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lessee may transfer the reversion, passing with it the right of re-entry, but cannot transfer that right itself: *Vaguran v. Rangayyangan*(¹). Similarly a license to enter and take possession of goods cannot be assigned: *In re Davis & Co., Ex parte Rawlings*(²). And a bare license to seize chattels cannot legally be assigned: *Brown v. Metropolitan Counties Life Assurance Society*(³).

What the plaintiff is claiming is a gift or bonus from Government to the defendant under Government Resolution No. 3874 above referred to, which gift or bonus was not and could not have been in the contemplation of the parties when the contract was entered into and which by itself was not transferable. Consequently the plaintiff is not entitled to recover it but only Rs. 15 from the defendant; and we must confirm the decree of the lower appellate Court and dismiss this appeal with costs. There can be no question that if the plaintiff had sued the defendant to recover damages for breach of contract different considerations would have applied.

Decree confirmed.

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(1) (1891) 15 Mad. 125.

(2) (1888) 22 Q. B. D. 193.

(3) (1859) 28 L. J. Q. B. 236.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

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SAYYAD JIAUL HUSSAN KHAN AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. SITARAM BHAU DESHMUKH AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Mahomedan Law—Pre-emption—Survival of the action to executors and administrators on the pre-emptor's death—Personal action—Probate and Administration Act (V of 1881), section 89—Actio personalis moritur cum persona.

The right of pre-emption under Mahomedan Law does not abate at the pre-emptor's death; but survives to his executors and administrators under section 89 of the Probate and Administration Act (V of 1881).

* First Appeal No. 144 of 1910.

APPEAL from the decision of S. S. Wagle, First Class Subordinate Judge at Thana.

This was a suit to enforce the right of pre-emption. Before the issues were settled, the pre-emptor (the plaintiff) died; and his heirs were brought on the record. The defendants contended that the right of pre-emption being personal, did not survive to the pre-emptor's heirs on his death. The Subordinate Judge agreed with the contention and held that the suit abated on the pre-emptor's death. The plaintiff appealed.

Jinnah, with *P. P. Khare*, for the appellants.

Kazi Kabiruddin, with *P. B. Shingne*, for the respondents.

BEAMAN, J. :—This suit was brought by the plaintiff to enforce his right of pre-emption. The suit was originally brought by the pre-emptor himself who has since died, and it is, therefore, now being carried on by his heirs and legal representatives. The main ground of contention in the first Court upon the preliminary issue, whether the right to sue died with the pre-emptor; and whether the suit abated; was that the pre-emptor was a Shafei and that according to the Mahomedan Law of that sect the right of pre-emption survived.

The first Court recorded the plaintiff's evidence and held that it was insufficient to establish the fact that the deceased pre-emptor was a Shafei. Accordingly the learned Judge below held that the pre-emptor's right died with him and that the suit abated.

In appeal the appellant, while still contending that the pre-emptor belonged to the Shafei sect, takes a further point that under section 89 of the Probate and Administration Act, which is expressly extended to Mahomedans, a right of this kind does not die, but survives to the executors and administrators. Comparing that section with section 268 of the Indian Succession Act, which governs Englishmen, as well as the various peoples of this country, we cannot doubt but that the intention of the legislature in both enactments was to make a large innovation upon the personal law of Englishmen as

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expressed in the old maxim *actio personalis moritur cum persona*, as well as necessarily upon the personal law of Mahomedans and Hindus. Since that, in our opinion, is unmistakably the effect of section 89 of the Probate and Administration Act, we think that its operation must be strictly confined to the persons named in it. We are, therefore, unable to accede to Mr. Jinnah's contention that the section is capable of being extended so as to include heirs and representatives who are neither executors nor administrators, within the clear definition of those terms contained in the Probate Act.

We see, however, no objection to the course proposed, should the Court adopt this view, namely, that the plaintiffs be now allowed to take out Letters of Administration with the least possible delay and that pending doing so, the hearing of this appeal be adjourned.

Order accordingly.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

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BAGAS UMARJI MIYAJI (ORIGINAL DEFENDANT 5), APPELLANT, v. NATHA-BHAI UTAMRAM AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANT 6), RESPONDENTS.*

Limitation Acts (XV of 1877 and IX of 1908), Article 134—Mortgage—Transfer by mortgage—Rights of the transferee—Redemption—Construction of statute—Legislative exposition.

The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1854. The representatives-in-title of the mortgagee, claiming to be absolutely entitled, mortgaged the land with possession to A in 1894 and he sold his rights to defendant 5. The suit having been brought more than twelve years after the alienation to A, defendant 5 claimed as against the plaintiffs the interest of a mortgagee by virtue of his adverse possession under Article 134 of the Limitation Act (XV of 1877).

* Appeal No. 46 of 1910 from order.