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of the monies due, the amount deposited should be deducted and that execution of the decree should proceed for the balance.

After taking further evidence the Subordinate Judge came to the conclusion that the money was not payable quarterly but yearly, and therefore that the plaintiff was not entitled to interest, and he altered the decree of the Munsif by disallowing interest, but he did not interfere with the order for costs.

It is contended here, in second appeal, that the only course for the Subordinate Judge was to dismiss the suit, and we think that was the proper course for him to follow, as the rent deposited under section 61 operated as an acquittance. It is further contended here that the suit must be dismissed with costs. The ordinary rule is that the person who is to blame for the litigation should pay the costs. It is found that the defendant was not to blame, and there is no reason why he should not get his costs. The decrees of the lower Courts will be set aside and plaintiffs' suit dismissed with costs in all the Courts.

It is found that the rent for the three quarters of 1297 was not due. Therefore the suit in respect of that is premature, and as the rent for this period is in deposit it is not necessary to make any order as to that.

Appeal allowed.

J. V. W.

APPEAL FROM ORIGINAL CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Prinsep and Mr. Justice Trevelyan.

NARAYANI DASI (PLAINTIFF) *v.* ADMINISTRATOR-GENERAL OF BENGAL AND OTHERS (DEFENDANTS).*

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March 16.

Hindu Law—Will—Construction of Will—Right of daughter to maintenance after her marriage—Married daughters in good circumstances—Trust for maintenance—Costs.

A Hindu testator, after making the Administrator-General of Bengal executor and trustee of his will, and giving his daughter an annuity of Rs. 5 a month for her life, provided for the payment to *G. C. B.*, whom he consti-

* Original Civil Appeal No. 33 of 1893, in Suit No. 6 of 1893.

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tituted the guardian of his daughter and of his only son during their minority, of the sum of Rs. 225 "monthly and every month for the maintenance and education of my said son and the support of my said daughter and such other persons as live in my house and are supported at my expense," and further provided that all "the residue of my estate, moveable and immoveable, with all accumulations and additions" should be conveyed to his son on his attaining majority, "subject nevertheless to the trust of maintaining my said daughter." The daughter had married a man of means and did not need any maintenance. *Held*, in a suit by the daughter for a construction of the will and for a specific sum to be set apart for her maintenance, that the plaintiff was not entitled to anything by way of a separate allowance for maintenance; she was only entitled under the will (apart from her annuity of Rs. 5 a month) to be provided for in case she were otherwise unprovided for.

Where the construction of a will was not so difficult as to have required the assistance of the Court, it was held to be not a case where the estate should bear the costs. The suit was therefore dismissed with costs.

APPEAL from a decision of Norris, J., dated 7th July 1893.

Suit brought on 4th January 1893 for the construction of the will of one Judunath Mitter, the provisions of which, so far as they are material to this report, were as follows:—

"This is the last will and testament of me, Judunath Mitter, of Aheeretollah Street in the Town of Calcutta, land-holder. I give the whole of my moveable and immoveable estate to the Administrator-General of Bengal for the time being, whom I appoint executor and trustee of this my will upon the trusts following, that is to say:—

"*Firstly*, to pay my debts, funeral and testamentary expenses.

"*Secondly*, to pay out of the income of my estate the following annuities: (*d*) to my youngest daughter, Narayani Dasi, during her natural life, Rs. 5 per month, the same to be paid to her guardian hereinafter appointed during her minority.

"*Fourthly*, to pay to Babu Gopal Chunder Bose, the husband of my elder daughter, Srimati Nobinkali Dasi (whom I appoint guardian of the persons of my only infant son, Bhutnath Mitter, and my younger daughter, Srimati Narayani Dasi, who is also an infant) the sum of Rs. 2,500 upon the marriage of the said Srimati Narayani Dasi for the expenses of such marriage, and I direct that she is to have all the personal ornaments left by my late wife Srimati Kisto Babiney Dasi deceased.

"*Fifthly*, to pay out of the income of my estate to the said Gopal Chunder Bose, or to such other person or persons as he may by writing under his hand appoint as guardian in succession to, or association with, or substitution of, himself during the minority of my said infant son Bhutnath Mitter, the sum of Rs. 225 monthly and every month for the maintenance and education of my said son, and the support of my said daughter, and such other persons

as now live in my house and are supported at my expense, and to invest the surplus in Government securities for the benefit of my said son.

"*Sixthly*, to make over and convey the rest and residue of my estate, moveable and immoveable, with all accumulations and additions, to the said Bhutnath Mitter and his heirs on his attaining majority, subject nevertheless to the trust of maintaining my said daughter, and the payment of the annuities hereinbefore mentioned and subject also to the following conditions and limitations, that is to say :—'In case the said Bhutnath Mitter should die without issue and before attaining majority I direct that my residuary estate shall pass to my said two daughters and their heirs absolutely in equal shares subject to the payment of the said annuities.—Dated 20th November 1876.'"

The facts of the case are sufficiently stated in the judgment appealed from, which, so far as is material, was as follows :—

NORRIS, J.—"This suit is brought for the construction of the will of one Judunath Mitter, who died on 21st November 1876. The will was prepared in the office of a well-known attorney practising in this Court and was executed by the testator on the day before his death.

"The testator died, leaving two daughters, Nobinkali Dasi then and now the wife of the defendant Gopal Chunder Bose ; the plaintiff then unmarried, now the wife of Jeebun Kristo Ghose, and an only son, the defendant Bhutnath Mitter, then about four years old.

"The will is in these terms (see *ante* pp. 684, 685.)

"The plaintiff alleges that probate of the will was granted to the Administrator-General in February 1877 ; that it was only in the early part of the year 1887 that she became aware that the will contained any provisions for her benefit ; that she made inquiries from the defendant Gopal Chunder Bose, and he then informed her that a legacy of Rs. 5 a month was given to her by her father's will ; that she never received any payment whatever in respect of the legacy until December 1892 when she received from the Administrator-General the sum of Rs. 960 in respect of the arrears of the legacy.

"I may take it that Rs. 960 was practically a payment in full from the testator's death till this suit was brought. The plaint further alleges that in August 1892 the defendant Bhutnath Mitter informed the plaintiff that he was ready to take over the estate of his father from the Administrator-General, and that

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the Administrator-General, before transferring the estate to him, required a letter from her and her husband to the effect that she would look to the defendant Bhutnath Mitter, and not to the Administrator-General, for payment of the legacy of Rs. 5 a month and the arrears thereof.

"The plaint further alleges that disputes and differences have arisen between the plaintiff and the defendants respecting the true construction of the will, and this suit is now brought for construction of the will, and if necessary for administration. Various accounts are asked for; and what the plaintiff substantially asks is, that under the 6th clause of the will she may be declared entitled, as of right, to maintenance out of her father's estate; and she prays for a declaration to that effect, and she asks for an enquiry by an officer of the Court, and to have an account taken, of what sum is necessary for her maintenance and, if necessary, to have a sum set apart to meet the sum reported to be sufficient.

"It is not disputed that she is entitled to the sum of Rs. 5 a month, but it is argued that she is not entitled to a declaration, as a *bonâ fide* offer has been made to secure that sum.

"In the 4th clause of the will the testator intended to provide for the plaintiff's marriage, and to that end directs that Rs. 2,500 should be paid to Gopal Chunder Bose to meet the marriage expenses. Whether the plaintiff's father negociated her marriage or knew to whom she was going to be married, or whether he did not know, or whether Gopal Chunder Bose carried out the negotiation, does not appear, nor does it matter.

"Then in the 5th clause of the will, so far as it relates to the plaintiff, the testator makes provision for the interval between his decease and the plaintiff's being given in marriage, and the further period during which the girl would not be permanently residing with her husband, but would be making visits to her father's house before she took up her abode with her husband. That was the object of the 5th clause. It directs the Administrator-General to pay Rs. 225 a month to Gopal Chunder Bose, and Gopal Chunder Bose having been appointed guardian of the two children is directed how to employ the Rs. 225 a month.

"The difficulty has arisen from the presence of the 6th clause, which directs the executor and trustee to convey the estate to Bhutnath Mitter on his attaining majority, subject nevertheless to the trust of maintaining his daughter, the plaintiff, and the payment of the annuities mentioned. The sole difficulty arises in the construction of the words "subject nevertheless to the trust of maintaining my said daughter." Does the son take the estate clothed with the obligation in any and every case to maintain his sister, or to do so under certain circumstances only?

"I am of opinion that there is no obligation on the son to maintain his sister in any and every case. What I think the testator meant to do was to provide for the contingency of his daughter not being maintained by her husband, either on account of the husband falling on evil days, or their not agreeing, or from other cause. What the testator in effect says to his son is this: "If your sister is not being maintained as she should be, you must support her, you must not let her want." Now it happens that the lady married a gentleman of means, and is being well maintained. What her general rights are it is not necessary to determine. I think in my judgment it is enough to say that such circumstances have not arisen as to entitle the lady to ask for this declaration. In my judgment therefore the suit fails. * * * *

It has been said that the will is a perplexing and obscure one. I don't think the mere fact that a suit has been brought ought to induce me to say that the will is obscure and perplexing. For my own part I cannot say there is any obscurity about it, and I do not see any reason why, in dismissing the suit, I should not, in accordance with the usual rule, direct the unsuccessful party to pay the costs. I must dismiss the suit, and with costs on scale No. 2."

From this decision the plaintiff appealed mainly on the grounds that the Court ought to have held that the plaintiff was entitled to maintenance from the estate, and ought to have fixed the amount of maintenance, or ordered a reference as to the sum, and given her a decree with arrears, and also to have decreed the amount due in respect of the annuity of Rs. 5 a month; and that the costs ought to have been ordered to be paid out of the estate.

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Mr. *Woodroffe*, Sir *Griffith Evans*, and Mr. *Bonnerjee* for the appellant.

The *Advocate General* (Sir *C. Paul*) and Mr. *O'Kinealy* for the respondent Bhutnath Mitter.

Mr. *Pugh* and Mr. *Evans Pugh* for the Administrator-General.

Mr. *Woodroffe*, as to the plaintiff's right to maintenance, cited the following cases as supporting the right: *Kilvington* v. *Grey* (1), *Soames* v. *Martin* (2), *Broad* v. *Bevan* (3), *Jubber* v. *Jubber* (4), *Hall* v. *Robertson* (5), *Williamson* v. *Jodwell* (6), *Badham* v. *Mee* (7); and the cases of *Carr* v. *Living* (8), *Staniland* v. *Staniland* (9), *Lamb* v. *Eames* (10), and *Mussoorie Bank* v. *Raynor* (11) were distinguished; and it was contended that the plaintiff was at any rate entitled to the annuity of Rs. 5 a month which should have been secured to her by the decree. It was also submitted that the plaintiff was entitled to her costs, and the case of *Kaily Nath Naugh Chowdhry* v. *Chunder Nath Naugh Chowdhry* (12) was referred to as to the principle on which costs should be given.

Mr. *Bonnerjee*, on the same side, pointed out that by the entire dismissal of the suit the plaintiff had been precluded, having regard to section 13 of the Civil Procedure Code, from ever coming forward to ask for maintenance under clauses 5 and 6 of the will. There is no question that she is entitled to Rs. 5 a month under the will, so that the suit could not have been properly dismissed with costs. There should at any rate have been a decree for that and a declaration reserving all future right to maintenance. As to the principles to be observed in the construction of Hindu wills the case of *Soorjeemoney Dassee* v. *Denobundoo Mullick* (13) was referred to. The right to maintenance does not depend on her living in the family-house, and it was impossible, according to Hindu views, that the father should have contemplated his daughter remaining unmarried. Costs should

(1) 10 Sim., 293.
(2) 10 Sim., 287.
(3) 1 Russ., 511, note.
(4) 9 Sim., 503.
(5) 4 DeGex. M. and G., 781.
(6) L. R., 13. Ch. D., 564.
(7) 1 Russ. and M., 631.
(8) 28 Beav., 644.
(9) 34 Beav., 536.
(10) L. R., 6. Ch., 597.
(11) I. L. R., 4 All., 500; L. R., 9 I. A., 70.
(12) I. L. R., 8 Calc., 378 (392).
(13) 6 Moo., I. A., 526 (550).

be paid out of the estate, the plaintiff being entitled to ask for the construction of the will, and such construction being doubtful and obscure.

The *Advocate General* for the respondent Bhutnath Mitter.—The annuity of Rs. 5 a month had been paid up to the date of the suit, so there was no need to make a decree as to that. It was not necessary to secure it to the plaintiff, that being already sufficiently done by the will—see *Greender Chunder Ghose* v. *Mackintosh* (1). As to maintenance, there is no right to have any specific sum allotted to her as the plaintiff asks. If she were not properly maintained otherwise, she would have a right to go back to her father's house—Shama Churn Sircar's Hindu Law, 1878, p. 611, where it is said that this is conformable to the Dayabhaga. A daughter living away from her father for no sufficient reason is not entitled to maintenance—*Ilata Shivatri* v. *Ilata Narayanna Nambudri* (2); Colebrooke's Digest, Vol. 3, p. 5. She must be a member of the household for the time being; it cannot be that if she goes away she is entitled to be maintained.

The following were also referred to as to maintenance: Bhuttacharji's Tagore Law Lectures, "Joint Hindu Family," pp. 368, 369; Dayabhaga, Chapter XI, section 1, articles 22, 23; Mayne's Hindu Law, 5th edition, paras. 408, 417; Strange's Hindu Law, p. 171; *Chandra Bhagabai* v. *Kashinath* (3); *Savitribai* v. *Luxmibai* (4); *Gokibai* v. *Lakhmidas Khimji* (5). The right to maintenance depends on the requirements of the person named. As to there being a trust for maintenance—*Scott* v. *Key* (6); *Bowden* v. *Laing* (7); *Carr* v. *Living* (8); *Staniland* v *Staniland* (9); *Massey* v. *Massey* (10); Lewin on Trusts, 9th edition, p. 145, were referred to, to show there was no precatory trust. *Armstrong* v. *Clavering* (11); *Mahomed Shamsool Hoda* v. *Shewakram* (12), and Williams on Executors, p. 1812, were also cited.

Mr. *O'Kinealy* on the same side.—The plaintiff has no right to have a sum set apart for her maintenance, but only a right

(1) I. L. R., 4 Calc., 897.
(2) 1 Mad., 372.
(3) 2 Bom., 341.
(4) Bom., 584.
(5) I. L. R., 14 Bom., 490 (496).
(6) 35 Beav., 291.
(7) 14 Sim., 113.
(8) 28 Beav., 644.
(9) 34 Beav., 536.
(10) W. N. (1873), 76.
(11) 27 Beav., 226.
(12) 14 B. L. R., 226; L. R., 2 I. A., 7.

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to be supported ("support" is the word used) if it were necessary, and it is not necessary. As to costs, where a suit is unnecessary the plaintiff must pay costs up to trial—*Fane* v. *Fane* (1). Here the arrears of the annuity had been paid when the plaintiff sued. *Coggan* v. *Allen* (2) gives the general rule as to costs. *Merlin* v. *Blagrave* (3), *Dyson* v. *Phillips* (4), and *Clark* v. *Henry* (5), were also referred to.

Mr. *Pugh* for the Administrator-General submitted he was not liable, having made over all the property to the defendant Bhutnath as directed by the will. The Administrator-General was not bound to give a conveyance, and Bhutnath is now in just as good a position as if a conveyance were granted. The Administrator-General is entitled to his costs.

Mr. *Woodroffe* in reply.

The following judgments were delivered by the Court (PETHERAM, C.J., and PRINSEP and TREVELYAN, JJ.) :—

PRINSEP, J.—The plaintiff is one of the daughters of the testator Jadunath Mitter, deceased, and at his death was about ten years of age and unmarried. The other daughter had been married to a man of means. There was also a minor son aged about four years. Probate of the will was obtained by the Administrator-General on 22nd February 1877, and he administered the estate until the son, Bhutnath Mitter, came of age.

The plaintiff now asks to have the will construed by the Court and the rights of all parties under it declared. She also asks for payment of all arrears of maintenance due to her out of the estate, and for security for prompt payment in the future, and that for this purpose the necessary enquiries may be made. Lastly, she asks that the estate may be administered under orders of this Court.

In respect of the plaintiff the will gives her an annuity of Rs. 5 per month for her natural life. About this there is no dispute, and it is also clear that the arrears due to the plaintiff on account of this annuity up to 20th November 1892 were paid before this suit was brought on 4th January following.

(1) L. R., 13 Ch. D., 228.
(2) L. R., 23 Ch. D., 101.
(3) 25 Beav., 125.
(4) 10 H. L. C., 624.
(5) L. R., 6 Ch. D., 588.

The only matters in dispute are whether the plaintiff is under the sixth paragraph of the will entitled to any further allowance as maintenance, and, if so, in what amount.

In the fourth paragraph of the will provision is made for the marriage of the plaintiff, which has taken place.

Paragraphs 5th and 6th contain the following directions: (see paragraphs 5 and 6, *ante* pp. 684, 685)

It is unnecessary to recite the conditions and limitations, because they do not affect the present case, except in so far as they show that on the death of the son Bhutnath without issue, and before attaining majority, the residuary estate was to be divided equally between the married and unmarried daughters, subject to the payment of the annuities mentioned in the previous part of the will.

The learned Judge in the Court of first instance has found that the intention of the testator was to impose "no obligation on the son Bhutnath Mitter to maintain the sister in any and every case," but "to provide for the contingency of the daughter not being maintained by her husband on account of the husband falling on evil days, or their not agreeing, or from other cause," and that as she has "married a gentleman of means and is being well maintained," it is not necessary to determine what her general rights are, the circumstances entitling her to such a declaration not having arisen. The suit was accordingly dismissed with costs payable by the plaintiff.

In appeal it is contended that the plaintiff is entitled to a decree for the arrears due on her annuity under paragraph 2, clause (*d*) of the will, and to further maintenance under paragraph 6; that the amount so payable should have been ascertained and fixed; that she was entitled to a construction of the will, and consequently that the suit should not have been dismissed with costs, as the costs should in any case be borne by the estate. It is also contended that under the will the Administrator-General should not have made over the estate to Bhutnath Mitter except by a regularly executed conveyance, in which the trust of maintaining the plaintiff should have been recited and secured.

The question therefore really at issue is whether the plaintiff was entitled to any separate maintenance by a specific sum of money.

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The testator was a Hindu gentleman, and the will was drawn up by a well-known Hindu attorney of this Court, so that, in endeavouring to ascertain the intention of the testator, we must assume that, unless anything be shown to the contrary from the express terms of the will, it was his object to provide for the family in accordance with the well-known principles of that law. The plaintiff, his youngest daughter, was approaching the marriageable age. Accordingly, as already stated, provision is made for that event. There is nothing to show that any arrangements had been made, or even that proposals had been made for a suitable husband. It is stated that, if the case had gone for trial, some evidence would have been forthcoming, but I observe that in her appeal the plaintiff has not asked for a remand for this purpose, but she has been contented to abide by the case as presented by the record. We must, therefore, take it that the testator was ignorant what were the means of the gentleman to whom his younger daughter was to be married. He provided for her during life by an annuity of Rs. 5 per month, and he further directed that during the minority of his son a certain sum (Rs. 225) should monthly be applied to the maintenance and education of his son and to the support of that daughter and such other persons as at the time of his will lived in his house and were supported at his expense, and he further directed that the surplus should be invested in Government securities for the benefit of his son.

The object of this, I take it, was to maintain the members of his family in his family dwelling-house after his death as during his life, and certainly not to give any members of that family a right to any separate allowance, if he or she chose to reside elsewhere. This sum was fixed and provision was also made for any surplus that might accrue. But it is stated that under Hindu law a person entitled to maintenance is not bound to reside with the family, and is entitled to a separate allowance, if he or she may prefer to live elsewhere. However this may be, this does not appear to have been in the contemplation of the testator so far as this part of his will is concerned. The object was to preserve the family and household as they were at that time But this part of the will relates only to the time of the minority of his son, the residuary legatee, who has now come of age, so that the following paragraph (6)

has come into operation. That paragraph directs the executor and trustee appointed by the Administrator-General to make over and convey the estate to the son, subject nevertheless to the trust of maintaining the said daughter, the plaintiff, referred to in the preceding paragraph. The paragraph cannot in my opinion be read apart from paragraph 5. It appears to me that "the trust of maintaining my said daughter" in paragraph 6 refer to the objection imposed by paragraph 5, and that the object of this provision is to ensure for her the same rights and privileges after the majority of the son as were provided for her during his minority. It was never in contemplation of the testator that the style of his family dwelling-house should be reduced, but that a home should always be open to his daughter whenever she might require it. To provide against want she had already been given an annuity of Rs. 5 per month. The trust created by paragraph 6 is in my opinion merely a revival of that created by paragraph 5 which expired on the son's attaining majority; on her marriage the plaintiff would in strict law be entitled to nothing out of her father's estate. She would practically cease to be a member of that family in regard to maintenance, and have such claims only on her husband. It is only when a daughter, such as the plaintiff, is reduced to poverty that she has a claim to be supported by her father's family.

The plaintiff admittedly is far from being in such a condition. Consequently it was not in contemplation of her father, a Hindu, that she should under any circumstances receive a separate allowance from his estate to the reduction of the means of his son, the residuary legatee. I understand the provision in paragraph 6 as conferring no separate rights on the daughter to be separately maintained, and there seems to be no indication why in such respects he should be inclined to treat her differently from her elder sister, who had married a husband in easy circumstances during the testator's lifetime. The annuity of Rs. 5 per month, and the fact that on the death of the residuary legatee, the son, without issue, or during minority, the estate was to be equally divided between the two daughters, *subject to the payment of the annuities* (and here I may observe no mention is made of the trust of maintaining the younger daughter) sufficiently shows this.

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For these reasons I am of opinion that the plaintiff is not entitled, under paragraph 6 of the will, to anything by way of a separate allowance for maintenance. I am however of opinion that she is entitled to a decree for the amount of her monthly annuity from the last day of payment, 20th November. It does not however appear that she has ever demanded this from the defendant, and therefore she is entitled only to that amount.

On consideration I think that the construction of this will is not so difficult as to have required the assistance of this Court, and therefore it is not a case where the estate should bear the costs.

The plaintiff is entitled to a decree for Rs. 5, the arrears of maintenance and to nothing else. In that respect the decree of the lower Court will be altered. Apart from that alteration the appeal is dismissed with costs on scale No. 2.

TREVELYAN, J.—The real question in this case is as to the meaning of the words "subject nevertheless to the trust of maintaining my said daughter." These words, there is no doubt, create a trust, but the dispute is as to the nature of the trust which they create. The plaintiff contends that under these words she is entitled to receive from the estate, which was her father's, a sum of money sufficient for the purpose of providing her with food, lodging and raiment, irrespective of whether she has other means of providing herself with those necessities of life. On the other hand, the Administrator-General and her brother contend that she is only entitled to be so provided when she is otherwise unprovided for.

Reference was made by both sides to the terms of the 5th clause of the will. That clause provides for the period of the minority of Bhutnath Mitter, and only for that period. The words "support of my said daughter" in the 5th clause are, I think, equivalent to the words "maintaining my said daughter" in the 6th. The extent of the maintenance and the conditions, if any, under which it should operate, were intended to be the same in both clauses.

Whatever "subject to the trust" means, subject to the said trust, or subject to another trust, the words used are so similar as to be intended to convey a similar meaning.

There is no reason why there should be any difference between the two periods. The question still remains as to what the testator meant by "support" or "maintaining."

Counsel for the appellant relied upon the circumstance that the 5th clause would extend to a period when the testator must have known that his daughter would be married, and of this there is no doubt. No Bengali Kayasth would contemplate his daughter being unmarried after she had attained the age of puberty. As this girl was twenty-four years old when her brother came of age, her father must have known that she would certainly be married before her brother attained his majority.

This circumstance makes no difference in the construction. If the defendant's contention be correct the father might have equally wished to provide for his daughter in the case of her becoming destitute during her brother's minority as after it. For eleven or twelve at least of the years covered by the 5th paragraph she would be married and subject to the same chances and conditions as during the subsequent period.

I think it is clear that the testator meant the same thing in the 5th and 6th paragraphs of the will. The question is what he meant.

As far as I can see a Hindu testator, or settlor, in providing for the maintenance of a child or other person, would mean exactly the same as an English testator, or settlor, would by a similar provision. I can see no reason for any difference. If there be any, I should think it the more likely that the Hindu father would be the less inclined of the two to give his daughter an annual provision of food and raiment irrespective of her necessities, and thus make her a burden upon his sons. When a Hindu girl marries, she completely ceases to have anything to do with her father and his family. She becomes one with her husband and belongs to his family. Counsel for the respondents has contended that under the Bengal school of Hindu law, a destitute daughter is entitled to maintenance. This right is denied by Counsel for the appellant.

If this right does not exist the case is brought the nearer to that of an English father and daughter. I think that a provision of this kind in the will of a Hindu means the same as, or at any rate not more than, a similar provision in the will of an English-

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man. We have been referred to several English authorities on that subject, and amongst them I can find no case wherein a provision for the maintenance of A being charged on a gift to B provision has been allowed irrespective of the wants of A. There is, however, some authority to the contrary. In Lewin on Trusts, 8th edition, p. 139, we find: "It can hardly be maintained, on the one hand, that when a child has attained majority, and is fairly launched into the world, and is making a livelihood, the trust is to continue; and, on the other hand, if a child be willing to remain at home, and no reasonable objection can be made to it, the person bound by the trust cannot refuse maintenance on the mere ground that the child has attained twenty-one, that age being in England the age of majority.

In *Carr* v. *Living* (1), the Master of the Rolls says: "The view I take of these cases, although I do not know whether it has been decided, is this: Where property is given to a wife for the support of herself and children, it is paid to her for the benefit of herself and children, and the Court does not inquire how it is applied, unless the children are not supported at all. But where the children are otherwise provided for, and do not require support or maintenance, they are not entitled to complain that they do not receive a portion of the fund which is not required for their maintenance, education and support." In *Thorp* v. *Owen* (2), although the point did not arise, the observations of the Vice-Chancellor at p. 613 of the report point in the same direction. So do the observations of the Master of the Rolls in *Scott* v. *Key* (3) at p. 293 of the report. *Broad* v. *Bevan* (4), which was relied upon by the appellant, has nothing to do with the question. All that was asked for there by Counsel was a reference to the Master, who, "taking into account the circumstances of Ann, will determine what provision for her will answer the intention of the testator." I would accordingly hold that the trust for maintenance in this case is only intended to apply in the event of the daughter being otherwise unprovided for.

The plaintiff does not make any such case here, so her claim to maintenance fails.

(1) 28 Beav., 644 (647.)
(2) 2 Hare, 607 (613.)
(3) 35 Beav., 291 (293.)
(4) 1 Russ., 511.

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NARAYANI DASI v. ADMINISTRATOR-GENERAL OF BENGAL.

The plaintiff has also contended that she is entitled to require the Administrator-General to execute a conveyance to Bhutnath Mitter. Bhutnath might be entitled to require such a conveyance to be executed, but I cannot see how the plaintiff could require such conveyance, or would be in any way injured by the absence of such a conveyance. In the absence of authority I decline to hold that any such conveyance can be enforced by the plaintiff.

I agree with Mr. Justice Prinsep as to the form of the decree which we should make.

PETHERAM, C. J.—For the reasons given by the other two learned Judges who heard this appeal I agree in the conclusions at which they have arrived.

Attorneys for the appellant: Messrs. *Dignam, Robinson & Sparkes.*

Attorney for the respondents: Babu *Gonesh Chunder Chunder.*

J. V. W.

TESTAMENTARY JURISDICTION.

Before Mr Justice Sale.

IN THE GOODS OF KAMINEYMONEY BEWAH (DECEASED.)

1894 *April* 24.

Probate—Revocation of Probate—Interest entitling person to apply for revocation—Hindu Law—Inheritance—Succession to property of degraded and outcaste woman—Right of her husband's family in her property acquired while degraded.

In an application for revocation of probate of the will of *K*, which had been granted to *D*, it appeared that *K* was a Hindu widow who many years ago left her husband's family dwelling-house and became a woman of the town; that she had lived under the protection of *D* for 35 years; that when she came to *D*, she had no property, but that all the property she left had been acquired by her while in a degraded and outcaste state. *Held*, that the applicant, as her husband's sister's son, had no interest in her estate entitling him to maintain the application.

The general rule, that the tie of kindred between a woman's natural family and herself ceases when she becomes degraded and an outcaste, applies with even greater force as between her and the members of her husband's family. Those members therefore have no right of inheritance in property acquired by a woman who leaves her husband's family and becomes degraded.

IN this matter an application was made by Mr. *Chowdhry* for a rule on the petition of one Hem Chunder Dass, which alleged