasler* (2)]. Moreover the Court never forces a joint administration upon unwilling parties [*Bell* v. *Timiswood* (3), *In the goods of Newbold* (4)], and it is obvious that where the applicants for administration are quarrelling between themselves and are antagonistic to each other the administration of the estate is likely to suffer. As they must act jointly one of them, if obstinate, could defeat the proper administration of the estate. This has also undoubtedly been held to be the practice in this country where administration has frequently been refused to more than one person even where the claimants by reason of kinship are equally entitled to it. In the Calcutta High Court, in the case of *Nittyo Kali Dabea* v. *Kedar Nath Chatterjee* (5) where two widows of a deceased Hindu gentleman applied for administration of his estate the High Court supported the decision of the District Judge refusing to grant a joint administration, following as he said the practice of his Court. The learned Judges in that case when it came on appeal to the High Court said: "We are of opinion that the Judge is perfectly entitled to follow the practice of his Court, which is a usual and reasonable practice, that administration should be granted to one person only." That case was decided in 1879 and although the Indian Succession Act of 1865 was at that time in force certain of the sections, including section 204, did not apply to the case of Hindus, but I refer to this case, and there are others of a similar

(1) (1809) 1 Phill. 125.
(2) (1865) 4 Sw. and Tr. 48.
(3) (1812) 2 Phill. 22.
(4) (1866) L. R. 1 P. and D. 285.
(5) (1879) 5 Cal. L. R. 368.

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nature, to show that even in this country the practice has been only in very special circumstances to grant administration to more than one person.

The respondent relies upon the provisions of section 204 of the Succession Act, which states that those who stand in equal degree of kindred to the deceased are equally entitled to administration. He argues from that that where you have got two or more persons, and in some cases it may be considerably more, who stand in equal degree of kinship, the Court is bound to grant letters of administration to them jointly. In my opinion such an interpretation ought not to be given to the section. That section and some of the preceding sections beginning with section 200 indicate who are the proper persons to be appointed administrator of the estate of a deceased person and lay down certain rules which shall guide the Court in selecting the people to whom letters of administration should be granted. It deals first of all with the case of a widow and then refers to certain exceptions in which the widow should not be appointed. Then it deals with the case in which there is no widow or the cases in which the Court sees cause to exclude the widow and in such case the person to be appointed is the person or person who would be beneficially entitled to the estate in accordance with the rules for the distribution of an intestate's estate. Then comes section 204 which states that those who stand in equal degree of kindred are equally entitled to administration. It then refers to the case of a husband surviving his wife. He has the same right of administration of the estate as the widow has in respect of the estate of her husband. Then it refers, in the absence of the persons already described, to the rights of creditors. Section 204, in my opinion, does no more than state that those who are in equal degree of kindred to the deceased are all, from that point of view alone, equally entitled to be appointed administrator, but the section nowhere says that they are all entitled to be appointed jointly and when one turns to section 225 of the Act it seems quite clear that the Court is given very wide powers, where it considers it

necessary or convenient, to appoint some person to administer the estate other than the person who in ordinary circumstances would be entitled to the grant. There is, therefore, in my opinion, nothing in this Act which makes it obligatory upon the Court to grant letters of administration to all the persons who may be entitled thereto merely by reason of their equal nearness of kin to the deceased. In the present case the applicants have quarrelled between themselves. They are apparently living apart and it would be very difficult, in my opinion, for them to work together in harmony. The estate has to be administered, and although it is a small one, there may be creditors whose claims have to be satisfied. We are asked by the respondent to appoint her jointly with her sister in order to protect her interests but it seems to me quite clear that her interests will be sufficiently protected by the operation of section 256 of the Succession Act which requires a bond to be executed by the person to whom a grant is made for the due administration of the estate and if she should fail to provide such a bond then the other applicant has means within her power of applying herself for an appointment or preventing the appointment of the appellant. The only question to determine is which of the claimants should be appointed administratrix. The appellant was the first to apply for letters of administration. It is true that the respondent made an application for a succession certificate which she was not entitled under the law to obtain but it is not in evidence whether that application was before or after the application for letters of administration made by her sister. At all events so far as the application for letters of administration is concerned the appellant was first in the field. She was living with her father before he died and as long ago as 1914 it appears the deceased appointed her as the proper person to receive the sum due to him on his death from the Provident Fund. Although this document is not a Will it is an indication of the deceased's wishes and I think that the considerations which I have mentioned are sufficient to turn the scale in favour of the appellant for, in my opinion, there

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are in this case insuperable objections to granting a joint administration.

In the result the order granting letters of administration to the appellant and the respondent jointly made by the learned District Judge will be set aside and in lieu thereof an order will be made directing letters of administration to be granted to the appellant, Kathleen Stoney otherwise Clara Katherine Helen Stoney. In so far as the costs of this appeal and of the proceedings in the Court below are concerned I think that the respondent, having regard to the fact that her legitimacy had been attacked, was perfectly entitled to come before the Court and endeavour to prove her legitimacy, and once she did prove that, she had an equal chance at the outset with the appellant in obtaining letters of administration and in these circumstances I think that the whole of the costs of this litigation, including the costs of this appeal, should come out of the estate.

Before I conclude this judgment I wish to say that I think that it is a deplorable thing that these two young ladies, whatever terms they may have been upon in the past, should be so foolish, to put it upon no higher basis, as to quarrel between themselves as to their right to inherit their father's property. It would appear from the baptismal certificate that Miss Myrtle Stoney is, what she alleges she is, the legitimate daughter of her parents and one thing is perfectly obvious that if she in fact is the legitimate daughter she is entitled equally to a half share in her father's property with her sister. The estate is a very small one and if merely for personal reasons these parties are going to quarrel between themselves on a matter of this sort they will find that before very long the whole of the estate will be swallowed up in litigation and there will be nothing left for either of them in the end. I therefore earnestly suggest for their consideration that they should without any further delay come to an amicable settlement about the matter instead of foolishly wasting their substance, which is very small, in litigation.

FOSTER, J.—I agree.