

APPELLATE CIVIL.

1894

December 18.*Before Mr. Justice O'Keefe and Mr. Justice Trevelyan.*

G. B. McINTOSH, ADMINISTRATOR TO THE ESTATE OF MR. A. R. McINTOSH,
DECEASED (PLAINTIFF) v. JIHARU MOLLA (DEFENDANT).^{*}

Land Registration Act (Bengal Act VII of 1876), sections 42, 78—Administrator—Obligation of Administrator to register his name before bringing suits for rent.

A person who is an administrator, and as such the representative of a deceased proprietor of an estate and legal owner of his property, is bound to be registered under section 42 of the Land Registration Act (Bengal Act VII of 1876) before he can sue the tenants of the estate for rent.

THIS and two other appeals heard at the same time arose out of suits for rent which were brought by the administrator of the estate of A. R. McIntosh, deceased, who was proprietor of the estate in which the lands of the tenant defendants were situated. Several issues were raised, the only one material to this report being the first issue: Can the plaintiff sue the defendants for rent without getting his name registered under the Land Registration Act (Bengal Act VII of 1876)?

The Munsif found this issue in favour of the plaintiff, and from this decision the defendants appealed.

The judgment of the lower Appellate Court on the point in dispute was as follows:—

“The point raised in these appeals involves a difficult question, which, as far as can be ascertained, has never yet been decided by any authority. The suits are for rent, and have been brought by one G. B. McIntosh as administrator to the estate of A. R. McIntosh, the registered proprietor. It is contended by the learned pleader on behalf of the appellant that, on a proper construction of Bengal Act VII of 1876, the present suits will not lie, inasmuch as the plaintiffs' name has not been registered under the provisions of that Act. Section 38 of the Act is to the effect that the proprietor or manager of an estate must register his name showing the character and extent of his interest as proprietor or manager within a certain period. Section 42 runs as follows: ‘Every person succeeding after the commence-

^{*} Appeal from Appellate Decree No. 108 of 1894, against the decree of T. D. Beighton, Esq., District Judge of 24-Pergunnahs, dated the 5th of October 1893, reversing the decree of Babu Jagat Narain Sircar, Munsif of Baruipur, dated the 17th of March 1893,

ment of this Act to any proprietary right in any estate or revenue-free property, whether by purchase, inheritance, gift, or otherwise, every joint proprietor of an estate or revenue-free property assuming charge, after such commencement, of such estate or property, or of any interest therein, respectively, on behalf of the other proprietors thereof, and every person assuming charge, after such commencement, of any estate or revenue-free property, or of any interest therein respectively, as manager, shall, within six months from the date of such succession or assumption of charge, make application in the manner hereinafter provided to the Collector of the District on the general register of which such estate or property is borne, or to any other officer who may have been empowered by such Collector to receive such application, for registration of his name and of the character and extent of his interest as such proprietor or manager.' Under section 78 it is provided 'that no person is bound to pay rent to a person claiming as proprietor or manager unless the name of such claimant shall have been registered under the Act.'

"I find from an examination of the letters of administration granted to Mr. G. B. McIntosh, and from the will of the late Mr. A. R. McIntosh, that the latter constituted his widow as his executrix, and that the letters of administration were granted to the present plaintiff as the substituted attorney of H. M. McIntosh, and 'limited until the said H. M. McIntosh shall obtain from this Court the probate of the will.' The question turns upon the construction of section 42. The nature of the succession which carries with it the obligation of registration under the Act is defined in the first clause of that section, and it is contended by the learned pleader for the respondent, that as the words 'executor' and, 'administrator' do not occur, and no words of similar meaning are to be found, the usual rule as to the interpretation of statutes would not allow of a presumption that the Legislature intended to include the succession of an administrator. The rule referred to is that in interpreting an Act of the Legislature general words are controlled and restricted by particular words. In my opinion this canon of interpretation does not arise here. Had the section run, 'whether by purchase, inheritance, gift or the like,' it might have been argued that the words 'or the like' referred to succession *ejusdem generis*. The words, however, are 'or otherwise.' I believe, therefore, that the Legislature intended the enactment to be completely exhaustive and to include every form of devolution of property. The object of the Act is to ensure as great publicity as possible to any change in the proprietorship. It will be noted that under section 49 of the Act an elaborate system of publication has been enacted to ensure that all persons concerned may become aware of the mutation; and I can see no reason why a transfer of proprietary right created by a will should be exempt from the operation of an Act which is intended to operate as a safeguard to tenants who have rents to pay. It may further be suggested that the word 'gift' in section 42 might pos-

1894

 MCINTOSH
 v.
 JHARU
 MOLLA.

1894

McINTOSH
v.
JHARU
MOLLA.

sibly include devolution of property by will, which is, in fact a gift becoming operative after the death of the testator.

"I do not think it necessary to decide, for the purposes of these appeals, whether the person whose name should be registered is the substituted attorney of the executrix or the executrix herself, but without the registration of one or the other of these individuals I consider that the suits cannot be brought, and the appeals must, therefore, be decreed with costs."

The plaintiff appealed from this decision to the High Court, on the ground that the Judge was wrong in holding that the suit could not be brought without the registration of the name of the plaintiff, or that of the executrix of the will of A. R. McIntosh, under Bengal Act VII of 1876; that the words "whether by purchase, inheritance, gift or otherwise" were not intended to be exhaustive; that administrators and executors were not included in sections 38, 43 and 78 of the said Act; and that the interpretation of the Act by the Judge was wrong in law and ought not to be upheld.

Mr. *Henderson*, Mr. *McNair* and Babu *Upendra Gopal Mitter* for the appellants.

Babu *Sreenath Das* and Babu *Promotho Nath Sen* for the respondent.

The judgment of the Court (O'KINEALY and TREVELYAN, JJ.) was as follows:—

The question raised in this second appeal is, whether a person, who is an administrator, and as such the representative of the deceased and the legal owner of his property, is bound to be registered under section 42 of the Land Registration Act. Looking at the nature of the Act, and the purposes for which it was enacted, namely, to prevent people from realizing rent without being registered, we think that an administrator is bound to be registered under section 42, and that this appeal must, therefore, be dismissed with costs.

J. V. W.

Appeal dismissed.