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MATHURA[illegible] DUTT v. KEDARNATH MOOKERJEE.

legal proposition, that alienations or abandonments by a guardian must not be wantonly done, but must be for the manifest interest and convenience of the infant, or at least must be made in good faith to those ends.

It was not denied in this case, that the land was the minor's hereditary jote, *prima facie* a desirable property to retain; and it, therefore, seems to me, that if he did fail to prove Chandra Sekhar's dispossession (he being a minor at the time), he was still entitled to call upon the defendants to show how they became possessed of the land. Indeed, the Judge below seems to have admitted his right so far, by going into the defendant's title, and by making the abandonment by the grandmother fatal to the rights of the grandson.

I am willing, if it be thought worth while, to remand the case to the Judge to find the fact, whether or no the relinquishment by the guardian was made in good faith for the interests of the minor, but I would not go beyond the grounds of review as stated in the petition.

LOCH, J.—(Whose opinion as that of the senior Judge prevailed).—"Review is hereby granted, and the decree in special appeal No. 2809 of 1869 is set aside, and the lower Court's judgment restored."

Before Mr. Justice Loch and Mr. Justice Glover.

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Dec. 16.

IN THE MATTER OF RANI RAISUNNISSA BEGUM *

Certificate—Acts XL. of 1858 *and* XXVII. *of* 1860.

A, as widow of B and guardian, under a will, of his minor son, obtained a certificate of administration under section 3 of Act XL. of 1858. C, another widow of B, subsequently applied for a certificate under section 3 of Act XXVII. of 1860. The Judge summarily rejected C's application, on the ground that the grant of a certificate to her would lead to confusion. *Held*, on appeal, that the Judge ought to have issued notices and proceeded under section 3 of Act XXVII. of 1860.

Rani Khajurunnisa (1), as widow of Raja Syud Enaet Hossein and guardian, under a will, of his minor son, obtained a certificate

* Miscellaneous Regular Appeal, No. 414 of 1868, from a decree of the Officiating Judge of Purneah.

(1) 9 W. R., 459.

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of administration under Act XL. of 1858. Rani Raisunnisa, another widow of the deceased Raja, applied to the Judge of Purnea, on the 29th August 1860, for a certificate under Act XXVII. of 1860, to enable her to collect her share of the deceased's debts.

The Judge summarily rejected the application, on the ground that to grant it would only lead to confusion, as Rani Khajurunnisa could do all that was required under the certificate granted her for the whole estate under Act XL. of 1858.

Rani Raisunnisa appealed, urging that certificates under Acts XL. of 1858 and XXVII. of 1860 were distinct, and could not clash, and that she was entitled to sue under the latter Act to protect her interests.

Mr. *C. Gregory* for petitioner, appellant.

Mr. *Paul* (with him Mr. *R. E. Twidale* and Baboo *Annada Prasad Banerjee*) for Rani Khajurunnissa.

The judgment of the Court was delivered by

LOCH, J.—We think the reasons given by the Court below, refusing to grant the application for a certificate under Act XXVII. of 1860 are wrong. A certificate granted under Act XL. of 1858 to administer to an estate, though it gives the right to the administrator to collect the debts due to the estate, is not sufficient to enable the party to whom the certificate is granted to enforce that right in Court, if the debtor objects to pay the debt, for without a certificate under Act XXVII. of 1860 no debtor of any deceased person can be compelled in any Court to pay his debt to any person, claiming to be entitled to the effects of any deceased person or any part thereof, except on the production of a certificate to be obtained under the Act.

The opposite party claimed under a will. Had that will been proved, we might have thought it unnecessary to order further enquiries in the case, because under that will the opposite party will be entitled to collect the debts due to the estate. But as this Court has held in *Feda Hossein* v. *Rani Khajurunnisa* (1) that the Judge has not pronounced in favour of the will or against it, we think that the Judge was bound in the present application to

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proceed, as required by section 3 of the Act, and after such enquiries as may be necessary to determine which of the parties, *i. e.* claimants, was entitled to a certificate under that Act? It has been said that as the applicant is only entitled to a small portion, if entitled to any thing, she is not entitled to a certificate, and that as the respondent has the greater interest, the certificate ought to be given to her. It has also been said that, as the petitioner was childless at the death of her husband, she is not entitled, under the Shia law, to succeed. With regard to the first objection, it seems to us that if the petitioner is entitled to a share, the mere fact of her having a small share will not debar her fron getting a certificate entitling her to collect according to the share due to her; and with regard to the other point we have referred to Macnaghten and Baillie, and find nothing in support of the statement that a childless widow is not entitled to succeed to her husband's estate.

We, therefore, reverse the order of the lower Court, and remand the case to the Judge to be tried in the usual manner, and to determine whether the petitioner is or is not entitled to receive a certificate. The parties will pay their own costs.

Before Mr. Justice Loch and Mr. Justice Bayley.

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MRITYUNJAYA SIRKAR (PLAINTIFF) *v.* GOPAL CHANDRA SIRKAR AND OTHERS (DEFENDANTS)*

Registry of Transfer—Acknowledgment of Tenancy.

See also 13 B. L. R, 150.

The mere deposit of rent in the Collector's Office by the purchaser of an under tenure in his own name and that of the registered tenant, is not sufficient notice to the zemindar of such purchase; nor is the mere acceptance by the zemindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant, but it is otherwise when there is acceptance with notice notwithstanding that the transfer had not been registered.

A certain jote, registered in the zemindar's books in the name of Jahiruddin, was sold in satisfaction of a decree for arrears of rent obtained by the zemindar against the said Jahiruddin.

The plaintiff brought a suit to set aside the sale, alleging that the jote did not belong to Jahiruddin, but to him (plaintiff),

* Special Appeals, No. 888 of 1868, from a decree of the Officiating Additional Judge of Jessore, reversing a decree of the Sudder Ameen of that District.