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applied. That rule must be applied. So the suit fails and the appeal must be allowed. I agree to the order proposed.

Solicitors for the appellants : Messrs. *Payne & Co.*

Solicitors for the respondents : Messrs. *Bhaishankar, Kanga & Girdharlal.*

*Appeal allowed.*

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ORIGINAL CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.*

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ary 25.*

KUMAR SHRI RANJITSINHJI, PLAINTIFF v. THE BANK OF BOMBAY, DEFENDANTS.\*

*Presidency Banks Act (XI of 1876), section 23—Succession Certificate Act (VII of 1889), sections 16 and 17—Dividends on shares may be paid to the person obtaining succession certificate—Transfer of shares to the holder of certificate or his nominee—Case stated for opinion of Court—Civil Procedure Code, Act (V of 1908), section 90 and Order XXXVI.*

The provisions of section 23 of the Presidency Banks Act of 1876 do not prevent the Banks from accepting the succession certificate granted under the Succession Certificate Act. The certificate affords full indemnity to all the persons who are liable on the securities specified in the certificate as regards all dealings in good faith in respect of such securities.

*Held* accordingly, the Banks will not be contravening the provisions of the Act if they pay the dividends on the shares in the Banks to the person obtaining the certificate, and on his requisition transfer the said shares to him or his nominee.

CASE stated for the opinion of the Court under Civil Procedure Code, Act V of 1908, section 90 and Order XXXVI.

Maharaj Rajkumar Shri Raghunathsinhji Wakhat-sinhji of Lunawada died intestate at Lunawada on

7th September 1916, leaving him surviving (1) two minor sons, Kumar Pravarsinhji and Kumar Virvikramsinhji, (2) father, Maharana Shri Sir Wakhatsinhji, K.C.I.E., Rajah of Lunawada and (3) brother, Kumar Shri Ranjitsinhji.

On the 20th of November 1917, Kumar Shri Ranjitsinhji as agent and on behalf of his father Maharana Shri Sir Wakhatsinhji, the grandfather and guardian of the minors Kumar Pravarsinhji and Kumar Virvikramsinhji applied to the Court of the District Judge and Political Agent, Rewa Kantha, for a certificate under the Succession Certificate Act, 1889, in respect of the debts and the securities belonging to and standing in the name of the deceased Kumar Raghunathsinhji, which included, *inter alia*, fifteen shares in the Bank of Bombay.

On 28th February 1918, the District Judge and Political Agent, Rewa Kantha, granted to Kumar Shri Ranjitsinhji the certificate applied for, empowering him to collect debts and to receive interest and dividends on securities mentioned in the Schedule to the application. On 1st April 1918, Kumar Shri Ranjitsinhji sent the said certificate to the Agent, Secretaries and Treasurers, the Bombay Bank, Ltd., for being registered in the books of the Bank, requesting the Bank to send the dividend warrants for interest accrued due.

On 8th April 1918, the Secretary and Treasurer of the Bank replied that the Bank could not recognise the Succession Certificate granted under Act VII of 1889 and that under section 23 of the Presidency Bank's Act, 1876, the Bank required the Probate of the will or Letters of Administration to the estate of the deceased obtained from a Court having jurisdiction in that behalf.

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On 4th June 1918, Kumar Shri Ranjitsinhji addressed the following letter to the Secretary and Treasurer of the Bank :—

“ With reference to your letter No. 7005, dated 9th April 1918. I have the honour to observe that section 23 of the Presidency Banks Act of 1876 is not so worded as to preclude the Bank from recognising a certificate granted under Act VII of 1889 inasmuch as the section does not lay down a complete and exhaustive procedure for recognition of legal representatives. The section lays down a condition under which a legal representative of a deceased shareholder can compel recognition by the Bank. The section, however, does not compel the Bank to take cognizance only of Letters of Administration and Probate. It is not obligatory on the Bank to refuse to recognise other certificates, e.g., certificates granted under Act VII of 1889 or regulation VIII of 1827. I may add that the Bank will not be incurring any risk or responsibility of any kind by recognising the certificate under Act VII of 1889, because Act VII of 1889 affords complete and absolute protection in respect of payment made to holders of certificates under it.

Under these circumstances I would request you to reconsider the matter and obtain the Directors' approval for recognition of the certificate granted to me by the Political Agent under section 17 of the Act. ”

On the 27th June 1918, the Directors of the Bank passed the following resolution :—

“ The Directors regret that they are unable to accept a certificate under Act VII of 1889 as authorising a transfer of shares of this Bank or a payment of dividends thereon, nor are they disposed to move Government to require the Bank to accept such certificates ”.

Thereupon, Kumar Shri Ranjitsinhji as plaintiff and Bank of Bombay as defendants in a suit agreed to state the following case for the opinion of the Hon'ble Court under the provisions of the Civil Procedure Code Act V of 1908, section 90 and Order XXXVI :—

(1) THE defendant Bank is constituted and regulated under the Presidency Banks Act, 1876, Act XI of 1876.

(2) By section 23 of the said Act it is provided as follows :—

“ 23. When by the death of any proprietor or shareholder his stock or share shall devolve on his legal

representative the Bank shall not be bound to recognise any legal representative of such proprietor or share-holder other than a person who has taken out from a Court having jurisdiction in this behalf Probate of the will or Letters of Administration of the estate of the deceased."

(3) Maharaj Rajkumar Shri Raghunathsinh Wakhatsinhji was during his lifetime the registered holder of 15 shares in the Bank of Bombay particulars whereof are given in the schedule hereto annexed and marked A.

(4) The said Maharaj Rajkumar Shri Raghunathsinh Wakhatsinhji died on or about the 7th day of September 1916 intestate and without having made any will.

(5) The said 15 shares still stand in the name of the said Maharaj Rajkumar Raghunathsinh Wakhatsinhji in the Register of Share-holders of the said Bank.

(6) On or about the 28th day of February 1915, the District Judge and Political Agent, Rewa Kantha, issued to the plaintiff a certificate under the succession Certificate Act 1889, Act VII of 1889, in respect *inter alia* of the said 15 shares copy whereof is hereto annexed and marked B in the Schedule hereto empowering the plaintiff to collect the debts therein referred to and to receive interest and dividends in the securities therein mentioned and to negotiate and transfer the same.

(7) By section 16 of the said Succession Certificate Act it is provided as follows :—

"16. Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein be conclusive as against the persons owing such debts or liable on such securities and shall, notwithstanding any contravention of section 1, sub-section 4 or other defect, afford

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full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted."

(8) By letter dated the 1st April 1918, the plaintiff sent to the defendants for registration the aforesaid certificate and requested the defendants to send to him the dividend warrants for the interest secured on the said shares. The defendants by their letter dated the 5th April 1918 informed the plaintiff that the Bank could not recognise the said certificate but would require under section 23 of the Presidency Banks Act, 1876, the Probate of the will or the Letters of Administration to the estate of the said deceased Maharaj Rajkumar Shri Raghunathsinhji Wakhatsinhji before the Bank could send the plaintiff the dividend warrant.

Thereafter further correspondence ensued between the plaintiff and the defendants, wherein the various contentions put forward on behalf of the plaintiff and the defendants are set forth a copy whereof is hereto annexed and marked collectively with the letter C.

The Directors of the Bank passed the following resolution dated the 27th June 1918:—

"The Directors regret they are unable to accept a certificate under Act VII of 1889 as authorising a transfer of shares of this Bank or a payment of dividends thereon nor are they disposed to move the Government to require the Bank to accept such certificates."

(9) No grant of Probate nor Letters of Administration of the estate of the deceased Maharaj Rajkumar Shri Raghunathsinh Wakhatsinhji have been produced by the plaintiff to the defendants.

(10) The plaintiff contends that he is entitled under the said Succession Certificate Act to receive from the

defendants dividends on the said 15 shares and is entitled to have the said 15 shares transferred in his name in the Register of the Bank under authority of the said Succession Certificate.

(11) The defendants on the other hand contend that they are not bound to receive the said Succession Certificate as binding upon them and that the plaintiff is not entitled to receive dividends on the said shares and to have the same transferred as contended for by the plaintiff in para. 10 hereof.

(12) The plaintiff and the defendants on the facts thereinbefore admitted for the purpose of submitting the present case agree to refer the following questions for the opinion of this Honourable Court, namely :—

(i) Whether in view of the provisions contained in section 23 of the Presidency Banks Act, 1876 (Act XI of 1876) the defendants are bound to accept the said Succession Certificate dated the 28th February 1918 and are bound thereon to pay the dividends on the said 15 shares to the plaintiff and to transfer the said shares as requested to the plaintiff ?

(ii) Whether the defendants are entitled under the provisions of section 23 of the Presidency Banks Act (Act XI of 1876) to pay such dividends to the plaintiff and to transfer the said shares to the plaintiff only upon the plaintiff taking out Probate of the will or Letters of Administration to the estate of the said deceased Maharaj Rajkumar Shri Raghunathsinh Wakhatsinhji and producing the same to the defendants ?

(13) It is hereby provided and agreed between the parties hereto that the respective rights put forward by the plaintiff and the defendants in respect to the said shares and the payment of the dividends due thereon

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and the transfer of the same as specified herein shall be determined by the findings of this Honourable Court with respect to the aforesaid questions so long as the present law remains in force and that in the event of this Honourable Court answering the said questions in the plaintiff's favour the defendants will in so far pay the said dividends and transfer the said shares and that in any event irrespective of how the said questions may be answered each party hereto shall bear their own costs of and incidental to this agreement and case hereby submitted and of the hearing and disposal thereof.

*Kanga and Desai*, for the plaintiff.

*Strangman*, Advocate General, *Inverarity, Campbell and Coltman*, for the defendants.

MACLEOD, C. J. :—This is a special case stated for the opinion of the Court under the provisions of the Civil Procedure Code, section 90 and Order XXXVI.

The defendant Bank is constituted and regulated under the Presidency Banks Act, 1876. By section 23 of the said Act it is provided as follows :—

“When by the death of any proprietor or share-holder his stock or shares shall devolve on his legal representative, the Bank shall not be bound to recognise any legal representative of such proprietor or share-holder, other than a person who has taken out from a Court having jurisdiction in this behalf Probate of the will or Letters of Administration to the estate of the deceased.”

Maharaj Rajkumar Shri Raghunathsinhji Wakhat-sinhji was during his lifetime the registered holder of 15 shares in the Bank of Bombay particulars whereof are given in the schedule to the special case. The Maharaj died on or about the 7th day of September 1916 intestate. On the 28th of February 1918 the District Judge and Political Agent, Rewa Kantha, issued a certificate under the Succession Certificate Act,

1889, in respect *inter alia* of the said 15 shares. Under section 17 of the Act :—

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“ Where a certificate in the form, as nearly as circumstances admit, of the second schedule has been granted to a resident within a foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court-Fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.”

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The plaintiff sent the certificate to the defendants for registration and requested them to send to him the dividend warrants for the interest accrued due on the said 15 shares. The defendants informed the plaintiff that they could not recognise the said certificate but would require under section 23 of the Presidency Banks Act, Probate of the will or Letters of Administration to the estate of the deceased.

The first question referred to us is this :—

“ Whether in view of the provisions contained in section 23 of the Presidency Banks Act, 1876 (Act XI of 1876) the defendants are bound to accept the said succession certificate dated the 28th February 1918 and are bound thereon to pay the dividends on the said 15 shares to the plaintiff and to transfer the said shares as requested to the plaintiff ?”

It cannot be disputed that the defendants are not bound to recognise the holder of a succession certificate. But the question arises whether they would be contravening the provisions of the Presidency Banks Act if they did accept the succession certificate ; and the second question is really drafted for deciding that point, although we found it necessary to alter the form of the question so that it runs thus :—

“ Whether the defendants would be justified under the provisions of section 23 of the Presidency Banks Act (Act XI of 1876) in paying such dividends to the plaintiff and in transferring the said shares to the plaintiff upon the plaintiff producing the said succession certificate ?”

We see nothing in the provisions of section 23 of the Presidency Banks Act of 1876 which prevents the



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defendants from accepting the succession certificate if in the exercise of their discretion they decide that they should do so. The certificate affords full indemnity to all the persons who are liable on securities specified in the certificate as regards all dealings in good faith in respect of such securities.

If, therefore, the defendants choose to accept the certificate, they will not be contravening the provisions of their Act if they pay the dividends on the said 15 shares to the plaintiff and on his requisition transfer the said shares to the plaintiff or his nominee.

I think it was agreed that there ought to be no costs.

HEATON, J. :—I concur.

Solicitors for the appellants : Messrs. *Stroff & Vachha*.

Solicitors for the respondents : Messrs. *Crawford Bayley & Co.*

G. G. N.

## MATRIMONIAL JURISDICTION.

*Before Mr. Justice Crump.*

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July 20.

BAI AWABAI, PLAINTIFF v. KHODADAD ARDESHER KOOCHABI, DEFENDANT<sup>o</sup>.

*Parsi Marriage and Divorce Act (XV of 1865), sections 3, 6, 8 and 9 to 14—Requisites to validity of a Parsi marriage—Certificate not a requisite of the marriage—Entry of certificate in the marriage register is merely for securing record of marriages duly solemnised—Absence of entry in the register does not affect validity of marriage—Proof of factum of marriage by any relevant evidence in the absence of entry of certificate in the register—Admission of secondary evidence.*

Section 3 of the Parsi Marriage and Divorce Act exhausts all requisites to the validity of a Parsi marriage.

<sup>o</sup> The Parsi Matrimonial Suit No. 6 of 1919.