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it be rightly said that, because he retained in his hands a one-sixteenth share, therefore the assignee of the fifteen-sixteenth share of the property was not his representative *quoad* that share? The *ijaradar* in this case has under his *ijara* acquired a substantial interest in the property, he is bound under the terms of his *ijara* to pay, as it is alleged, a small share of the proceeds of the property, he being entitled to appropriate to himself the rest; and, so far as regards the share of the proceeds which has thus been transferred to him, though for a term of years, he might well be regarded as a representative of the judgment-debtor.

Upon these grounds we are of opinion that the contention raised by the learned vakil for the appellant that the present suit is not maintainable, having regard to s. 244 of the Code, ought to prevail.

[499] In this view of the matter, it is not necessary to discuss the other question raised before us.

The result is that this appeal will be allowed and the suit dismissed, but having regard to the fact that the objection, which has been raised by the defendant, and upon which he has succeeded, is an objection as to the form of action, and does not really go to the merits of the case, and, inasmuch as the merits were in the Court below found entirely against him and in favour of the plaintiffs, we think that each party should bear his own costs in both Courts.

Appeal decreed.

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Before Mr. Justice Harington.

TOOLSII DAS KURMOKAR v. MADAN GOPAL DEY.* [24th April, 1901.]

Will, Construction of—Hindu Law—Hindu widow—Adoption—Testator—Alienation—Administrators—Title derived from such Administrators.

When, by will, an authority to adopt is given to a Hindu widow, it does not necessarily follow that the widow takes only a life-estate in the property left to her under the will, especially when the power of disposition over the property is given to her. The intention of the testator must be gathered from the terms of the will itself.

The defendant purchased certain immoveable property from the administrators to the estate of the widow of R, who, by his will, left all his moveable and immoveable properties to the widow, authorizing her to take in adoption one or two sons according as she might desire; the will gave her also the power of disposition over the estate:—

Held, that R bequeathed his estate in favor of his widow absolutely; and that the title obtained by the defendant through the administrators of the deceased widow could not be impugned.

Punchoo Money Dossee v. Troylucko Mohiney Dossee (1) discussed and distinguished.

ONE Roop Chand Karmokar, a Hindu inhabitant of Calcutta, died in June 1877, leaving him surviving an only widow, Attor[500]money Dossee, but no issue. He made a will, in Bengali, of which the following is a translation:—

"1. This will or instrument of wishes is executed by Sree Roop Chand Karmokar, inhabitant of Hareatta Lane, in the Town of Calcutta to the following effect:—I am very ill, moreover having been suffering from consumption and other

* Original Civil Suit No. 423 of 1897.

(1) (1884) L. L. R. 10 Cal. 842.

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serious complaints for a long time, and not having any hopes of living much longer, I do, as hereinafter written, make known my desires in respect of the management and disposition of my moveable and immoveable property. After my death my wife, Sreemutty Attormoney Dossee will, according to her discretion, lay out a reasonable amount in my funeral obsequies and *sraddh*, &c., and, if I have any debts, she will pay them; and recover any money that shall be due to me. Also for the happiness of my soul in the future world she will give fifty rupees on account of *mohotsab to Isshur Maddun Gopal's Path* at Sree Path Malparrah and to my *Pooroheet*, Sreejoot Jodu Nath Bonerjee Mohashoy, she will pay the sum of twenty-five rupees.

"2. Amongst my immoveable property, there is the family dwelling house No. 17, Gobindo Chunder Sen's Lane in Champatallah Second Lane in Calcutta, and a tenanted house No. 82, in Champatallah Second Lane aforesaid, which I make an absolute gift of to my said wife, Sreemutty Attormoney Dossee. After my death she shall reside in the said family dwelling house; and realizing the rent of the said tenanted premises she shall in my place and stead carry on with discretion and in a reasonable manner the daily *sheba* of the *Shalgram*, the *Doorgatsub* and the *poojas* of other *Debs* and *Debees* in the same way as they have been conducted in my lifetime. I also give and bequeath to my said wife all my money, my gold and silver articles, brass and bellmetal utensils, *shawls*, *roomals*, watches, household furniture and whatever other property I am possessed or shall leave at the time of my death. If my sister's son or any one else make any objection to this, such objection shall be inadmissible. So long as my wife survives, she shall enjoy possession of the said landed property and putting out to interest the rents and other cash moneys she shall carry on her own maintenance, perform her *Brottoniyom* and the daily *sheba* and other *poojas* of the *Debs* and *Debees* in a reasonable manner, and whatever gift or disposition she may make in the future, shall be ratified and upheld after her death. I do also further authorize her to take in adoption one or two sons, according as she may desire.

"8. In order to carry out the provisions of this my will I appoint my said wife, Sreemutty Attormoney Dossee, and her maternal uncle, Baboo B pro Dass Karmokar of Colcotallah, in this city, executors. I also appoint my cousin, Sreejoot Nandalall Karmokar, an executor. Finally I declare that I have made no will before this. If I have, such a will is inadmissible and only this my last will is valid. To this and in the presence of the underment[501]tioned witnesses and while in a sound state of mind, I execute this instrument of will. Date 31st Bysakh 1284."

The plaintiff (who was Roop Chand's sister's son) brought this action in *forma pauperis* as Roop Chand's heir-at-law for recovery of possession of the premises No. 17, Gobindo Chunder Sen's Lane, in the town of Calcutta, mentioned in the aforesaid will, from the defendant Modan Gopal, who purchased the property from the administrators to the estate of Attormoney, alleging that the will conveyed only a life estate to the widow, and that on her death he was legally entitled to the property.

After Roop Chand's death his widow Attormoney took possession of the said house and premises. In November 1892 Attormoney died intestate, leaving no heir or next of kin her surviving, save and except the plaintiff.

On January 26, 1893, Soobhadra Dossee, the mother of Attormoney, and one Khetter Mohun Kurmokar obtained Letters of Administration to the estate of Attormoney from the High Court, and on September 12, 1893, the said administrators obtained an order from the said Court authorizing them, under s. 90 of Act V of 1881, as amended by Act VI of 1889, to sell the said premises.

On May 16, 1894, the defendant Madan Gopal purchased the property from the said administrators, and had since been in possession thereof.

The defendant pleaded that Roop Chand made an absolute bequest in favor of his widow, and the title derived from her administrators was therefore a good one; and that the plaintiff had no claim to the property.

Mr. Sen Gupta and Mr. U. P. Eby, for the plaintiff.

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Mr. *Chakravarti* and Mr. *J. G. Woodroffe*, for the defendant.

HARINGTON, J.—In this case the plaintiff claims certain immoveable property as heir to his maternal uncle, a man named¹ Roop Chand Dass. Roop Chand Dass left a widow Attormoney Dossee. The defendant purchased the property, which is the subject of [502] the present suit, from the administrators to the estate of the last-mentioned lady.

The defendant's case is that Roop Chand Dass bequeathed the property in question to his widow absolutely, and, therefore, the title derived from her administrators is a good one.

The plaintiff alleges that Roop Chand Dass' will was only effectual to give a life estate to his widow, and therefore, on the termination of that life estate, he became entitled to the property as heir-at-law.

The question depends, therefore, on the interpretation of Roop Chand Dass' will, for no question arises as to the right of the administrators to sell, assuming this was the property of Attormoney Dossee, because they had obtained the necessary leave of the Court as such administrators to sell the property.

It is contended by the plaintiff that, inasmuch as the will of Roop Chand Dass contains an authorization to adopt, it indicates that the testator intended his widow to take no more than a life estate and, as an authority for that proposition, the case of *Punchoo Money Dossee v. Troylucko Mohitney Dossee* (1) is cited. In that case the testator had given either commandment or permission (it does not seem quite clear from the report which is the correct interpretation of the Bengali word) to his wife to adopt a son, and he also gave a direction to her to adopt a second son in the event of any good or evil happening to the first, and the will provided, that on the adopted son attaining full age, he should become the *malik* of the whole property.

On the construction of that will the Court held that it was clear that the testator intended the widow to adopt a son, and, in the event of the death of that son, to adopt another, and that that intention coupled with the provision that the son was to become the owner of the property, when he came of age, showed that in that case the testator did not intend the widow to take an absolute interest. In that case there was no adoption, for the widow disregarded the testator's wishes as to that, but the intention being made clear, the fact that she disregarded the intention to [503] adopt could not alter the construction to be put on the will. That case is not an authority for the proposition that in every will in which authority to adopt is given to the widow, it necessarily follows that the widow only takes the life estate. The intention of the testator must be gathered from the terms of the will itself. I do not think he could employ more explicit language for the purpose of giving his wife his estate absolutely, than he has employed in this case. He says:—"Amongst my immoveable property, there is the family dwelling house No. 17, Gobindo Chunder Sen's Lane in Champatallah Second Lane in Calcutta, and a tenanted house No. 82, in Champatallah Second Lane aforesaid, which I make an absolute gift of to my said wife Sreemutty Attormoney Dossee. After my death she shall reside in the said family dwelling house, and, realizing the rent of the said tenanted premises, she shall in my place and stead carry on with discretion and in a reasonable manner the daily *sheba* of the *Shalgram*, the *Doorgotsub* and the *poojahs* of other

1. (1884) I. L. R. 10 Cal. 342.

Debs and *Debees* in the same way as they have been conducted in my lifetime."

He then goes on to give her his moveable property. After first giving the moveable and immoveable properties his will contains a clause to this effect :—

"If my sister's son, or any one else, make any objection to this, such objection shall be inadmissible."

His will goes on in these terms : "So long as my wife survives, she shall enjoy possession of the said landed property, and putting out to interest the rents and other cash moncoys she shall carry on her own maintenance, perform her *Brottoniyom* and the daily *sheba* and other *poofahs* of the *Debs* and *Debees* in a reasonable manner, and, whatever gift or disposition she may make in the future, shall be ratified and upheld after her death.—I do also further authorize her to take in adoption one or two sons, according as she may desire."

After reading that disposition, it appears to me to be unarguable to say, that the effect of that will taken as a whole is to give the widow only a life estate. One of the tests which is applied to see, whether the estate given is intended to be absolute or not, is to see whether the donee of the estate has a power of disposition [504] over it. In this will, in most absolute terms the widow is given the power of disposition, she may make a gift or disposition of it and that gift or disposition shall be upheld after her death. That is clause absolutely inconsistent with the contention of the plaintiff, that no more than the life estate is given by this will. For this reason I am of opinion that the title obtained by the defendants through the administrators of the deceased lady cannot be impugned : the plaintiff's suit must therefore be dismissed with costs.

Suit dismissed.

Attorney for the Plaintiff : Babu J. N. Dutt.

Attorney for the Defendant : Messrs. Rutter & Co.

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CRIMINAL REVISION.

Before Mr. Justice Ameer Ali, Mr. Justice Rampini and Mr. Justice Pratt.

KAZI ZEAMUDDIN AHMED (*Petitioner*) v. QUEEN-EMPRESS
(*Opposite Party*).* [18th May and 19th June, 1901].

Riot—Owner or occupier of land on which riot takes place, liability of—Agent—Manager—Acts of commission as well as omission—Knowledge—Penal Code (Act XLV of 1860), s. 154.

The accused was the sole proprietor of village A. A serious riot involving loss of life took place at village A, and the accused's naib instead of doing anything to prevent or suppress the riot accompanied the rioters and stood close by, while the riot was going on, after which he absconded. The accused, who had no knowledge that a riot was likely to be committed was convicted under s. 154 of the Penal Code and fined.

Held (RAMPINI and PRATT, JJ.), a landlord is liable under s. 154 of the Penal Code for the acts of commission as well as omission not only of himself, but of his agent or manager.

Criminal Revision No. 52 of 1901, made against the order passed by G. Gordon, Esq., Sessions Judge of Dacca, dated the 27th of October 1900, affirming the order of H. F. Howard, Esq., Sub-Divisional Magistrate of Naraingunge, dated the 9th of September, 1900.

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