

July 25,  
August 16.

*Referred Case.*

PURSHOTAM MANSUKH.....*Plaintiff.*  
RANCHHOD PURSHOTAM .....*Defendant.*

*Payment of Debts to Heir of deceased Hindú—Certificate of Heirship subsequently granted—Liability of Debtor to pay a second time—Reg. VIII. of 1827—Act XXVII. of 1860—Act XX. of 1864.*

A defendant who is sued by the holder of a certificate of heirship to a deceased Hindú for a debt due from the defendant to the deceased is at liberty to show, notwithstanding the certificate of heirship, that he has paid the debt he owed the deceased to the actual heir of the latter before the grant of the certificate of heirship. It will not, however, be sufficient for such defendant to show that he has paid his debt to a person whom he *bona fide* believed to be such heir.

QUESTION and case submitted by Gopálráv Hari Deshmukh, Judge of the Court of Small Causes at Ahmedábád, for the consideration and orders of the High Court:—

“A man dying, his widow received payment of a sum of money due by a debtor of the deceased. His nephew subsequently obtained a certificate of heirship from the District Judge, and now sues the debtor for recovery of the debt paid to the widow. Can he claim repayment from the debtor?”

“The plaintiff (the nephew of the deceased) sued the defendant (the debtor of the deceased) for the purpose of recovering from him the amount due by him to the deceased. He produces a certificate obtained from the District Judge declaring him to be the heir of the deceased Kushandás.

“The defendant pleaded that he had already paid the money to the widow of Kushandás, knowing her to be the heir of the deceased, before the question of heirship was decided upon by the District Judge.

“The case was decided against the plaintiff by Mr. Mukunrái Munirái, he holding that, as the payment to the widow was made in good faith, and before the certificate of heirship was granted, the defendant (the debtor) could not be obliged to repay the debt to the plaintiff, who, if he chooses, might take steps to recover the same directly from the widow.

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“The plaintiff applied for a new trial, quoting the High Court’s ruling in Special Appeal No. 70 of 1870, decided on the 9th of April 1870 (Vol. VII., p. 31, Part I.). He urged that, according to this ruling, the money must be paid again to the plaintiff by the debtor, the widow having failed in obtaining a certificate. The new trial has been granted, and the case is pending.

“My opinion is that the debt should be paid to the certified heir, and not to the widow, of the deceased.”

The question involved in the above case having in the first instance come before MELVILL and KEMBALL, JJ., was by them, on the 11th of July 1871, referred for the consideration of a Full Bench. It was, accordingly, argued before WESTROPP, C.J., and GIBBS, MELVILL, and WEST, JJ., on the 25th of July 1871.

*Dhirajlál Mathurádás*, for the defendant :—The defendant is entitled to show, if he can, that the person to whom he paid the debt was in fact the heir of the deceased. The certificate of heirship is not conclusive to the contrary: *Shripat Rámchandra v. Vithoji Malhárji (a)*; S. A. No. 185 of 1868 (*Muryá Rágho v. Bábáji Shivrám*), decided 13th June 1868; *Krishnarao Anunt Joshee v. The Collector of Tanna (b)*. If that is so, payment to the heir discharges the debtor from all liability to the certificate-holder.

*Nagindás Tulsidás*, for the plaintiff :—A certificate of heirship is like a probate, and relates back to the death of the deceased. The defendant cannot, after a certificate has been granted, be allowed to aver that any one except the holder of the certificate is the heir. He cited *Dámodhar Bápuji v. Zingá (c)*.

*Cur. adv. vult.*

WESTROPP, C.J. :—This case having come in the first instance before my brothers Melvill and Kemball, they referred to a Full Bench the question—“Whether a debtor of a deceased person who has paid his debt to the widow of the

(a) 4 Bom. H. C. Rep., A. C. J. 178.

(b) 7 Harrington, 312.

(c) 7 Bom. H. C. Rep., A. C. J. 31.

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deceased, holding her to be the heir, is entitled, in a suit brought in a Court of Small Causes for the recovery of the same debt by a person holding a certificate of heirship obtained subsequently to the payment, to show that the widow, and not the holder of the certificate, is the legal heir."

Our brothers Melvill and Kemball add the following remark :—"The plaintiff relies on the case of *Dámodhar Bápúji v. Zingá*. The defendant relies on the decisions in *Shrípat Rámchandra v. Vithoji Malhárji* and *Muryá Rágho v. Bábáji Shivrám* (Special Appeal No. 175 of 1868). We find a difficulty in reconciling the decisions in these cases, and, therefore, refer the question for determination by the Full Bench."

The question has, accordingly, been argued before my brothers GIBBS, MELVILL, and WEST, and myself, by Mr. Dhirájlal Mathurádás for the defendant, Ranchhod Purshotam, the alleged debtor, who paid the debt to the widow of the deceased creditor ; and by Mr. Nagindás Tulsidás for the plaintiff, who holds the certificate of heirship to the deceased, and is stated in the reference from the Small Cause Court at Ahmedábád to be his nephew.

Certificates of heirship are given under Reg. VIII. of 1827, which Regulation consists of a preamble and two chapters. The first part of the preamble and the first chapter are what it is important that we should consider in the present case. The first part of the preamble recites as follows :—"Whereas at the same time that it is, *in general*, desirable that the heirs, executors, or legal administrators of persons deceased should, unless their right is disputed, be allowed to assume the management, or sue for the recovery, of property belonging to the estate, without the interference of Courts of Justice, it is yet in some cases necessary or convenient that such heirs, executors, or administrators, in order to give confidence to persons in possession of or indebted to the estate, to acknowledge and deal with them, should obtain a certificate of heirship, executorship, or administratorship from the Zillá Court." What precisely is meant by the

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phrase "legal administrators" is not defined. As it must be taken to mean some one different from heir or executor—and evidently, from the context of the preamble, and from Sec. 1, Ch. I., does not mean a person holding letters of administration, or anything equivalent thereto—the phrase probably applies to such a person as the guardian of a minor, or possibly the duly constituted manager of an undivided Hindú family who have inherited from the deceased. The first section is as follows:—"Whenever a person dies, leaving property, whether moveable or immoveable, the heir, or executor, or legal administrator may assume the management or sue for the recovery of the property, in conformity with the law or usage applicable to the disposal of the said property, without making any previous application to the court to be formally recognised."

These passages clearly show it to have been the intention of the Legislature, in enacting this Regulation, that the heir, executor, or legal administrator (whosoever the lastmentioned may be) might, if so minded, take possession of, or sue for, the estate without any certificate or forensic recognition of his character as heir. And this constantly happened.

Secs. 2, 3, and 4 provide for the obtaining of a certificate of heirship, executorship, or administratorship, as the case may be, by an heir, executor, or administrator "desirous of having his right formally recognised by the court, for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him."

It was then, under this Regulation, clearly optional with the heir, &c., whether he should take a certificate or not, and the preamble shows that the Legislature thought that it was "in general desirable" that he should not take such a certificate unless his right were disputed.

Let us suppose the case of an undivided Hindú family of three sons of the deceased. The eldest, as is generally though not invariably the custom, assumes, without opposition from the others, the management of the estate, and obtains

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payment of some of the debts due to the deceased, and dies within six months. The second next assumes the management, also without opposition, and obtains payment of some more of the debts of the deceased, and dies within three months. It cannot be denied that these payments to the eldest and second sons of the deceased were, at the time of making them, valid payments. The third son, who has been absent from home for some years, returns, and succeeds to the management of the estate, but, finding some difficulty in persuading the remaining debtors to the estate of the original deceased to recognise his title, obtains from the Zillá Court a certificate of heirship to the deceased, as he would be lawfully entitled to do. Not satisfied with suing those remaining debtors, he brings actions against the former debtors, who had paid their debts to his eldest and second brothers. It would be scarcely possible to contend that these latter defendants should not, under this Regulation (which in its preamble recites that it is "in general desirable" that the heir should, and in its first section enacts that he may, assume the management or sue for the recovery of the property, without applying for a certificate of heirship), be at liberty to show and maintain *non obstante* the certificate of heirship granted to the third son of the deceased, that they had respectively paid their debts to heirs of the deceased authorised by Hindú law to give a good acquittance. Another case might be that of the guardian by law (Muhammadan or Hindú) of a minor who, after the decease of the minor's father, enters into possession, on behalf of his only son, of the property of the deceased, without a certificate, but in his capacity of a guardian (by Hindú or Muhammadan law) of the minor, or, as the Regulation styles it, as legal administrator, and on his behalf, and in that capacity receives payment of a debt due to the deceased and dies during the minority, and the next person entitled to the guardianship obtains a certificate as legal administrator, and sues the party who has already paid his debt. It cannot be that the Legislature intended that the new legal administrator, although furnished with a certificate under the Regulation, should be at liberty to compel the defendant to pay the money twice over.

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Again, there might be two executors of the deceased, of whom one may have acted as executor in the *Mofussil*, without probate or certificate, and received payment of a debt due to the deceased, and died. The other may then have obtained a certificate, and sued the former debtor. The Regulation would justify the defendant in pleading payment to the deceased executor.

Lastly, take the case of the widow of one of three Hindú brothers, who dies childless and separated in estate from his brothers. The widow, on her husband's death, enters into possession and management of his estate as his heir, as she is well entitled to do, and obtains payment of a debt due to him, but subsequently she is persuaded by the surviving brothers to accept maintenance, and to make over the estate to them, and they, without opposition, obtain a certificate of heirship, under Reg VIII. of 1827, to the deceased brother. It would be flagrant injustice, and contrary to the preamble and first section of the Regulation, if to an action by the holders of that certificate against the person who had paid the widow, he could not plead and show payment to the widow as heir.

Many other cases could be suggested in which justice would be set at nought, were the certificate of heirship to be permitted to overreach and invalidate a payment of prior date. An examination of that part of the Regulation which states what shall be the operation and force of the certificate, is, we think, conclusive in establishing that the certificate shall not so relate back to the death of the deceased as to prevent an alleged debtor from showing that he has made a valid payment to another person, who actually was heir of the deceased at the time of the payment. Sec. VII., cl. 1, enacts that "An heir, executor, or administrator, holding the proper certificate, may do all acts and grant all deeds competent to a legal heir, executor, or administrator, and may sue and obtain judgment in any Court in that capacity:" and cl. 2 proceeds thus: "But as the certificate confers no right to the property, but only indicates the person who, *for the time*

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*being*, is in the legal management thereof, the granting of such certificate shall not finally determine nor injure the rights of any person, and the certificate shall be annulled by the Zillá Court upon proof that another person has a preferable right. The words "for the time being," used in this section, are most important, and satisfy us that there was not any intention whatsoever upon the part of the Legislature to invalidate payments made prior to the date of the certificate, to any person who, either as heir, or executor, or legal administrator, was, at the time of such payments, entitled to receive them from the debtors of the deceased. The case of *Shrípat Rámchandra v. Víthoji Malhárji (d)*, which has been relied upon for the defendant, is not precisely in point. It was not, like the present, a case between the holder of a certificate of heirship and an alleged debtor of the deceased, averring payment to another person as heir of the deceased, but was an action brought to recover lands by the alleged vendees of the holder of a certificate of heirship against a defendant, alleging himself to be the vendee of a person other than the holder of the certificate, which other person the defendant asserted to have been the heir of the deceased owner. The Assistant Judge held the certificate of heirship to be *primá facie* proof of title in the plaintiff's vendor; but Couch, C.J., and Newton, J., held his decision on that point to be wrong, and remanded the case for re-trial. And no doubt this decision of Couch, C.J., and Newton, J., was perfectly correct, as Sec. VII., cl. 2, of the Regulation expressly provides that the certificates shall not confer any right to the property; and the question there was, "In whose vendor did the title lie?" Another case cited for the defendant, *Muryá bin Rágho Pátíl v. Mádhavráv Rámchandra Shírgámkar* (Special Appeal No. 185 of 1868), was also not in point, the suit being one by the alleged heir of a deceased mortgagor to redeem a mortgage, and Warden and Gibbs, JJ., held that the District Judge was wrong in treating the certificate of heirship produced by the plaintiff as *primá facie* proof of his heirship in such a suit.

(d) 4 Bom. H. C. Rep., A. C. J. 178.

As to *Dámódhar Bápuji v. Zingá (e)*, cited for the plaintiff, and which was before Gibbs and Lloyd, JJ., and *Dámódhar Bápuji v. Rávuji*, decided by Couch, C. J., and Warden and Gibbs, JJ. (f), those were cases in which debtors who had paid the widow of the deceased creditor, after she had obtained an order for a certificate of heirship under Reg. VIII. of 1827, but before the certificate had issued, were held liable to pay over again to the brother of the deceased creditor, who succeeded in obtaining from the High Court a reversal of the order of the District Court, which had directed a certificate of heirship to be issued to the widow, and afterwards obtained such a certificate, of which he was the holder when he sued the respective defendants. We have examined as well the records as the reports of those cases, and find that the defendants relied upon an allegation that the widow, Ján-kibái, to whom they had paid the debt, was at that time the *sole manager of the deceased Náro's estate*, but they did not venture to allege or contend that she was heir, and in fact chiefly relied on the order which she had obtained from the District Court, directing that a certificate of heirship should be issued to her; and the Division Courts, in both of these cases, seem to have viewed Dámódhar Bápuji as undisputed heir of the deceased, and certainly we do not understand either of those courts as holding that the defendants were precluded from showing, if they could, that the widow was heir of the deceased at the time the payments were made.

It is worthy of notice that neither the repealed Act XX. of 1841, nor Act XXVII. of 1860, nor Act XX. of 1864 (Sec. 2), which are all (and especially the last) more stringent enactments than Reg. VIII. of 1827, makes any declaration or provision that payment of debts made to an heir, executor, or legal administrator of the estate of a deceased person previously to the grant of a certificate under any of these Acts, shall be in any wise invalidated by such grant. On the contrary, Sec. 1 of Act XX. of 1841 and Sec. 2 of Act XXVII. of 1860, although respectively providing that on

(e) 7 Bom. H. C. Rep., A.C.J. 31. (f) *Ibid.*, A.C.J. 32, note.

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debtor of any deceased person *shall be compelled* in any court to pay his debt to any person claiming to be entitled to the effects of any deceased person, except on the production of a certificate under such Act, or of a probate or letters of administration, make this important salvo, "unless the Court shall be of opinion that payment of the debt is withheld from fraudulent or vexatious motives, not from any reasonable doubt as to the party entitled," which shows that both of these enactments contemplate valid payments to parties not the holders of any certificates.

In speaking of the earlier of those enactments (XX. of 1841, Sec. 1), Peel, C.J., in *Ramdoss v. Gooboo Churn Sein (g)*, says: "It is very difficult to understand what the Legislature precisely meant, or indeed to put any satisfactory construction upon the Act. It does not purport to displace altogether the right, which a Hindu or Mahomedan representative ordinarily has, independently of probate or letters of administration. If that had been intended, the object would have been effected by simply enacting that no representative title should be valid for the purpose of suing until confirmed by probate or letters, or the 'certificate' mentioned in the Act. The object of the Act seems to be to give protection in certain cases to parties indebted to Hindu or Mahomedan estates; the question is, to what cases does the protection extend, and how is the protection to be applied? The words cannot be construed literally. A man who does not pay because he is unable to pay can scarcely be said 'to withhold payment from either fraudulent or vexatious motives,' though there might be no doubt whatever of the title of the claimant in the present case; however, we think that there was a *bonâ fide* though groundless doubt. The court looks more to the *animus* of the party than the substantiality of his objection. A *bonâ fide* doubt may be raised, though the facts on which the doubt is founded may be altogether erroneous, or the law utterly mistaken."

Enactments, such as Sec. 3 of Act XX. of 1841 and Sec. 4 of Act XXVII. of 1860, that the certificate "shall be con-

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clusive of the representative title against all debtors to the deceased, and shall afford full indemnity to all debtors paying their debts to the person in whose favour the certificate has been granted," do not affect such a question as that which arose in the Court of Small Causes in this case, which is whether the defendant still is a debtor to the estate of the deceased? If, before the granting of the certificate of heirship to the plaintiff, the defendant paid a person who at the time of the payment was the lawful heir, or executor, or legal administrator of the deceased within the meaning of Reg. VIII. of 1827, the defendant was not, at the time this suit was brought, a debtor to the estate of the deceased.

We think that the question referred to the Full Bench in the present case must be answered in the affirmative, and that the defendant is at liberty to show, notwithstanding the certificate held by the plaintiff, that the widow of the deceased was, at the time of the alleged payment by the defendant to her, the legal heir to the deceased Kushandás Bhagvándás. It will not be enough for the defendant to show that he believed the widow to be so, or to be the manager of the estate of the deceased; he must show that she then was the actual heir-at-law of the deceased. The view which we have taken of Reg. VIII. of 1827 may occasion inconvenience, *e.g.*, a conflict of opinion between various courts. But any other view might have involved injustice of grave character, and would, we think, have been inconsistent with the language and spirit of the Regulation.

In *Maguire v. Denham (h)*, decided in the King's Bench in Ireland in 1835, letters of administration to a deceased person were, as in case of actual intestacy, granted to one Marshall. The defendant made a *bonâ fide* payment to him on account of a debt due to the deceased. Subsequently a will made by the deceased, and in which no executor was named, having been produced, the letters of administration to Marshall were revoked, and letters of administration *cum testamento*

(h) 10 Ir. L. Rep. 240.

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*annexo* were granted to Maguire. In an action by him against the defendant, it was held that the payment on account to Marshall, the first administrator, was valid ; and that Maguire, the second administrator, could recover the balance only. *Bevan v. Lloyd (i)*, decided by the C. P. in Ireland in 1848, involves the same doctrine, showing that the first administration was voidable and not void ; that the mesne acts of the first administrator, if done in due course of administration, were valid ; and, lastly, that it lies upon the party impeaching those acts to show that they were not so done. The case of *Woolley v. Clark (j)* differed from those cases, inasmuch as the executor of the first will, who sold the goods of the testator, had previous notice of the existence of a later will, also appointing an executor, who caused the court to revoke probate of the first will, and to grant him probate of the second will, and then recovered from the first executor the value of the goods sold.

Having answered the question referred to us in the affirmative, we remit this case to the Division Court for final disposal.

The Division Court, on receiving the above answer from the Full Court, finally disposed of the case by passing the following order on the 22nd of August 1871, in answer to the reference :—

“In accordance with the accompanying judgment, the Judge of the Small Cause Court should be informed that the plaintiff is entitled to recover, unless the defendant can show that the widow of his deceased creditor is the legal heir.”

(i) *Ibid.* 223.

(j) 5 B. & Ald. 744.