Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Administrator General of Bengal v. *Prem Lal Mullick and others, from the High Court of Judicature at Fort William in Bengal; delivered* 30*th March* 1895.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD SHAND.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

Nundo Lal Mullick, a wealthy Hindu resident in Calcutta, died in February 1891, leaving a last will by which he disposed of his whole estate real and personal, and appointed Dwarka Nath Bhonjo, and Sumbhoo Nath Roy to be his executors and trustees. These gentlemen accepted the office thus conferred on them; and, in March 1891, they obtained a grant of probate from the High Court at Calcutta, and proceeded to administer the trusts of the will. On the 14th August 1893, they executed a deed, by which they transferred the whole estates effects and interests vested in them by virtue of the said probate to the Appellant, the Administrator General of Bengal, professedly in terms of Section 31 of "The Administrator General's Act "1874" (Act No. II. of 1874).

The clause in question enacts that "any private "executor or administrator, may, with the pre-

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" vious consent of the Administrator General of
" the Presidency in which the property comprised
" in the probate or letters of administration is
" situate, by an instrument in writing under his
" hand, bearing a stamp of ten rupees and notified
" in the local Gazette, transfer all estates, effects
" and interests vested in him by virtue of such
" probate or letters to the Administrator General
" by his name of office."

The same section provides that, upon the instrument being duly executed and notified, the transferor shall be exempt from all liability for any act or omission after its date; and that the Administrator General for the time being shall have the same rights, and shall be subject to the same liabilities, which he would have had, and to which he would have been subject, if the probate or letters of administration had been granted to him, by his name of office, at the date of the transfer.

It is not matter of dispute, that, if the executors and trustees of the late Nundo Lal Mullick are within the class of persons empowered by Section 31 to devolve their administrative functions upon the Administrator General, the transfer was properly executed and notified, and must receive effect. The only question raised and discussed in the Courts below, and in the course of this appeal, has been, whether the transferors, as the executors and trustees of a deceased Hindu, are private executors within the meaning of the clause.

The present suit was brought in September 1893, before the High Court, by Prem Lal Mullick, the adopted son and heir of the testator, (herein-after referred to as the Respondent), by his adoptive mother and next friend Sreemutty Tregoona Sundery Dassee. The plaint contains a variety of conclusions, the first three of these being (1) for the administration of the testator's

estate under the direction of the Court, (2) for the appointment of a receiver pending the final determination of the suit, and (3) for an injunction restraining the Administrator General from taking possession of or interfering with the estate. The testamentary executors and trustees of the deceased, and the Administrator General, were called as Defendants.

Mr. Justice Sale, who tried the suit, found, by a decree dated the 21st December 1893, that the transfer purporting to be made by the executors and trustees to the Defendant, the Administrator General, on the 14th August 1893, was invalid; and he appointed a receiver of the moveable property, and of the rents issues and profits of the immoveable property belonging to the estate of the deceased. On appeal, his decision was affirmed by the majority of the Court, consisting of Prinsep and Trevelyan J.J., Petheram C.J. dissenting. The present appeal has been brought, by the Administrator General, against these judgments. The executors and trustees, although called as Repondents, have made no appearance.

Their Lordships have been unable to adopt the construction of Section 31 of the Act of 1874, which commended itself to the majority of the learned Judges. The right view of the Statute was, in their opinion, expressed by the Chief Justice.

The clause in question is a re-enactment, without verbal alteration, of Section 30 of "The Admin-" istrator General's Act 1867," (Act No. XXIV. of 1867). At the time when that Act passed, the executor of a Hindu estate could not have availed himself of the provisions of Section 30. His powers and functions were not those of an English executor, but rather those of a manager; he did not require probate, and probate, if obtained, would not have vested him with any title to

the estate, either real or personal, which he administered. Accordingly he was not, within the meaning of Section 30, a private executor or administrator who could transfer to the Administrator General any estates "vested in him by virtue of such probate or "letters."

A very important change was made in the law by "The Hindu Wills' Act 1870," (Act No. XXI. of 1870), which, *inter alia*, enacted that certain portions of "The Indian Succession Act 1865" (Act No. X. of 1865), should apply to all wills and codicils made by any Hindu, on or after the 1st day of September 1870. Amongst the clauses thus applied were Sections 179 to 189, both inclusive, which make provision for the granting of probate and letters of administration. It is sufficient for the purposes of this case to refer to two of these clauses. Section 181 is to the effect that probate can be granted only to an executor appointed by the will. Section 179 provides that the executor or legal administrator, as the case may be, of a deceased person, shall be his legal representative for all purposes, and that all the property of the deceased person shall vest in him as such.

It is not disputed that the immediate effect of the Act of 1870 was to place a Hindu executor who was in a position, and chose, to take advantage of its provisions, on precisely the same footing as the executor of an Anglo-Indian testator, in so far as concerns the taking out of probate, and the vesting in him of the estate of the deceased. The will of the late Nundo Lal Mullick was executed in August 1889; and his executors, therefore, on their obtaining probate, became immediately vested, by force of statute, with the whole estates which belonged to him at the time of his decease.

The right to devolve the property of a deceased

testator, with all powers and duties relating to its management and administration, which is conferred by Section 31 of the Act of 1874, is not confined to any particular class of executors, or of estates. It is given, in broad and comprehensive terms, to any and every testamentary executor, in whom the estates of the deceased testator have been legally vested by virtue of his probate. The clause only attaches one condition to the exercise of the executor's right, which is, that no transfer shall be made to the Administrator General, without his consent. It is left to the discretion of that official to determine, whether the property falling under the will, and the trusts which it creates, are of such a character that he ought to undertake the duty of administration.

In these circumstances, it appears to their Lordships that the executors and trustees of Nundo Lal Mullick were, according to the very letter of the enactment, persons having power to transfer the estates vested in them, in that capacity, to the Administrator General, under the provisions of Section 31. Indeed it was hardly disputed, in the argument for the Respondent, which, to a great extent, consisted in a repetition of the reasons assigned for their judgments by the Courts below, that, if Section 31 be taken *per se*, no other result could follow. But it was maintained that, although the language of the clause is framed in such general terms as to include every executor who has obtained a grant of probate under the 179th and following Sections of the Indian Succession Act 1865, it must nevertheless be held to exclude the executor of a Hindu will, because it appears *aliunde* that the legislature so intended. It is conceivable that the legislature, whilst enacting one clause in plain terms, might introduce into the same Statute other enactments which to some

extent qualify or neutralise its effect. But a positive enactment, in a Statute of 1874, cannot be qualified or neutralized by indications of intention gathered from previous legislation upon the same subject. And there is no legislation, subsequent to that of 1874, with respect to the power of an executor to make over his office with all its rights and liabilities to the Administrator General.

One of the arguments, if not the main argument, urged for the Respondent was, that Section 30 of the Administrator General's Act of 1867 at no time conferred any right of transfer upon the executor of a deceased Hindu; and, that Section 31 of the Act of 1874, which was a consolidating Statute, merely re-enacted the provisions of Section 30, and was neither intended, nor could be held to have a wider effect. The argument rests upon two assumptions which do not appear to their Lordships to be well-founded. Section 30, at the time when it became law, had no application to a Hindu executor, who, as the law then stood, had no estate vested in him which he could transfer. But a Hindu executor who, prior to the Act of 1874, obtained probate and had the estate vested in him, by virtue of the Hindu Wills' Act, 1870, was in a very different position. He answered the description given in Section 30 of the persons who were entitled to transfer; and, apart from a clause in the Act of 1870 which they will shortly notice, their Lordships see no reason why he should have been deprived of the benefit of its provisions. Assuming, however, the argument to be so far well-founded, it does not follow that the Hindu executor is not within the ambit of Section 31 of the Act of 1874. The Respondent maintained this singular proposition, that, in dealing with a consolidating Statute, each

enactment must be traced to its original source, and, when that is discovered, must be construed according to the state of circumstances which existed when it first became law. The proposition has neither reason nor authority to recommend it. The very object of consolidation is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful code applicable to the circumstances existing at the time when the consolidating Act is passed.

The Respondent relied upon the terms of Section 5 of the Hindu Wills Act, 1870, which provides that "nothing contained in this Act "shall affect the rights, duties and privileges "of the Administrators General of Bengal, "Madras and Bombay, respectively." It is by no means clear that a reservation in these terms was meant to have the effect of precluding the Administrator General from accepting, if he thought proper, the devolution upon him of the administration of a Hindu Succession, under Section 30 of the Act of 1867. But it does not appear to their Lordships to admit of doubt that the reservation cannot control the powers given to the Administrator General by the Act of 1874.

Another argument for the Respondent was based upon the enactments of Sections 16 and 17 of the Act of 1874. The first of these Sections empowers the Administrator General to apply for letters of administration to the estate of a deceased person who leaves assets exceeding the value of Rs. 1,000, either generally or with a will annexed, if no person appears to claim the right to administer within a month after the death; but Hindu estates are expressly exempted from its operation. On the other hand, Section 17 empowers the Court to make an order, at the instance of parties interested, or of the Administrator General, directing the Administrator

General to apply for letters of administration of the effects of any deceased person, Hindus included, in cases where it is shewn, to the satisfaction of the Court, that danger is to be apprehended of the misappropriation, deterioration or waste of the assets unless such letters of administration are granted. These enactments do not appear to their Lordships to conflict with the provisions of Section 31. Section 17 gives the Administrator General no right, or excludes his right, to take up, at his own hand, the administration of the estate of a Hindu, who has died testate or intestate, which is not in danger; whilst, if the estate be in danger, he may be directed by the Court to do so, at his own instance, or at the instance of parties interested in the succession. It appears to their Lordships to be impossible to derive from these provisions an inference that the legislature cannot have intended to allow the Administrator General to become the administrator of a Hindu estate, at the request of the executors, at all events an inference so strong as to override the plain enactments of Section 31.

It was also maintained that the legislature cannot have intended that, in any circumstances, the Administrator General should have the duty imposed upon him of carrying out the trusts of a Hindu will, which might probably or possibly involve the execution of religious trusts, with which a public official ought to have no concern. The answer to that argument is twofold. In the first place, the Administrator may have that duty imposed upon him by the Court, in cases where there is no existing administration, and the estate is in danger of being dilapidated. In the second place, Section 31 does not impose upon him the duty of administering any estate, whether Hindu or not, in any case where he is not requested to do so by the acting executors, and where the purposes of the will are, in his

judgment, such as ought not be to executed by an official in his position.

Their Lordships observe that the two learned Judges who constituted the majority in the Appellate Court, although they do not base their judgment upon them, refer to the proceedings of the Legislature which resulted in the passing of the Act of 1874 as legitimate aids to the construction of Section 31. Their Lordships think it right to express their dissent from that proposition. The same reasons which exclude these considerations when the clauses of an Act of the British legislature are under construction, are equally cogent in the case of an Indian Statute.

Their Lordships will humbly advise Her Majesty to reverse the decrees appealed from, to dismiss the suit, and to direct that the costs of both parties in the Courts below, as between solicitor and client, shall be paid out of the estate of the deceased. The costs of this appeal, must be borne by the estate, in like manner.