Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Norendra Nath Sircar and another v. *Kamalbasini Dasi, from the High Court of Judicature at Fort William in Bengal; delivered 22nd February* 1896.

Present:

LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

In this case there is a question as to the effect of the will of Hara Nath a Hindu gentleman who died on the 14th of January 1882. Hara Nath left three sons. The eldest Jogendra Nath had attained majority at the time of his father's death. The other two who were children by a junior wife were then infants of tender age.

The will which was made on the day on which the testator died disposed of his property in the following manner :—

"My three sons shall be entitled to enjoy all " the moveable and immoveable properties left " by me equally. Any one of the sons dying " sonless the surviving sons shall be entitled to " all the properties equally."

Jogendra Nath was appointed sole executor with powers of management during the minority of his brothers. On their attaining majority he was directed to "make over charge of their " properties to them."

Jogendra Nath proved the will and took upon himself the management of the testator's estate.

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He died on the 2nd of December 1886. He left a widow but died sonless.

In these circumstances a contest arose as to the destination of Jogendra Nath's share. The surviving sons of Hara Nath by their mother and next friend claimed it as theirs under the terms of the will. On the other hand Jogendra's widow as his heir contended that on the testator's death the executory gift over in the event of any of his sons dying sonless became incapable of taking effect having regard to the provisions of Section 111 of the Indian Succession Act 1865 which was made applicable to the wills of Hindus by the Hindu Wills' Act 1870.

Section 111 of the Act of 1865 enacts that "where a legacy is given if a specified uncertain "event shall happen and no time is mentioned "in the Will for the occurrence of that event "the legacy cannot take effect unless such "event happen before the period when the fund "bequeathed is payable or distributable." In the Illustrations to that section the following case is given :—

"(*b*) A legacy is bequeathed to A and in case "of his death without children to B. If A "survives the Testator or dies in his lifetime "leaving a child the legacy to B does not take "effect."

The subordinate Judge referred to several text writers and cited a number of authorities to prove that according to the law still in force in England and according to the law as administered in India before the date of the Indian Succession Act 1865, an executory gift such as that contained in the testator's will would have effect in the event of the first taker dying sonless at any time. Then turning to the Act he held with some hesitation that it was not the intention of the Legislature to alter the law in India by departing from the law of England. The learned Judges

of the High Court on appeal reversed the decision of the Subordinate Judge. They held that the Act of 1865 had altered the law and that according to Section 111 of that Act as explained by Illustration (*b*) the original gift to the three sons in equal shares became indefeasible on the testator's death.

It is hardly necessary for their Lordships to do more than express their concurrence with the Judgment of the High Court. But they think it may be useful to refer to some observations in a recent case before the House of Lords as to the proper mode of dealing with an Act intended to codify a particular branch of the law. "I think" said Lord Herschell in the Bank of England *v.* Vagliano 1891 A.C. 107 " the proper course is in " the first instance to examine the language of " the Statute and to ask what is its natural " meaning uninfluenced by any considerations " derived from the previous state of the law and " not to start with enquiring how the law pre- " viously stood, and then assuming that it was " probably intended to leave it unaltered, to see " if the words of the enactment will bear an " interpretation in conformity with this view. " If a Statute, intended to embody in a code a " particular branch of the law is to be treated " in this fashion, it appears to me that its utility " will be almost entirely destroyed, and the very " object with which it was enacted will be " frustrated. The purpose of such a statute " surely was that on any point specifically dealt " with by it, the law should be ascertained by " interpreting the language used instead of, as " before, roaming over a vast number of autho- " rities in order to discover what the law was " extracting it by a minute critical examination " of the prior decisions . . . ."

The learned Judges of the High Court have taken the line which was approved in the House

of Lords. The Subordinate Judge followed exactly the opposite course. His judgment with much display of learning and research is a good example of the practice which Lord Herschell condemns and the mischief which the Indian Succession Act 1865 seems designed to prevent. To construe one will by reference to expressions of more or less doubtful import to be found in other wills is for the most part an unprofitable exercise. Happily that method of interpretation has gone out of fashion in this country. To extend it to India would hardly be desirable. To search and sift the heaps of cases on wills which cumber our English Law Reports in order to understand and interpret wills of people speaking a different tongue trained in different habits of thought and brought up under different conditions of life seems almost absurd. In the Subordinate Courts of India such a practice if permitted would encourage litigation and lead to idle and endless arguments. The Indian legislature may well have thought it better in certain cases to exclude all controversy by positive enactment. At any rate in regard to contingent or executory bequests the Indian Succession Act 1865 has laid down a hard and fast rule which must be applied wherever it is applicable without speculating on the intention of the testator.

Two points were urged by the learned Counsel for the Appellants which do not seem to have been argued in the Courts below. In the first place it was suggested that in Section 111 of the Act of 1865 the qualification or proviso "unless "a contrary intention appears by the will" is to be understood. In some sections of the Act those words are to be found. Full effect must be given to them where they occur. But where the qualification is not expressed there is surely no reason for implying it. The introduction of such a qualification into Section 111 would make the

enactment almost nugatory. Then it was argued that in the present case the fund is not "pay-"able or distributable" within the meaning of the enactment until the testator's younger sons attain their majority. But in their Lordships' opinion that is not the effect of the will. The period of distribution is the death of the testator. It would be impossible to hold that that period is to be postponed by reason of the personal incapacity of some of the beneficiaries.

The view of the High Court that Section 111 applies to bequests of all descriptions of property there being no difference in India between real and personal property was not impugned in the argument before their Lordships.

Their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed. The Appellants will pay the costs of the appeal.