

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

IN THE MATTER OF THE PETITION OF MOHUN DASS v. LUTCHMUN
DASS.*

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*Revocation of Probate—Removal of Mohunt claiming under a Will—
Succession Act (X of 1865), s. 234.*

By his will the mohunt of an *akra*, or religious endowment, appointed A to be the *malik* of the properties comprised in the endowment, and to receive the dues and pay the debts, and to do everything necessary connected herewith; and provided that, if any act was done prejudicial to any of those purposes or to any property set apart therefor, or contrary to the Hindu practice and religion or usages, the property should vest in such disciple of A who should be competent and virtuous. A obtained probate of the will, and entered upon the properties mentioned therein.

Held, that the Court had not power, under s. 234 of the Succession Act, to revoke the probate upon the ground that A had, since he took charge of the office, taken to an immoral course of conduct, and in consequence had been excluded from the community of *mohunts*.

The proper course to take for depriving such a person of his office would be to bring a suit under the Religious Endowment Act, or any other Act, for a declaration that he had disqualified himself, and if in that suit a decree was obtained and duly certified to the Court which granted probate, that Court would, no doubt, direct the revocation of the probate.

IN this case one Ramdass, the mohunt, or trustee and guardian, of an *akra*, or religious endowment, at Devipore, by his will dated the 28th December 1871, appointed Lutchmun Dass, his favorite *chela*, or disciple, to be, after his own death, his successor in the mohuntship, and to be *malik*, or proprietor, of the moveable and immoveable properties comprised in the religious endowment, and to receive the dues and pay the debts, and to do everything necessary connected therewith. The will also contained a provision, which was as follows:—“If, after

* Appeal from Original Decree, No. 271 of 1878, against the decree of A. J. Bainbridge, Esq., Judge of Moorshedabad, dated the 17th September 1878.

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my death, any act be done which is prejudicial to any of the aforesaid purposes, or to any property set apart for the purposes aforesaid, or contrary to our practice and religion, or to the usage which has prevailed amongst us from generation to generation, then the property shall vest in that disciple of mine who shall be competent and virtuous."

Ramdass died on the same day that he executed his will. Shortly after his death, Lutchmun Dass applied for and obtained a certificate under Act XXVII of 1860, and assumed without opposition, the position of *mohunt* of the *akra*, and entered into possession of the properties appurtenant to it. Some five or six years afterwards disputes and disagreement arose between Lutchmun Dass and the *mohunt* of a neighbouring *akra*, and charges were made against Lutchmun Dass of immorality and malversation of property belonging to the religious endowment.

On the 11th July 1878 Lutchmun Dass, with the object, apparently, of strengthening or securing his position, applied under the Hindu Wills Act (XXI of 1870) for probate of the will of Ramdass. On the 23rd of July 1878, a caveat was filed by the objector Mohun Dass.

On the 6th of August 1878, probate of Ramdass's will was granted by the Judge of Moorshedabad to Lutchmun Dass. On the same day, Mohun Dass filed a petition, asserting that Lutchmun Dass, since his accession to the *mohuntship*, had been guilty of immorality and malversation, in consequence of which he had been excluded from communion with all other *mohunts*, and had rendered himself incapable of retaining the office of *mohunt*, and praying that the application of Lutchmun Dass should be refused, and that probate of the will of Ramdass should be granted to him, Mohun Dass, as the second and not the first, and the most virtuous and competent disciple of Ramdass, as the person designated to succeed him in the *mohuntship*.

Probate having been already granted to Lutchmun Dass, Mohun Dass, on the 20th August 1878, filed the present petition under s. 234 of the Succession Act (X of 1865) reiterating the same charges against Lutchmun Dass, and praying that the probate granted to him should be annulled.

revoked, and that he should be called upon to account for his administration of the religious endowment.

The lower Court dismissed the application without going into the merits, on the ground that s. 234 did not apply.

From this order Mohun Dass appealed to the High Court.

Baboo *Gopal Lall Mitter* and Baboo *Guru Dass Banerjee* for the appellant.

Baboo *Soorendronath Muttylall* for the respondent.

The judgment of the Court (JACKSON and TOTTENHAM, JJ.) was delivered by

JACKSON, J.—The petitioner, who is the appellant before us, moved the Judge of the District of Moorshedabad to revoke the probate of a will under which the respondent had been designated as mohunt at the head of a certain religious institution. It was alleged that this mohunt had, since he took charge of the office, taken to a certain course of conduct whereby he has tarnished his name, and in consequence whereof he has been excluded from the community of the mohunts. The Judge considered that this was not a case in which the provisions of s. 234 of the Indian Succession Act authorized him to revoke or annul the grant of probate; and the petitioner, being dissatisfied with this decision, has appealed to this Court, and before us it is contended that the section referred to does apply to such a case, and that the proof of that is to be found in illustration (h) attached to that section. Illustration (h) refers to the case of a “person to whom probate was, or letters of administration were, granted, and who has subsequently become of unsound mind;” and it is argued that as the Court is entitled so to act in the case of a person mentally disqualified, so it is also entitled to act in the case of persons who are proved to be morally disqualified.

It appears to us that this contention is founded upon an entire mistake, and there is a considerable difference between the case of a person contemplated in the illustration and that of a person against whom the present suit is directed. Illustration (h) has reference to the case of an executor who is

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acting under a probate and whose lunacy subsequently of course disables him from acting under the will, that lunacy being established by a regular enquiry under the direction of the Court under the Act relating to that subject. The respondent now before us is not an executor. He obtained probate of the will of the late mohunt, and under the operation of that will is now at the head of the institution, and until any just cause for revocation of the grant of probate is made out under the law, he cannot be removed. The proper course, as it seems to me, for depriving the respondent of the office, would be to bring a suit under the Religious Endowment Act, or any other suit for a declaration that he has disqualified himself, and if in that suit a decree is obtained and duly certified to the Court which granted probate, that Court, no doubt, would direct the revocation of the probate. The present appeal will be dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Pontifex and Mr. Justice McDonell.

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 April 22.

THE EMPRESS v. KALA CHAND DASS AND OTHERS. *

Criminal Procedure Code (Act X of 1872), ss. 505, 506—Deposit of Cash in lieu of Security Bond for Good Behaviour.

The powers given by ss. 505 and 506 of Act X of 1872 should be exercised with extreme discretion; the former of these sections is not intended to apply to persons of "by no means a reputable character."

An order requiring persons to deposit cash in lieu of entering into a bond as security for their future good behaviour is bad in law.

THIS was a reference under s. 296 of Act X of 1872 made to the High Court by J. Smith, Esq., the Sessions Judge of Burrisal.

The accused persons were charged under s. 505 of the Criminal Procedure Code with being persons of notoriously bad liveli-

* Criminal References, Nos. 44, 45, and 47 of 1879, by J. Smith, Esq., Sessions Judge of Burrisal, dated 15th March 1880, on an order passed by the District Magistrate of that district.