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what meaning in this view we can fairly attribute to the word 'successively,' and which are the words which create the perpetual sebaiship. The scheme of the clause appears to be based on life sebaiships. The wife was to have it for life, Gour Mohun Dey was to have it for life, and the daughter, her husband and their male children were to have it 'successively.' The latter expression, which to my mind controls the whole gift to the daughter, her husband and male children must mean, I think, that the daughter, her husband and their male children were to take it one after another for their respective lives, and in that sense 'successively;' and that the word 'male children' must be read as words of purchase and not as words of limitation. I do not think we can reasonably read, as the appellants invite us to do, the word 'successively' as meaning 'sons and sons' sons in succession.' I see nothing in the will which would justify us in reading the expression 'male children,' save in its ordinary acceptation.

"In my opinion the view taken by the Court below is right; and, in this view, it is not disputed that the sebaiship would revert to the heirs of the testator."

[723] *Mayne and G. Branson* for the appellants contended that the intention of the testator was that the superintendence of the endowment should be held by his daughter, her husband, and their descendants in regular succession, and this intention was sufficiently evidenced by the language he used. *Tagore v. Tagore* (1) and *Bhoobun Mohini Debya v. Hurrish Chunder Chowdhry* (2) were cited to show that such an interpretation was borne out by decisions of the Judicial Committee. In cases of religious trusts the fact that a perpetuity is created does not make the trust invalid by the Hindu Law. *Greedharee Doss v. Nund Kishore Dutt* (3), *Muttu Ramalinga Setupati v. Perianayagum Pillai* (4) and *Janoki Debi v. Gopal Acharjia* (5), *Gnanasambanda Pandara Sanadhi v. Velu Pandaram* (6) were referred to.

Cohen, K. C. and A. Phillips for the respondents were not called upon.

The judgment of their Lordships was delivered by

LORD MACNAGHTEN. Their Lordships think the High Court has given a perfectly correct interpretation of the will, which is the subject-matter of this appeal, and that no other interpretation is possible.

Their Lordships will therefore humbly recommend His Majesty to dismiss this appeal, and the appellant must pay the costs of the first respondent, who alone appeared therein.

Appeal dismissed.

Solicitors for the appellant: *Watkins and Lempriere.*

Solicitors for the respondent: *Kartick Chunder Dey and W. W. Box.*

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[724] CRIMINAL REVISION.

Before Mr. Justice Stevens and Mr. Justice Harington.

GOURHARI GOPE v. ALAY GOPINI.* [12th March, 1902.]

Immoveable property—Possession—Order by Subordinate Magistrate restoring—Appeal—Jurisdiction—Magistrate of first class specially empowered to hear

* Criminal Motion No. 1117 of 1901, made against the order passed by Akhoy Kumar Sen, Deputy Magistrate of Dacca, dated the 8rd of September 1901.

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| (1) (1872) L. R. 1 A. Sup. Vol. 47, 65; | (4) (1874) L. R. 1 I. A. 209, 228. |
| 9 B. L. R. 377, 395. | (5) (1882) L. R. 10 I. A. 82; I. L. R. |
| (2) (1878) L. R. 5 I. A. 198, 147; | 9 Cal. 766. |
| I. L. R. 4 Cal. 29, 28. | (6) (1899) L. R. 27 I. A. 69, 77; |
| (3) (1863) Marshall 573, 581; (1867) | I. L. R. 23 Mad. 271, 280, 281. |
| 11 Moore's I. A. 405, 428. | |

appeals—Consequential or incidental order—Criminal Procedure Code (Act V of 1898), ss. 423, cl. (d) and 522 and (Act X of 1882) s. 423.

Held, that under s. 423, cl. (d) of the Criminal Procedure Code of 1898, a Magistrate of the first class specially empowered to hear appeals from Subordinate Magistrates has jurisdiction to hear an appeal with reference to an order passed by a Subordinate Magistrate under s. 522 of that Code.

Ram Chandra Mistry v. Nobin Mirdha (1) declared obsolete.

IN this case the complainant alleged that the petitioner Gourhari Gope and others pulled down her house and erected a tin shed on the *bhiti* and forcibly took away her household articles.

The petitioner alleged that the house and the *bhiti* underneath belonged to him, and that the nature of the possession by the complainant was a permissive one under him.

The petitioner was tried by a Bench of Honorary Magistrates, and was convicted under s. 426 of the Penal Code of mischief, and the Magistrates under s. 522 of the Criminal Procedure Code ordered possession of the *bhiti* to be restored to the complainant.

The petitioner appealed to the Deputy Magistrate of Dacca with first class powers, who was specially empowered to hear appeals from Subordinate Magistrates, and who, relying on the ruling in the case of *Ram Chandra Mistry v. Nobin Mirdha* (1), was of opinion that he had no power on appeal to interfere with the order under s. 522 of the Criminal Procedure Code.

[725] The petitioner then moved the High Court in revision and obtained a Rule.

Babu Shurat Chunder Baisak and Babu Satish Chunder Mukerjee for the petitioner.

No one appeared for the opposite party.

STEVENS AND HARRINGTON, JJ. This Rule was granted to show cause why a Magistrate of the first class specially empowered to hear appeals from Subordinate Magistrates should not be directed to hear this appeal with reference to the order passed by the Subordinate Magistrate under s. 522 of the Code of Criminal Procedure.

The Magistrate exercising appellate powers was of opinion that he had no power to interfere with an order under s. 522 under the ruling of this Court in the case of *Ram Chandra Mistry v. Nobin Mirdha* (1). That ruling is, however, obsolete, having reference to Act X of 1882, the Code of Criminal Procedure then in force. Clause (d) of s. 423 of the present Code of Criminal Procedure provides for the making by an Appellate Court of any consequential or incidental order that may be just or proper.

The Rule is made absolute.

The case will go back to the Appellate Court to be dealt with as regards the order under s. 522 of the Code of Criminal Procedure.

Rule made absolute.

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