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ORIGINAL CIVIL.

Before Mr. Justice Jardine.

JEHA'NGIR DHANJIBHA'I SURTI, (PLAINTIFF), *v.* PEROZBA'I, WIDOW AND ADMINISTRATRIX OF DHANJIBHA'I MANCHERJI SURTI, (DEFENDANT).*

1886. *July* 27.

Párși—Párși Intestate Succession Act XXI of 1865, *Sec.* 5—*Succession—Widower, meaning of word—A widower on second marriage is still a widower relatively to deceased wife.*

In section 5 of the Párși Intestate Succession Act XXI of 1865 the word "widower" means a widower relatively to the deceased wife only, and without consideration of the fact or possibility of the widower remarrying.

D., a Párși, died intestate on the 19th September, 1885, leaving a widow, (the defendant), and two daughters, and the heirs of a predeceased daughter, J., him surviving. J. had been the wife of the plaintiff, and had died thirty-four years before the date of this suit, leaving, as her heirs, her husband (the plaintiff) and one daughter, who was still living. After J.'s death the plaintiff married again, and his second wife was living at the date of this suit. Letters of administration to D.'s estate were granted to his widow, the defendant. The plaintiff claimed a share in D.'s estate, contending that he was the widower of J., one of the daughters of the intestate, and entitled, as such, under section 5 of the Párși Intestate Succession Act XXI of 1865.

Held, that he was the widower of J. within the meaning of the section, and, as such, was entitled to a share in D.'s estate.

ONE Dhanjibhái Mancherji Surti, a Párși, died intestate on the 19th September, 1885—leaving, as his heirs, his widow, (the

* Suit No. 99 of 1886.

1886.

JEHANGIR DHANJIBHÁI SURTI v. PEROZBÁI.

defendant,) and two daughters, Hirábái and Buchubái, and the heirs of a predeceased daughter, Jáiji.

Jáiji had been the wife of the plaintiff. She died about thirty-four years before the date of this suit—leaving, as her heir, her husband (the plaintiff) and one daughter, Jerbái, who was still alive.

At the time of his death, Dhanjibhái was possessed of immoveable property at Surat and considerable moveable property. Letters of administration to his estate were granted to his widow the defendant.

The plaintiff claimed to be entitled to two-fifteenths of the estate of his deceased father-in-law. The defendant denied that the plaintiff was entitled to any share of the estate.

The plaintiff in this suit prayed for a declaration that he was entitled to a two-fifteenth share in the estate, and for an account, &c.

It appeared that, after Jáiji's death, the plaintiff had married again, and that his second wife was living at the date of this suit. The only question argued at the hearing was, whether, under such circumstances, the plaintiff could be regarded as the widower of Jáiji, within the meaning of section 5 of Act XXI of 1865 (Pársi Intestate Succession Act), so as to entitle him to any share in the estate of the deceased.

Lang and *Inverarity* for the plaintiff:—The plaintiff was married to Jáiji, a daughter of the deceased. The issue of that marriage was a daughter, Jerbái; and we contend that, under section 5 of Act XXI of 1865, this daughter and the plaintiff are entitled to Jáiji's share of the estate. There can be no doubt that he would have been entitled if he had not married again after Jáiji's death. We say that, notwithstanding his second marriage, he is still the widower of Jáiji, and, therefore, entitled under section 5. There is no provision, in Act XXI of 1865, divesting the right on remarriage. He remains a widower *quá* his deceased wife. When remarriage is intended to be a disqualification, it is mentioned: see clauses 10 and 14 of Schedule 2 of Act XXI of 1865.

In section 5, "widow or widower" means survivor male or female. Counsel referred to the definition of widower given in Latham's Dictionary, Webster's Dictionary, and Wharton's Law Lexicon.

Latham (Advocate General) and *Macpherson* for the defendant:—From the dictionaries it is clear that the word "widower" means one whose wife is dead, and who has not remarried.

Article 14 of schedule 2 of the Act states more specifically what is meant by section 5. The Legislature would be more unwilling, in a case under section 5, to allow a man to inherit who had remarried, than in a case under section 7. Counsel referred to *Mancherji Kávasji Dávur* v. *Mithibái*[1], and proposed to refer to the various alterations made by the Legislative Council in the draft Bill, which was ultimately passed as Act XXI of 1865, for the purpose of ascertaining the intention of the Legislature. They cited *Hebbert* v. *Purchas*[2].

Inverarity objected, and cited *Gopál Pándey* v. *Parsotam Dás*[3]; *Karuppa* v. *Arumuga*[4]; *Chunilál Panálál* v. *Bomanji Mancherji*[5]; *Shaik Moosá* v. *Shaik Essá*[6].

JARDINE, J.:—In 1885, Dhanjibhái Mancherji, a Pársi of Surat, died intestate—leaving a widow, (the defendant) administratrix, and two daughters. A third daughter, Jáiji, had predeceased her father. Jáiji left her husband, (the plaintiff,) and a daughter her surviving. The plaintiff married again before the death of the intestate, and is married now. These facts are admitted; and the only question, which the learned counsel have argued, relates to the construction of section 5 of the Pársi Succession Act, XXI of 1865, which is as follows:—"If any child of a Pársi intestate shall have died in his or her lifetime, the widow or *widower* and issue of such child shall take the share which such child would have taken if living at the intestate's death, in such manner as if such deceased child had died immediately after the intestate's death." The plaintiff claims a share as widower of Jáiji, the deceased child of the intestate. His counsel, Mr.

(1) I. L. R., 1 Bom., 506.
(2) L. R., 3 P. C., 648.
(3) I. L. R., 5 All., at p. 135.
(4) I. L. R., 5 Mad., 384.
(5) I. L. R., 7 Bom., 310.
(6) I. L. R., 8 Bom., pp. 241, 247

1886.

JEHÁNGIR DHANJIBHÁI SURTI v. PEROZBÁI.

Inverarity, contends for the definitions of widower in Latham's edition of Johnson's Dictionary—"One who has lost his wife," and Wharton's Law Lexicon—"One whose wife is dead;" while the learned Advocate General, for the defendant, relies on the etymological meaning and the definition in Webster, *viz.*, "A man who has lost his wife by death, and has not married again." In Richardson's Dictionary it is stated that "a husband who has lost his wife is called a widower." These references show that a certain ambiguity attends the word.

In the face of the ruling in *Shaik Moosá* v. *Shaik Essá*[1] and similar cases cited by Mr. Inverarity, I hesitate to use the different forms in which the Act I have to interprete was placed before the Legislative Council, in order to infer the probable intention of the framers in passing the section in question; although the remark of the Lord Chancellor on the Act of Uniformity in the case of *Hebbert* v. *Purchas*[2] is cited for the defendant as being not only a discussion of facts of history, but also as authority for collecting the intention of the framers of an Act from the alterations made in its terms before it reaches the stage of enactment. As remarked in *Gopál Pándey* v. *Parsotam Dás*[3], "it is for the Legislature to consider and determine whether the words which they employ in framing the Acts will give effect to the object and policy which the State has in view. We are, no doubt, at liberty to consider the general state of the law which prevailed, *in pari materia*, prior to the enactment of any statute under consideration."

Before the passing of this Act, the Pársis in the town and island of Bombay were, as to succession, governed by the English law, as modified by Act IX of 1837; and in the mofussil, the Courts, acting under Regulation IV of 1827, sections 26 and 27, took evidence of, and enforced what were proved to be the usages of the Pársis in the locality. But from the previous state of the law, I can raise no inference in a new case of succession like the present; neither can I give any weight to the suggestion that it would be repugnant to Pársi sentiment to allow the son-in-law, who has

(1) I. L. R., 8 Bom., pp. 241 and 247. (2) L. R., 3 P. C., 606, 648.
(3) I. L. R., 5 All., at p. 135.

remarried, to take the deceased wife's share. Perhaps that might be argued as regards Hindus; but there is no information as to the general feeling of the Pársis; and, on the other hand, it may well be conceived that the Legislature may have designed to encourage marriage by giving some certainty in regard to the parents' intestate property, irrespective of the death of one of the young married pair. From the general provisions of the Act, little light is derivable; and as regards section 7, I concur in Mr. Justice Green's remarks in *Mancherji Kávasji Dávur* v. *Mithibái*[1]. This is the first case of its kind, and the point before the Court seems never to have been raised before. In now giving my opinion, I would notice that section 5 will, without violation of the ordinary meaning of the words, bear the construction contended for by Mr. Inverarity, *viz.*, that by "widower" is meant a widower, relatively, to the deceased wife only, and without consideration of the fact or possibility of the widower remarrying. If the framers of the Act had wished to provide against remarriage, as in the cases falling under section 7, they might have used adequate language, as in the second schedule, articles 10 and 14. The omission to employ similar express words for cases falling under section 5, is significant. I notice, also, that in section 201 of the Indian Succession Act, which was passed earlier in the same year, the word "widow," as appears from the illustration (*b*), includes a widow who has married again. For these reasons, my decree will be for plaintiff, with the usual directions for administration and account. Costs of both parties to be paid out of the estate.

Attorneys for the plaintiff:—Messrs. *Pestonji and Rustam.*

Attorneys for the defendant:—Messrs. *Bicknell and Káng.á.*

(1) I. L. R., 1 Bom., at p. 512.