Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of Kumar Chandra Kishore Roy v. 1. *Prasanna Kumari Dasi;* 2. *Sarat Kumari Dasi, from the High Court of Judicature at Fort William in Bengal; delivered the 2nd December* 1910.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD MERSEY.
LORD ROBSON.
SIR ARTHUR WILSON.
MR. AMEER ALI.

[DELIVERED BY LORD MERSEY.]

These are two Appeals from the judgment and decrees of the High Court at Fort William in Bengal, dated the 26th May 1906, confirming a decree of the District Judge of Rungpur, dated the 22nd April 1904, which confirmed a decree of the Subordinate Judge of Rungpur, dated the 23rd December 1903. The suits were brought by two Hindu ladies, daughters of one, Kumar Shyam Kishore Roy, deceased, against the Appellant, who is the adopted son of the deceased, to recover arrears of maintenance alleged to be due to them under their father's will. The Appellant denied that the Respondents were entitled to any maintenance under the terms of the will, and further objected that they were not competent to maintain their suits inasmuch as

they had not obtained letters of administration to their father's estate.

The facts, so far as they relate to the first point, are as follows:—On the 18th July 1879 Kumar Shyam Kishore Roy died. He left no son, but he left two of his wives, namely, Rani Pran Kishori and Rani Basanta Kumari, surviving him. By the latter wife he had had two daughters who are the present Respondents. He had made a will dated the 28th January 1878. This will, together with certain deeds previously executed by the testator, granted permission to the wives to adopt sons, and in accordance with this permission the widow Rani Pran Kishori adopted the Appellant. At this time the Appellant was a minor. The will makes provision for the wives and for the two daughers. The clause in the will relating to the two daughers, omitting irrelevant words, is as follows:—

"When they will be married and if they desire to live "in separate houses the person in whose management my "property will be at the time will make separate houses "for them in the vicinity of my house from the income of "my property. For the maintenance of my daughters I "fix an allowance of Rs. 600 a year for Srimati Prasanna "and Rs. 600 for Srimati Surat. As long as the daughters "will live in the separate houses in this place they will get "the fixed allowances respectively; but if the daughters do "not live in this place they will get Rs. 10."

The two daughters married; the one in 1888 and the other in 1889; and they went to live in separate houses. The estate was at this time under the management of the Court of Wards, the Appellant being still a minor. The Court, after the respective marriages, paid to each of the ladies the Rs. 600 per annum as provided by the will. The Appellant came of age in 1896 and then entered into possession, of the estate. Since obtaining possession he has refused to make the allowance to the ladies, alleging that the clause in the will providing for the allowance

is void by reason of the provisions contained in section 111 of the Indian Succession Act (Act X. of 1865). Hence these two suits. Section 111 of the Succession Act is as follows :—

"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 happens before the period when the "fund bequeathed is payable or distributable."

It is contended on behalf of the Appellant that the bequests to the daughters were given only in the uncertain event of marriage, and that as that event did not happen in the lifetime of the testator the bequests never took effect. Their Lordships are of opinion that this contention is not well founded.

The payment of the maintenance is not made contingent on the marriage of the ladies. The will deals with the maintenance in a clause which stands by itself and which must be read by itself. The clause contains no reference to marriage or to any other future event. Section 111 therefore has no bearing on the construction to be put on the bequest.

The facts relating to the second point are as follows. At the time when these suits were instituted (September 1900) no letters of administration had been granted; but while the suits were pending, namely, on the 7th October 1901, the widow Rani Pran Kishori obtained from the District Judge of Rungpur a grant of letters of administration with the will annexed. This grant was subsequently modified by a judgment of the High Court, dated the 24th February 1903, by limiting it to the realisation of the maintenance allowance provided for the widow by the will. Before the District Judge could recall and alter the said letters so as to bring them into conformity with the judgment of the High Court the widow died. Thus the said letters never were formally

altered. Upon these facts the Appellant contended that, having regard to Section 187 of the Indian Succession Act, the Court was not competent to grant the relief prayed for. Section 187 is as follows:—

"No right as executor or legatee can be established in "any Court of Justice, unless a Court of competent jurisdiction "within the Province shall have granted probate of the Will "under which the right is claimed, or shall have granted "letters of administration under the 180th section."

The 180th section here referred to relates exclusively to wills proved elsewhere than within the province and provides for grants of letters of administration upon the production of authenticated copies of such wills; the section has no relevancy to the case now under consideration, for here the letters of administration were granted within the province. The question therefore turns entirely on the effect of the first part of Section 187 which requires that before the right of a legatee can be established, probate of the will shall have been granted by a court of competent jurisdiction within the province. By Clause 3 of the Act "probate" is defined as meaning "the copy of a Will certified under the "seal of a Court of competent jurisdiction, with "a grant of administration to the estate of the "testator." Their Lordships are of opinion that "probate" as here defined was in fact obtained. The will was proved before a court of competent jurisdiction within the province and that court duly issued to the widow a certified copy of the will under the seal of the court with a grant of administration to the estate of the testator. The provisions of the section were therefore strictly complied with. The subsequent limitation of the grant to so much of the estate of the deceased as might be sufficient to satisfy the widow's claim, even if right appears to their Lordships to be immaterial. It is then said that even if the

provisions of Section 187 were complied with, the compliance was after suit commenced, and was therefore too late. Their Lordships however are of opinion that, as the compliance was before decree, the Court was fully competent to deal with the case. Their Lordships will humbly advise His Majesty that the Appeal should be dismissed and with costs.

In the Privy Council.

KUMAR CHANDRA KISHORE ROY

v.

1. PRASANNA KUMARI DASI;
2. SARAT KUMARI DASI.

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