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decree, time commenced to run from the date of the earliest default, and the claim to the land was therefore time-barred.

Their Lordships cannot agree with this contention. They are of opinion that upon the construction of the decree itself, on the occasion of a default in each payment the right of the respondent to have the said property made over to her arose, and therefore the claim to the lands was not time-barred.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitors for Appellant—*Bramall and Bramall.*

Solicitors for Respondent—*T. L. Wilson & Co.*

PRIVY COUNCIL.

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VERTANNES AND OTHERS
v.
ROBINSON AND ANOTHER.

(On Appeal from the High Court at Rangoon.)

Will—Construction—"Effects"—Immovable property—Power of executor—Conveyance after estate wound up—Estoppel—Landlord's title—Indian Evidence Act (I of 1872), ss. 115, 116—Probate and Administration Act (V of 1882), s. 4.

A Christian resident in Rangoon by his will appointed his wife executrix and devised and bequeathed to her specified immovable properties "and all my household furniture, carriages, horses, chattels and effects, and all money and debts due and owing to me which I shall be possessed of at the time of my death." He died in 1897, possessed of land, the K property, in addition to the immovable properties specified in the will. The widow proved the will, sold the specified properties, and by 1904 had paid all the debts including a mortgage on the K property. She and the children of the marriage then went to reside on the K property, and they were still in occupation when the present suit was brought. In 1905 the widow, not purporting to act as

* PRESENT:—LORD PHILLIMORE, LORD WARRINGTON OF CLYFFE AND SIR JOHN WALLIS.

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executrix, mortgaged the K property ; in 1916 the property was reconveyed to the widow, but it remained equitably mortgaged to the plaintiff, to whom in 1918 she conveyed it in discharge of the mortgage debt, the plaintiff agreeing to let the property to the eldest son for twelve months. In 1920 the plaintiff, after notice to quit, sued in ejectment, making defendants the eldest son, the widow, and the younger children. The children all pleaded that there was an intestacy as to the K property and claimed their shares under the Indian Succession Act as heirs to their father ; the eldest son further pleaded that he was not estopped from denying the plaintiff's title as he had attorned tenant under the belief that she had power as executrix to transfer the property to the plaintiff.

Held, (1) that on the true construction of the will, the word "effects" did not include immovable property, and that therefore there was an intestacy as to the K property.

Hogan v. *Jackson*, [1775], 1 Cowp. 299 and *Attorney-General for British Honduras* v. *Bristowe*, [1880] 6 App. Cas. 143—*distinguished*.

(2) that the widow had no power after 1904 to convey the property as executrix, as she had then completely wound up the estate, except that she had not transferred to the children their shares ; her neglect of that duty did not enable her to give a good title to the plaintiff, who knew the terms of the will.

Bijraj Nopani v. *Pura Sundary Dassee*, (1914) I.L.R. 42 Cal. 56 ; L.R. 41 I.A. 189—*distinguished*.

(3) that the eldest of son was estopped under the Indian Evidence Act, 1872, section 116, from denying the title of the plaintiff, his landlord.

Bilas Kunwar v. *Desraj Ranjit Singh*, (1915) I.L.R. 37 All. 557 ; L.R. 42 I.A. 202—*followed*.

(4) that the younger children were not estopped under the Indian Evidence Act, 1872, section 115, by reason of certain acts of acquiescence, as the plaintiff had not acted on any representation by them but on an error common to him and the children.

Kuverji v. *Babai*, (1890) I.L.R. 19 Bom. 374—*approved*.

(5) Consequently that there should be a decree for ejectment against the widow and the eldest son, and it should be declared that the plaintiff was entitled to a third, also a quarter of two-thirds, of the property, and each of the younger children to a quarter of two-thirds.

Decree of the High Court reversed.

Appeal (No. 17 of 1926) from a decree of the High Court (March 25, 1925) reversing a decree of the District Judge of Insein.

The suit was brought by the first respondent to eject the appellants and their mother, the second respondent, from property consisting of about 30 acres at Kokine.

The appellants were the children of one Sarkies Vertannes who died in 1897. They contended that

under their father's will there was an intestacy as to the property, and that they were entitled to their shares in it according to the Indian Succession Act. The second respondent, who was the widow of Sarkies Vertannes and executrix of the will did not defend the suit; she had conveyed the property to the appellant in 1918 in discharge of mortgage debts with which she had charged it. The first respondent had agreed in 1918 to let the property to the first appellant for twelve months, and had given him notice to quit.

The chief questions arising on the appeal accordingly were: (1) whether the will gave the property to the second respondent; (2) if not, whether she had power as executrix to convey it to the first respondent; (3) whether the appellants or any of them were estopped from asserting their title as heirs to their father.

The facts appear fully from the judgment of the Judicial Committee.

The trial Judge held that upon the true construction of the will there was an intestacy as to the land in suit, that the first appellant was estopped under section 116 of the Indian Evidence Act, 1872, from denying the title of the first respondent, but that no case of estoppel was made out against the other appellants. As a result he decided that the first respondent was entitled to the land in suit, subject to charges for the interests of the children other than the first appellant.

Upon appeal to the High Court by both parties, the learned Judges (Robinson, C.J., and Maung Gyi, J.) held that the property passed to the testator's widow, the present second respondent, under the will; further, that all the present appellants (except the third), were estopped by their conduct and acquiescence.

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The appeal by the present appellants was dismissed, and that by first respondent allowed.

Dunne, K.C., and *E. B. Raikes* for the appellants.

Sir George Lowndes, K.C., Vaisey, K.C., and *Leach* for the first respondent.

The arguments appear from the judgment of the Judicial Committee.

The judgment their Lordships was delivered by—

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LORD PHILLIMORE.—The narrative in this case is to the following effect. Sarkies Vertannes was an Armenian Christian practising as a solicitor in Rangoon. In 1886 he made his will, and the material part is as follows :—

> " This is the last Will and Testament of me Sarkies Vertannes of No. 68A, Halpin Road, in the Town of Rangoon, British Burma. I do hereby appoint Mary my wife the sole executrix of this my will. I do hereby revoke all wills and dispositions heretofore made by me, and do publish and declare this to be my last will and testament I give and devise and bequeath my three houses numbered respectively 68, 68A, 68B, in Halpin Road, in the Said Town of Rangoon, together with land thereto belonging and all the out-offices and buildings standing thereon, and all my household furnitures, carriages, horses, chattels and effects, and all moneys and debts due and owing to me which I shall be possessed of at the time of my death unto my said executrix absolutely."

He died in May, 1897. At that time he was possessed of other immovable property besides that mentioned in his will—namely, certain land at Kokine in a suburb of Rangoon—and it is concerning this land that the dispute has arisen.

His widow obtained probate of the will and administered the estate, sold the three houses in Halpin Road which are specified in the will, paid all the