

## ORIGINAL CIVIL.

Before Mr. Justice Phear.

1875  
Dec. 13.

GABRIEL v. MORDAKAI (AND ANOTHER).

*Succession Act (X of 1865), s. 56—Revocation of Will—Lawful Polygamous Marriage.*

The will of a Jew, made subsequently to his first marriage, but previously to a second marriage in the lifetime of his first wife, held to be revoked by such second marriage under s. 56 of the Succession Act (1).

GABRIEL EZRA GABRIEL, a Jewish inhabitant of Calcutta, died on the 18th July 1875, leaving two widows, Furrah Gabriel and Sarah Gabriel, and a niece, him surviving, and having duly made a will, dated the 23rd November 1856. The testator had married his first wife in the year 1840, and his second wife, during the lifetime of the first wife, on the 21st July 1872. The executors of the will renounced probate, and an application was made by the elder widow as sole legatee named in the will for letters of administration with a copy of the will annexed. The usual citations were issued to the next-of-kin, and a special citation to the other widow and the niece of the deceased, to show cause why letters of administration should not be granted. The second widow and the niece entered a caveat, and the

(1) The question was, however, not raised whether, looking to the date of the will and the provisions of s. 331 of the Succession Act, that Act applied at all. The corresponding section (34) of the English Wills Act (1 Vic., c. 26) excludes from that Act all wills made prior to the first of January 1838—*Langford v. Little*, 2 Jo. & Lat., 613, at p. 633. All acts performed upon wills, such as alteration and cancellation, appear to be regarded as new testamentary acts, and they fall within the Wills Act, though the will itself may have been made prior to the first of January 1838. The marriage of the testator does not fall within either of these categories, and it is doubtful what principle would be applied to such a case. In *Hobbs v. Knight*, 1 Curt., 768, at pp. 775-6, the arguments used by Sir H. Jenner involve the opinion that, for the purpose of deciding whether marriage has revoked a will, the will is not excepted by the 34th section from the operation of the Act. In *Shirley's case*, 2 Curt., 657, the same Judge subsequently decided in the contrary sense, but the case was not contested, nor was *Hobbs v. Knight* cited by counsel.

petition for letters of administration was thereupon ordered to be treated as a plaint, and the caveators as defendants were directed to file written statements. Both the defendants in their written statements submitted that, by reason of the second marriage, the will, even if duly executed, was revoked, and that the deceased died intestate.

The case was set down for settlement of issues, and the issue was raised whether the second marriage revoked the will?

Mr. *Jackson* for the plaintiff.

Mr. *Macrae* for the defendant Sarah Gabriel.

Mr. *Woodroffe* and Mr. *Branson* for the defendant Mordakai.

Mr. *Jackson* referred to s. 56 of the Indian Succession Act, and pointed out that the case of a second marriage in cases where such a marriage was lawful in the lifetime of the first wife, had apparently not been in contemplation of the Legislature. [PHEAR, J.—I suppose there is no doubt a Jew may lawfully marry a second time in the lifetime of the first wife.] No, that is admitted.

PHEAR, J.—I think I may say the will was revoked by the second marriage; and this will dispose of the present petition.

Attorney for the plaintiff: Mr. *Gregory*.

Attorneys for the defendants: Baboo *G. C. Chunder* and Mr. *J. O. Moses*.

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*Before Mr. Justice Phear.*

IN THE GOODS OF WILLSON (DECEASED).

1876  
Feb'y. 1.

*Succession Act (X of 1865), s. 258—Grant of Letters of Administration with Will annexed—Practice.*

Letters of administration with the will annexed may, under s. 258 of the Succession Act, be granted after the expiration of seven clear days from the death of the testator.

W. G. Willson died on 8th February 1876, leaving a will, of which no executor was appointed, and there being no next-of-kin in India, an application for administration with the will annexed was made on behalf of the Administrator General on 18th February, i.e., ten days after the testator's death. On a