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to another without resigning the land as completely as would be necessary, in the case of privileged occupants of another sub-class, to place the land at the disposal of the Khot.

And so long as his tenancy is not determined, the land is not at the disposal of the Khot. And the Khot cannot claim to treat the person in possession under a right derived from the occupancy tenant, either as a trespasser or even as a yearly tenant, so long as the privileged occupant's rights remain undetermined by resignation, lapse or duly certified forfeiture.

The utmost, therefore, to which the plaintiff Khot is in this case entitled, is, we think, a declaration that no occupancy tenant's rights in the land in question have been transferred by the first defendant to the second defendant. In the circumstances of this case, we think both parties having failed to establish their contentions to the full, we should leave the parties to bear their own costs.

Decree accordingly.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Chandavarkar.

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ABDOOL HOOSEIN MULLA AND ANOTHER, PLAINTIFFS, *v.* GOOLAM HOOSEIN ALLY AND ANOTHER, DEFENDANTS.*

Indian Registration Act (III of 1877), secs. 17, 18 clauses (d) and (f), 21, 24 and 77—Transfer of Property Act (IV of 1882), secs. 6, 19 and 21—Indian Succession Act (X of 1865), sec. 107—Document whereby a Mahomedan daughter relinquished her right of inheritance to her father's property.—Registration—Refusal to register on the ground that the document did not contain sufficient description of property—Discretion of Registrar—Jurisdiction of Civil Court—Vested or contingent interest—Spes successionis—Alteration not affecting the legal effect of the contract.

A Mahomedan daughter executed in favour of her father a document under which, in consideration of her receiving Rs. 9,000, she relinquished her right of inheritance to the father's property and also to certain ornaments directed to be given to her by her mother. The document was presented for registration to the Sub-Registrar, who accepted the registration fee, which was endorsed on the document, and subsequently refused to register the document on the ground

* Original Suit No. 460 of 1905.

that its execution was denied and that it did not contain sufficient description of the immoveable property to which it related—sections 35 and 21 of the Registration Act (III of 1877). On appeal to the Registrar, he held that the execution of the document was proved, but refused registration on the ground that the provisions of section 21 had not been complied with. Thereupon a suit having been filed under section 77 of the Registration Act (III of 1877) for a decree directing registration of the document,

Held, allowing the claim, that section 21 of the Registration Act (III of 1877) did not apply. The document could not be treated as relating to property because it related to mere heirship: much less could it relate to immoveable property capable of being described and identified. Supposing that section 21 was applicable and that the document related to immoveable property, then the conditions of the section were satisfied, because under the document the executant gave up her right of inheritance to such of her father's immoveable property as he might leave on his death, and that this is not only a sufficient but the only description that could be given of the property.

Held, further, that the document did not fall within the category of any of the documents mentioned in section 17 of the Registration Act (III of 1877). It fell within clauses (*d*) and (*f*) of section 18 of the Act. It fell within clause (*d*) of section 18 because there was a release by the executant of her right to certain ornaments to which she had a present right. It fell within clause (*f*) because it was a document under which the executant agreed to release her right as heir to her father and that belonged to a class of documents not mentioned in section 17 and not falling within the preceding clauses of section 18.

Where a Sub-Registrar or Registrar receives a document and the registration fee, and endorses the payment on the document and issues a commission for taking evidence, he must be regarded as having exercised his discretion under section 21 of the Registration Act (III of 1877) and accepted the document for registration. But even if there was at first no acceptance under that section, that being a matter in his discretion, the Court cannot, under section 77 of the Act, question the subsequent exercise of such discretion. The discretion under section 21 arises where a non-testamentary document "relates to immoveable property". Where it does not so relate, the section cannot apply and the discretion cannot arise. It is open for a Civil Court to inquire into such question in a suit under section 77 of the Act.

The right of a son or daughter or other heir of a person to inherit his property is not an estate in remainder or in reversion in immoveable property or an estate otherwise deferred in enjoyment. It is neither a vested nor a contingent right. It does not come within the definitions of "a vested interest" in section 19 of the Transfer of Property Act (IV of 1882), or of "a contingent interest" in section 21 of the Act and section 107 of the Indian Succession Act (X of 1865). So far from being a vested or a contingent right, or a right in present or in future, it is, in the language of clause (*a*) of section 6 of the Trans-

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fer of Property Act (IV of 1882), "the chance of an heir-apparent succeeding to an estate," or "a mere possibility" of succession which cannot be transferred.

A mere *spes successionis* is unknown to, and not recognized by, Mahomedan Law.

An alteration to be material for the purpose of registration must affect the legal effect of the contract so as to make it cease to be the same instrument.

ONE Kalimuddin Amiruddin, who was a resident of Cambay, outside British India, was possessed of considerable immoveable properties both at Bombay and Cambay. He died on the 25th June 1900, leaving him surviving two sons, Abdool Husein Mulla and Abdullabhai Mulla, and a daughter Fatmaboo. Before the death of Kalimuddin, Fatmaboo, by a document dated the 25th October 1895, in consideration of Rs. 9,000 to be paid to her by Kalimuddin, renounced and released in his favour all her claims to the estate of the said Kalimuddin, moveable and immoveable, and also all her claims to certain ornaments which had been directed to be given to her by her mother, and she agreed by the said writing that, subject to her claim for the said sum of Rs. 9,000, Kalimuddin was at liberty to give his property to his other heirs. The document ran as follows :—

To Mulla Kalimuddin Amiruddin, residing at Horward in Cambay. Written by Fatmaboo Kalimuddin, wife of Gulam Hoosein Abdulla, residing as aforesaid. To wit: you are my father. Besides myself you have two sons. As to whatever immoveable and moveable property (and) effects there are belonging to you at Cambay, Bombay and Bakkha and Bassein and other places, and the same being hereafter increased or decreased during your life-time, as to what properties there may be at your death therein I have a share by way of inheritance according to the Mahomedan Law. And my mother directed (certain) ornaments to be given (to me). You having by the following agreement agreed to give me Rs. 9,000, namely, nine thousand of the Bombay currency in lieu of (or for) my whole share including that claim, have from this day credited (the same) to my account. Therefore I relinquish all my right (or) claim in respect of that *rakam* (sum of money) and give this release in writing and acknowledge that I have no right or claim at all to whatever property there may be at your death in this or in any other country (*i.e.*), wherever (the same may be) situated. Having fixed only the abovementioned sum in respect of all my rights I have caused (the same) to be credited and I am to take only that under the following agreement.

* * * * * * *

You can give your heirs your property along with the burden of the moneys mentioned in the above release, that is to say, whoever may become your heirs

are to enjoy your property after discharging the burden of the abovementioned sum, that is to say, your heirs the persons taking your property are bound to pay the abovementioned sum.

The said document was executed at Cambay and remained there until December 1904.

Fatmaboo during the life-time of her father and also after his death insisted on the performance of the aforesaid agreement and exacted payments from the deceased, and after his death from her brothers, to the extent of Rs. 4,651-7-0, but she subsequently repudiated the said transaction and filed a suit, No. 830 of 1904, in the High Court of Bombay against her brothers for a share in the estate of the deceased, relying on the fact that the said document had not been registered. Her brothers (defendants in the said suit) brought the said document to Bombay in December 1904, and on the 12th January 1905 they presented it for registration in the office of the Sub-Registrar of Bombay, who accepted it on receipt of the registration fee which was endorsed on the document. As the said document did not contain a full description of the immoveable properties left by the deceased Kalimuddin, a description of those properties was added to it in the form of a schedule before the document was lodged for registration. The Sub-Registrar issued a commission to take the evidence of Fatmaboo at Cambay, but in the meanwhile she having come to Bombay the commission was returned unexecuted. The Sub-Registrar, thereupon, refused registration on the ground that the non-appearance of Fatmaboo amounted to a denial of the execution of the document, and that the document did not comply with the requirements of section 21 of the Registration Act, inasmuch as it did not contain a description of immoveable property sufficient to identify the same. Fatmaboo's brothers, thereupon, appealed to the Registrar, who ordered the commission to re-issue to Cambay for the examination of Fatmaboo, but she did not attend the commission and died on the 25th April 1905, leaving her surviving her husband Goolam Hoosein and her son Shamsuddin Goolam Hoosein, her heirs according to Mahomedan Law. The last named two persons were examined before the commission and they denied knowledge of the execution of the document by Fatmaboo and stated that the schedule thereto was

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added after the alleged execution. The question of the registration of the document then came before the Registrar, who, after hearing the parties, refused to register it on the ground that it did not comply with the provisions of section 21 of the Registration Act. The plaintiffs, thereupon, brought the present suit against Goolam Hoosein and his son Shamsuddin praying, *inter alia*, that it may be ordered that the said document may be registered in the office of the Sub-Registrar or Registrar within thirty days of the passing of the decree in the suit.

The defendants answered that they had no personal knowledge of the execution by Fatmaboo of the document in suit; that the document did not remain at Cambay as alleged in the plaint and it was brought to Bombay on several occasions before December 1904; that it was void and inoperative and, therefore, not binding on the defendants; that the plaintiffs tampered with the document by subsequently adding to it a schedule of the property; and that under the circumstances of the case the registration of the document was properly refused.

Raikes with *Strangman* appeared for the plaintiffs.

Scott (Advocate General) with *Davar* appeared for the defendants.

CHANDAVARKAR, J.:—This is a suit brought by the two plaintiffs, Abdool Hoosein Mulla Kalimuddin and his brother, Abdullabhai, under section 77 of the Indian Registration Act, for a decree directing a Gujerathi document, alleged to have been executed by their sister Fatmaboo on the 25th of October 1895 at Cambay, to be registered in the office of the Sub-Registrar of Bombay, the Registrar having refused to order its registration.

Fatmaboo having died, the suit has been brought against her husband and son, the first and the second defendant respectively.

The plaintiffs' father, Kalimuddin, was a resident of Cambay outside British India but he owned several immoveable properties in Bombay as well as in Cambay. It is alleged by the plaintiffs that, on the 25th of October 1895, their sister Fatmaboo executed in favour of their father and themselves a Gujerathi

writing, whereby she relinquished her right of inheritance to the father's property in consideration of receiving from him a sum of Rs. 9,000; that the said document remained at Cambay from the date of execution until December 1904, when for the first time it was brought to Bombay in consequence of Fatmaboo having filed against the plaintiffs Suit No. 830 of 1904 in this Court; that the plaintiffs, having been then advised that it required registration, presented it for registration at the Sub-Registrar's office on the 12th of January 1905; that on the 23rd of June 1905 the Sub-Registrar refused registration; and that they then appealed to the Registrar, who, however, upheld the Sub-Registrar's order on the 23rd of June 1905.

The defendants in their written statement plead, *inter alia*, that the document was brought to Bombay several times before December 1904; they deny personal knowledge of its execution by Fatmaboo; they allege that, before presentation to the Sub-Registrar, the plaintiffs materially altered the document by adding to it a schedule containing a description of the property which the document purported to affect.

The first question in the suit—whether the document, which is marked Ex. C, was executed by Fatmaboo—ceased at the outset of the trial to be a point in controversy between the parties. The learned Advocate General, for the defendants, admitted the execution of the document except the schedule to it appearing as a footnote. Mr. Raikes, for the plaintiffs, on the other hand, admitted that Fatmaboo had nothing to do with the schedule, and that it had been inserted by the first plaintiff just before the presentation of the document for registration. What in law is the effect of this insertion on the question of registration is one of the points raised in the suit and that I will deal with presently. In the meantime I record my finding on the first issue in these terms:—The document mentioned in the plaint, except the schedule containing a description of the property, was executed by Fatmaboo.

That brings me to the next question, whether or not the document was, as required by clause (*b*) of section 25 of the Indian Registration Act, presented for registration "within four months after its arrival in British India."

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Mr. Raikes, for the plaintiffs, has urged that, having regard to the fact that both the Sub-Registrar and the Registrar were satisfied upon the evidence before them that the document had first arrived in British India within four months of its presentation, the Court ought to start with a presumption in favour of the plaintiffs in that respect and hold to it unless the defendants rebutted it by satisfactory evidence. Having regard to the decision of Farran, C. J., and Strachey, J., in *Tullockchand* v. *Gokulbhoy*(1), Mr. Raikes might have gone further and urged that where once a Sub-Registrar or Registrar has exercised his discretion under section 24 of the Act and accepted a document for registration, though subsequently he refuses to register it, the Court, in a suit under section 77, has no power to enquire into the propriety of his findings and direction. In *Tullockchand's* case the document was presented for registration on the expiration of four months from the date of its execution. Section 24, therefore, applied. The Sub-Registrar, however, accepted the document for registration without enquiring whether the non-presentation of it within the four months was owing to urgent necessity or unavoidable accident, as required by section 24. Subsequently, registration was refused by him on other grounds. Farran, C. J., in delivering judgment, said :—"We agree, however, with the ruling in *Durga Singh* v. *Mathura Das*(2), that when a Registrar has made a direction under section 24 that a document shall be accepted for registration, the Court cannot inquire, under sections 77 and 74, into the propriety of that direction. If it finds that a direction has been given by the Registrar, it will assume that the Registrar gave the direction on grounds which seemed to him to be sufficient."(3) This was said of section 24. In the present case we are concerned with section 25, which also deals with "acceptance for registration" and occurs in the same Part. The same reasoning ought to apply. However, I will assume that the Court's jurisdiction to pass a decree directing registration depends upon the question whether the plaintiff has done all that the Act says he should do as preliminary conditions to registration; that he ought to satisfy the Court by means of evidence led before it

(1) (1897) 21 Bom. 724. (2) (1884) 6 All. 460.

(3) (1897) 21 Bom. 724 at p. 729.

that he has complied with those conditions; and that if the Registrar has refused registration on one ground, the fact that he has, on other grounds, found in favour of the party seeking registration becomes immaterial. When that party comes into Court the whole case is re-opened and he must prove it. So treating the case, what is the effect of the evidence recorded before me?

[His Lordship here dealt with the recorded evidence at great length, and proceeded :—]

Upon the whole, the plaintiffs have proved to my satisfaction that the document, Ex. C, arrived in British India for the first time in December 1904 and that it was presented for registration within four months of such arrival. I find, therefore, the second and the third issue in the affirmative.

Having disposed of the important question of fact in the case, I turn now to the questions of law discussed at the Bar.

The first of those questions is whether there was "acceptance for registration" within the meaning of the Act, and whether after such acceptance it was open either to the Sub-Registrar or the Registrar to refuse registration on the ground mentioned in section 21 of the Indian Registration Act, *viz.*, that the document did not contain a description of the immoveable property to which it related "sufficient to identify the same."

What happened before the Sub-Registrar is this. The document was presented to him for registration; the registration fee was received from the first plaintiff and payment thereof was endorsed on the document. The Sub-Registrar then issued a commission for the examination of Fatmaboo as to execution. She, however, failed to appear before the Commissioner, and the commission returned unexecuted. The Sub-Registrar thereupon treated her non-appearance as denial of execution, and both on that ground and on the ground that the document did not contain a sufficient description of the immoveable property to which it related, he "refused" registration under sections 35 and 21. Then there was an appeal to the Registrar. The Registrar issued a commission to Cambay for the examination of witnesses as to the execution of the document. That commission having returned executed, the Registrar held upon the

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evidence that the execution of the document by Fatmaboo was proved, but he too refused registration on the ground that the provisions of section 21 had not been complied with. Under these circumstances Mr. Raikes, for the plaintiffs, contends that it was not open either to the Sub-Registrar or the Registrar to refuse registration on the ground of section 21. His argument is that when a document has been presented and the Sub-Registrar has received the fee for registration, there is "an acceptance for registration" by which the registering authority is bound; that it is before such acceptance that the registering officer has to satisfy himself whether the conditions for acceptance, prescribed in the Act, have been complied with; and that after such acceptance he cannot go back upon it, but he can refuse to register only under the circumstances mentioned in section 35. And Mr. Raikes relies, in support of this contention, on the decision of this Court in *Gangava* v. *Sayava*[1], where, in interpreting certain provisions of the Registration Act, Jardine and Ranade, JJ., held that "the Act . . . means different things by the two phrases, *refuse to register* found in sections 19 and 35, and *refuse to accept for registration* found in sections 20 and 21". It was said there:—"The first thing to be done by the registering officer is to decide whether to accept or not accept. It is only after the acceptance for registration that he can consider the wider question which arises on admissions and denials and evidence, whether he should refuse to register." In the present case, it is clear upon the evidence of the Sub-Registrar's clerk and of the proceedings before the Sub-Registrar and the Registrar that they dealt with the question of *acceptance for registration* and of *refusal to register* together. According to Mr. Raikes' argument, after the registration fee had been paid to, and the document had been received by, the Sub-Registrar, and after he had issued a commission for the examination of the executant, the Sub-Registrar's act was tantamount to *acceptance for registration*. The decision of this Court just mentioned supports that contention. In the present case we are concerned with section 21 only. The provisions of the Act which deal with "acceptance for registration" invest the registering officer with a discretion,

(1) (1896) 21 Bom. 699.

with the exercise of which a Civil Court has no power to interfere. So it was held by Farran, C. J., and Strachey, J., in *Tullockchand* v. *Gokulbhoy*[1], with reference to the provisions of section 24 of the Act, which, like section 21, concern "acceptance for registration". Applying that decision to the present case, I must hold that it was the duty of the Sub-Registrar to decide the question whether he should *accept* or not the document for registration before embarking on the enquiry as to execution. When he received the document and the registration fee and endorsed the payment on the document and issued a commission, he must be regarded as having exercised his discretion under section 21 and accepted the document for registration. But supposing that there was at first no acceptance under that section, and that being a matter of the Sub-Registrar's and the Registrar's discretion, the Court cannot, in a suit under section 77, question the subsequent exercise of such discretion by either of them, the Court has still power to decide whether there was any call in this particular case for the exercise of the discretion under section 21, having regard to the contents of the document (Exhibit C) presented for registration. The discretion under section 21 arises only where a non-testamentary document "relates to immoveable property." Where it does not so relate, the section cannot apply and the discretion cannot arise. That into this question it is open for a Civil Court to enquire in a suit under section 77 is clear from the decision of Farran, C. J., and Strachey, J., already referred to. (*Tullockchand* v. *Gokulbhoy*[1].) There the facts were, on the question of registration, similar to those here. In that case a document called B was presented and *accepted* for registration; the Sub-Registrar *refused* registration on the ground that the executant had declined to admit execution. There was an appeal to the Registrar. Before him the executant appeared and admitted execution, but raised objections to its registration. The Registrar refused to register the document on the ground that the conditions of section 21 had not been complied with. A suit was brought in this Court under section 77 to compel registration. Fulton, J., decreed registration.

(1) (1897) 21 Bom. 724.

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(See *Gokulbhoy* v. *Tullockchand*[1]). In appeal, Farran, C. J., and Strachey, J., went into the question whether the document "related to immoveable property" within the meaning of section 21, and, holding that it did not, confirmed the decree passed by Fulton, J.

That is also the question here. Does Exhibit C relate to any immoveable property? And if it does, is it within the meaning of clause (*b*), section 17 of the Act, a non-testamentary instrument which purports or operates "to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property?"

The document was executed by Fatmaboo in favour of her father. After reciting that as to *any property there may be on his death* she has "a right of inheritance according to Mahomedan Law" and that her mother had directed him to give ornaments to her, she relinquishes all her rights and claims in consideration of her receiving the sum of Rs. 9,000.

The first point to notice here is that the document relates to any property there may be on the death of the executant's father. It is not said in the document that such property is or shall be immoveable. It may be that or moveable on the father's death. And how are you to describe property which does not exist at the date of the document but which may possibly exist on the father's death? To expect the parties to such a document to describe such property in the same way as property known to exist is to expect them to do the impossible, and the Legislature never requires parties to do that. In the first place the document cannot be treated as relating to property because it relates to mere heirship; much less can it relate to immoveable property, capable of being described and identified: see *In re Ellenborough. Towry Law* v. *Burne*[2], where Buckley, J., held that an assignment of a mere expectancy is not an assignment of property. Section 21, therefore, cannot apply to it. But supposing it does apply because, taking the words of the section in their widest sense, the document relates to immoveable property, being a document by which Fatmaboo gives up her right

(1) (1896) 21 Bom. 60. (2) [1903] 1 Ch. 697 at p. 701.

of inheritance to such of her father's immoveable property as he may leave on his death, then we have not only a sufficient, but the only, description that can be given of it. It can only be described as property that he may leave on his death. No other description was possible until the father died. The conditions of section 21 are therefore satisfied.

Then the next question is—Is it a document falling within clause (*b*) of section 17 of the Registration Act or any other clause of the same section, or within section 18? What is released by Fatmaboo is her right of inheritance to her father's property—*i.e.*, such property, whether moveable or immoveable, as he may leave on his death. One essential condition, however, of clause (*b*), section 17 of the Registration Act, is that the right, title or interest created, declared, assigned, limited, or extinguished, must be, "present or in future," "vested or contingent." It can hardly be said that Fatmaboo had any "present" right, title or interest to or in her father's immoveable or moveable property at the moment of the execution of the document. In terms the right, title or interest which she purports to relinquish was one which was to come into existence *on her father's death*. Can it be then a right, title or interest "in future"? But, as was held by Westropp, C. J., and Melvill, J., in *Nana bin Lakshman* v. *Anant Babaji*[1], on the interpretation of the similar sections of the previous Registration Acts, the words "in future" have reference "to estates in remainder or in reversion in immoveable property, or to estates otherwise deferred in enjoyment." The right of a son or daughter or other heir of a person to inherit his property is not one of such estates. It is neither a vested nor a contingent right. It does not come within the definitions of "a vested interest" in section 19 of the Transfer of Property Act and of "a contingent interest" in section 21 of that Act and section 107 of the Indian Succession Act. So far from being a vested or a contingent right, or a right in present or in future, it is, in the language of clause (*a*) of section 6 of the Transfer of Property Act, "the chance of an heir-apparent succeeding to an estate," or "a mere possibility" of succession which cannot be transferred. As has been held by the Calcutta

(1) (1877) 2 Bom. 353.

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High Court, "the provisions of section 6" of the Transfer of Property Act "are only intended to apply to cases of a mere hope or chance of succession which may be defeated by the act of some person having the present disposal of the property": *Brahmadeo Narayan* v. *Harjan Singh*(1). And this was exactly Fatmaboo's position when she executed Exhibit C. By that document she merely gives up that "hope" or "chance." Such "hope" or "chance" is a mere possibility—it is not property, much less is it immoveable property. If it were property, how is it to be valued? As has been rightly observed in the Calcutta decision referred to above, "mere possibilities of succession are wholly incapable of valuation."

The decided cases both of the English Courts and our Indian Courts support that view. In *In re Parsons. Stockley* v. *Parsons*(2), Mr. Justice Kay said:—"It is indisputable law that no one can have any estate or interest, at law or in equity, contingent or other, in the property of a living person to which he hopes to succeed as heir at law or next of kin of such living person. During the life of such person no one can have more than a *spes successionis*, an expectation or hope of succeeding to his property." Further on he adds, "a *spes successionis* is not a title to property by English law," that the word "title" is equivalent to "interest," that "one who has no interest whatever in property can hardly be said to have a title," and "that no one can have any 'interest' as heir or next of kin in the ancestor's lifetime". Again:—"Can a possible next of kin of a person who is to be supposed to die at a future time be said to have a 'contingent title', or is not the proper view that he has no title at all, nothing but an expectation or hope which is not recognised in law as any title? While the *propositus* is living every relative he has in the world is a possible next of kin. Can each one say that he has a contingent title? He may have sons, brothers and nephews. Can the nephew, leaving the sons and brothers, say 'I have a title'? If he cannot, then the brother cannot, nor the son. A *spes successionis* is not a title to property by English Law."

As to Indian decisions, in *Hasan Ali* v. *Nazo*(3), Mr. Justice Straight, Brodhurst, J., concurring, observed:—"If I under-

(1) (1898) 25 Cal. 778 at p. 780. (2) (1890) 45 Ch. D. 51 at pp. 55, 56, 63.
(3) (1889) 11 All. 456 at p. 458.

stand the Mahomedan Law aright, it does not recognise any reversionary inheritance or contingent interest expectant on the death of another, and till that death occurs which by force of that law gives birth to the right as heir in the person entitled to it according to the rule of succession, he possesses no right at all." In *Abdul Wahid Khan* v. *Mussumat Nuran Bibi*[1] the Judicial Committee of the Privy Council held that the Mahomedan Law does not recognise an estate of the kind called vested remainder. In that case Mr. Justice Mahmood (then District Judge) had held that "under the Mahomedan law a mere possibility, such as the expectant right of an heir-apparent, is not regarded as a present or vested interest and cannot pass by succession, bequest, or transfer, so long as the right has not actually come into existence by the death of the present owner. This principle of Mahomedan Law is uniform in its application to matters of succession, whether in virtue of bequest, inheritance, or otherwise." It is true that the Judicial Committee merely quote this passage without expressing either approval or disapproval. But if, as their Lordships held, the Mahomedan Law does not recognise such an interest in an estate as a vested remainder, it ought to follow that a more precarious thing than that, such as a mere *spes successionis*, is unknown to, and not recognised by, that law. And that was the decision of the Allahabad High Court in *Hasan Ali* v. *Nazo*[2], where Mr. Justice Straight refers with approval to the view expressed by Mr. Justice Mahmood in the passage which I have quoted. It follows from this that the Mahomedan Law is in this respect the same as that laid down by the Legislature in section 6, clause (*b*), of the Transfer of Property Act. In Mr. Dinshaw F. Mulla's useful edition of "The Principles of Mahomedan Law," that law has been summed up tersely in these words:—"The right of an heir-apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor."[3]

(1) (1885) 12 I. A. 91. (2) (1889) 11 All. 456.

(3) p. 36.

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What, then, is the real nature of the transaction evidenced by Ex. C. It has been spoken of at the Bar in loose but not in legal parlance as a release. Where a person enters into an agreement to release property which may descend to him as an heir, it is a contract to release the right of heirship when it comes into existence. Such a contract, being an agreement to release the right of heirship hereafter, gives only a right to the person in whose favour it is, to demand a release when the right comes into existence. It is merely evidence of a contract to be performed *in futuro* upon the happening of a contingency of which the parties can claim specific performance if, when the right as heir comes into existence, they show that they have done all they were bound to do. Whether such a contract is valid or not is a question which does not arise in the present suit and I refrain from expressing any opinion upon it. But it is sufficient for the present purpose to hold that Ex. C does not fall within the category of any of the documents mentioned in section 17 of the Registration Act, but that it falls within clause (*d*) and clause (*f*) of section 18. It falls within clause (*d*) of section 18 because there is a release by Fatmaboo of her right to certain ornaments to which she had a present right. It falls within clause (*f*) because it is a document by which Fatmaboo agrees to release her right as heir to her father and that belongs to a class of documents not mentioned in section 17 and not falling within the preceding clauses of section 18.

It follows from this conclusion that it was not necessary to describe any immoveable property in Ex. C. That description was not material, and its addition after the execution of the document and behind the back of the executant, Fatmaboo, did not and could not materially alter the document. The alteration to be material must affect the legal effect of the contract so as to make it cease to be the same instrument (see per Brett L. J. and Cotton L. J. in *Suffell* v. *Bank of England*[1]). Here the addition of a description of the immoveable property could not affect the instrument because that property was not within its scope. The document affected such property as might be in existence on the death of Fatmaboo's father, and Fatmaboo had

(1) (1882) 9 Q. B. D. 555 at pp. 559, 572.

no interest, present or future, vested or contingent, in the immoveable property which he owned at the date of the document.

I allow the claim as prayed for in the plaint. Defendants to pay the plaintiffs' costs.

Suit decreed.

Attorneys for the plaintiffs: *Messrs. Payne & Co.*

Attorneys for the defendants: *Messrs. Bhaishankar, Kanga and Girdharlal.*

G. B. R.

ORIGINAL CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

FRAMJI SHAPURJI PATUCK AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* FRAMJI EDULJI DAVAR (ORIGINAL DEFENDANT), RESPONDENT.*

1905. *October* 11, 12.

Indian Easements Act (V of 1882), section 28, clause (c)—Disturbance of Easements—Meaning of Disturbance—Injunction to prevent disturbance—Light and Air—Physical comfort—Substantial Damage.

The Indian Easements Act is not merely prescriptive; it defines the law relating to easements and thus differs from the English Act in its ambit.

Section 28, clause (c) of the Act provides that the extent of a prescriptive right to the passage of light and air to a certain window, door, or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespective of the purpose for which it has been used.

PER CURIAM:—"In any case I see no reason for withholding from disturbance its legal sense of an illegal obstruction, and, for the purpose of chapter IV, that only can (in my opinion) be an illegal obstruction, for which, if done, a suit would lie. Therefore I hold that for an injunction there must be a threat of something more than mere obstruction and so the plaintiffs' first contention fails."

To establish that the plaintiffs have suffered substantial damage to their rights to light and air they must show material diminution in the value of their heritage or material interference with their physical comfort.

* Appeal No. 1490, suit No. 791 of 1904.