APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

LASTINGS (ORIGINAL PLAINTIFF), APPELLANT, *v.* GONSALVES AND OTHERS (ORIGINAL DEFENDANTS, NOS. 1-3, 5, 6, 10-22 AND 7-9), RESPONDENTS.*

1899. *January* 18.

Religion—Native Christians—Change of religion—Law applicable to converts—Succession—Inheritance.

Where, in consequence of the conversion of a person from one form of religion to another, the question arises as to the law to be applied to such person, that question is to be determined not by ascertaining the law which was applicable to such person prior to the conversion, but by ascertaining the law or custom of the class to which such person attached himself after conversion and by which he preferred that his succession should be governed.

APPEAL from the decision of Ráo Bahádur G. V. Limaye, First Class Subordinate Judge of Belgaum.

In this suit the plaintiff (Letitia Lastings), who was a member of a Native Christian family resident at Belgaum, claimed a one-third share of certain bungalows situate at Belgaum, which had belonged to her father, D. F. Gonsalves, who died in 1855. She alleged that the property had been left undisposed of by his will, and she claimed that, as heirs of her father, she and her two brothers (defendants Nos. 1 and 2) were entitled in equal shares. The plaint stated the cause of action to have arisen in 1893, when the plaintiff first became aware of her rights and demanded her share, and it was apparently assumed that the law applicable to the case was the Indian Succession Act (X of 1865).

At the hearing, the Subordinate Judge framed issues of which the fifth was as follows :—

"5. Is the plaintiff entitled to any and what share in the properties in dispute?"

No evidence was given of the status of the plaintiff and her family, and on this issue the Subordinate Judge accordingly dismissed the suit, holding that it lay upon the plaintiff to show by what law her family was governed at the time of her father's death in 1855, and under which she claimed a share in his estate. He was of opinion that as it certainly was not the Succession Act (X of 1865), which was not passed until 1865, the presumption

*Appeal, No. 56 of 1898.

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was that the law applicable was the law applicable to the family before conversion to Christianity. As there was no evidence upon this point, he dismissed the plaintiff's claim. In his judgment he said :—

"Issue 5. The plaintiff, who is admittedly a descendant of a Native Christian family, claims as one of the heirs of her deceased father, D. F. Gonsalves, a certain share in his property, alleging that the same is intestate, inasmuch as the disposition made by the deceased by his will is confined to the income of the property and does not extend to the property itself: *vide* Exhibit 82. Assuming that her father died intestate, the first question, which is essential to the determination of her right of succession, is, by what law the family was governed in 1855. The parties presumably appear to have been under a misconception on this point since they relied solely on the Indian Succession Act in support of their respective contentions. That Act certainly is not applicable, as the succession opened long before its enactment. The pleadings do not show what the respective allegations of the parties are as to the law applicable to the family of the deceased in regard to succession; and the plaintiff made no attempt to show that the family is governed by any particular law or usage entitling her to a share along with her brothers. Her pleader only contented himself by stating that the English law was not applicable to the case. On the other hand, it is not the defendants' contention that the case is governed by that law. The presumption, then, is that the law applicable is the law which was applicable before the conversion to Christianity. It is to be regretted that there are no materials in the case, like those in the Thána Case (see Printed Judgments for 1894, p. 323), which was originally decided by me, for determining from what caste or religion the conversion took place. Hence it is impossible to arrive at a conclusion on the question above alluded to. I, therefore, feel constrained to hold that the plaintiff has failed to show that she is entitled to any share in her deceased father's estate. I find on the 5th issue in the negative absolutely. This finding renders it unnecessary to find on the remaining issues. I reject the claim with costs."

The plaintiff appealed.

Sadashiv R. Bakhle for the appellant (plaintiff) :—No issue was raised as to the law applicable to the plaintiff's family, and, therefore, no evidence was given on the point. He referred to *Bai Baiji* v. *Bai Santok*[1]; *Barlow* v. *Orde*[2].

Ratanji R. Desai for respondent (defendant No. 2) :—The family is Native Christian and, therefore, English law is applicable—*Lopes* v. *Lopes*[3]. The Native Christians at Belgaum were originally

(1) (1894) 20 Bom., 53. (2) (1870) 13 M. I. A., 277.
(3) (1868) 5 Bom. H. C. Rep., 172.

Madras Hindus—"Belgaum Gazetteer," pp. 226-227. Possibly the plaintiff's father was a Portuguese. Either Hindu law or English law must be applied, and in neither case can the plaintiff succeed. The decree of the Judge is, therefore, substantially correct.

Kola with *B. B. Boyce*, for respondents Nos. 6 and 7 (defendants Nos. 10 and 21) :—We purchased portions of the property from defendant No. 2, and support his case.

PARSONS, J. :—The Subordinate Judge dismissed this suit upon a preliminary point, which was not specifically raised by any issue, and upon which, therefore, no evidence was given by the parties. Moreover, the reason given for the dismissal is wrong. The parties are Native Christians. The presumption drawn by the Subordinate Judge was that the law applicable to them was the law by which their family was governed before its conversion to Christianity, and because it was not shown from what religion it was converted to Christianity, the Subordinate Judge considered this to be fatal to the plaintiff's case, which he accordingly dismissed. We think that this is a clear error. The law prior to conversion is a point on which it might not be necessary to give any evidence at all, because as laid down in *Bai Baiji* v. *Bai Santok* [1], citing *Abraham* v. *Abraham* [2], the convert may, by his course of conduct after conversion, show by what law he intended to be governed as to these matters.

The *ratio decidendi* is laid down in *Barlow* v. *Orde* [3], where their Lordships of the Privy Council say :

"The construction and effect of the will, therefore, must depend on the law of the domicile, if that can be ascertained. At the time of the Colonel's death there was no *lex loci* of the province in which he was domiciled, and the law applicable to the succession of any individual depended on his personal *status*, which again mainly depended on his religion. Thus the succession of a Hindu would, as a general rule, fall to be regulated by Hindu law, and of a Mahomedan by Mahomedan law, and of an East Indian Christian by English law ; but in every case, for the purpose of determining the *status personalis*, regard was to be had to the mode of life and habits of the individual, and to the usages of the class or family to which he belonged. If no specific rule could be ascertained to be

(1) (1894) 20 Bom., 53. (2) (1863) 9 M. I. A., 195.
(3) (1870) 13 M. I. A., 277.

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applicable to the case, then the Judges administering justice in the province were to act 'according to justice, equity, and good conscience.'"

This, no doubt, was said as to a particular province, but the principle holds good equally as well in respect of this part of India: see *Jalbhai* v. *Louis Manoel*[1].

In the present case no proper opportunity was given to the parties to adduce any evidence on these points, nor has the Judge considered the evidence that there is on the record,—for instance, there is the will (Exhibit 62) made by the deceased, the language, wording and nature of which cannot be ignored. We, therefore, reverse his decree and remand the case for a fresh inquiry and decision after raising the proper issues and taking evidence. Costs to be costs in the cause.

RANADE, J.:—This case has not been satisfactorily disposed of in the Court below. The principal parties to the suit are non-European Christians, the claim being brought by a sister against her two brothers and persons claiming under them for her one-third share of her father's property. The plaint stated that the plaintiff's father had made a will in 1852, and that he died in 1855. This will disposed of the rents, but not of the properties themselves. Plaintiff's mother kept back this will, and, before her death in 1886, made a fresh will inconsistent with her husband's will, and the defendants Nos. 3 and 4 took out probate of this second will, and all the defendants were in possession of the whole estate under this second will. The claim for a third share was made apparently under Act X of 1865, which provides that daughters and sons shall share equally in intestate succession. Defendant No. 1 did not object to the claim, but defendant No. 2 contended that his father's will disposed not only of the rents, but also gave full power to his widow to dispose by will the estate left by him, and that the second will disposed of the estate accordingly.

The first question in the case was as to the status of the parties, and the law which governed the devolution of property in intestate succession. The lower Court laid down no issue on this point. It only remarked that neither English law nor Act X of 1865 was applicable to the case, and that the law which applied to the parties before their conversion should govern the dispute.

(1) (1894) 19 Bom., 680.

As plaintiff failed to show to what caste or religion the family belonged before conversion, the lower Court dismissed the suit.

The appellant's pleader very properly took exception to this summary procedure which disposed of the case on a point on which no issue had been raised. The lower Court, moreover, was in error in the view it has expressed about the law which governed such cases. There is no doubt that Act X of 1865 does not govern the case, as the appellant's father died in 1855, and section 331 expressly comes in the way of all retrospective extension of the Act. As the parties are Native Christians residing at Belgaum outside the Town and Island of Bombay, the ruling in *Lopes* v. *Lopes*[1], which applied English law to Portuguese inhabitants of Bombay, does not govern this case. If they are East Indian Christians, the English law will govern their succession disputes—*Barlow* v. *Orde*[2]. If they are converted Native Christians, then they must be governed by the law to which they and their family have attached themselves. The rules of Hindu law, if they were Hindu converts, will not apply as a matter of course. The convert may renounce the law by which he was bound, or, if he think fit, he may abide by the old law. His course of conduct after conversion by attaching himself to a class which has a personal law of its own, or by personally observing such usage or custom, must determine the question of what law he has preferred to attach himself to. This was the principle laid down in *Abraham* v. *Abraham*[3] and has been followed in this Court in a series of decisions—*Jalbhai* v. *Louis Manoel*[4]; *Bai Baiji* v. *Bai Santok*[5]. It is thus clear that the question at issue does not depend upon the consideration of the law prior to conversion, but on the law or custom of the class to which the parties attached themselves after conversion, and by which they preferred that their succession should be governed. This case must, therefore, be remanded back to the lower Court, which should frame an express issue on this point, and after receiving evidence on the same decide the case on the merits.

Decree reversed and case remanded.

(1) (1868) 5 Bom. H. C. Rep., 172.
(2) (1870) 13 Cal. W. R., 41 (P. C.)
(3) (1863) 9 M. I. A., 195.
(4) (1894) 19 Bom., 680.
(5) (1894) 20 Bom., 53.