

(1925) 02 CAL CK 0044
In the Calcutta High Court

Sudhir Chandra Das

APPELLANT

Vs

Srimati Indumati Chaudhurani and Others

RESPONDENT

Date of Decision : 18-02-1925

Acts Referred:

Citation : 94 Ind. Cas. 616

Hon'ble Judges : Lancelot Sanderson, C.J.; George Claus Rankin, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is an appeal by the plaintiff Sudhir Chandra Dass against the judgment of my learned brother Mr. Justice C. C. Ghose which was delivered on the 12th of March 1924.

2. The facts of this case are, I hope, entirely out of the ordinary at all events, as far as my experience goes, they are unprecedented.

3. For the purpose of my judgment it is necessary to state the material facts which are as follows:

4. The question arises with regard to the estate of one Srish Chandra Das. He died on the 12th day of December 1904 leaving a widow whose name was Raseswari Chowdhurani his eldest daughter was Sarojini Chowdhurani, who was married to Bankim Chandra Chowdhury. Sarojini had a son whose name was Nirmal Chandra Chowdhury. This son Nirmal was afterwards, as I shall have to mention, adopted by Raseswari, and he took the name of Sudhir Chandra Dass and he is the plaintiff in this case. The second daughter of Srish Chandra Das was Indumati Chaudhurani. She was married to Bepin Behary Biswas.

5. The third daughter was Promila Sundari Chowdhurani who was married to a man called Gnanada Nath Roy Choudhuri and the fourth daughter was Sukumari Chaudhrani who was married to Sudhirendra Nath Roy Chowdhuri.

6. All the four daughters were married at the time of Srish Chandra Das" death.

7. Srish Chandra Das made a Will by which he appointed his widow Raseswari executrix and one Rajoni Mohan Das executor of his estate; and, the Will provided that they should be entitled as executors to take out Probate without security.

8. A further provision in the Will was that the testator gave verbal authority to his wife to take a son in adoption; and, he stated in writing that his wife should be competent to take his first daughter's son Nirmal Chandra Das and failing him any other person in adoption.

9. The Will provided that the son so adopted should be the proprietor of the estate to be left by the testator, and that a monthly allowance at the rate of Rs. 100, should be paid to the testator's first two daughters and that two houses should be given to them.

10. This Will is alleged to have been executed on the 11th of December 1904 a day before the testator died.

11. On the 22nd day of February 1905, the executrix and the executor applied for Probate of the Will; Indumati filed a caveat; and, subsequently administrator pendente lite was appointed.

12. On the 22nd day of May 1905, certain petitions were presented one by the executrix and the executor another on behalf of Indumati, the third on behalf of Sarojini, the fourth on behalf of Sukumari and another one on behalf of Promila, with the object of withdrawing the objections to the Will which had been raised by Indumati and of Probate being granted to the executors. It is not necessary to refer in detail to the terms of these petitions except in the case of the one which was presented on behalf of Indumati.

13. In her petition Indumati stated that she had found after enquiry that it was not possible for her to maintain her objection and it proceeded as follows: "Under these circumstances it will not be good to proceed with the case and be harassed and create disturbance and unpleasantness in the family. So, I, Indumati Dasi the objectrix withdraw all objections regarding the Will propounded and filed by the applicants, and acknowledge that the Will filed in the case is the genuine Will of my father and executed by him; and with a view to avoid all costs likely to be incurred in the case and harassment to be subjected to and to establish cordial relationship in the family and as a consideration for this compromise, and in excess of the provisions of the Will the executors have made a proper arrangement by providing for support maintenance and education of my present and future children. It being inconvenient to give me one house in Digbazar under the provision of the Will, the executors in lieu thereof have given me two houses described in Schedule below for my residence which are to be considered as one and they have consented to execute a proper document therefor within two weeks of the estate having come into their hands and they have further agreed to give me my monthly allowance of Rs. 100 according to the provisions of the Will.

14. The result of these petitions was that on the 24th of May 1905, Probate was granted to the executrix and executor in common form.

15. The administrator pendente lite, was discharged, and, Raseswari the widow of the testator, came into possession of the estate.

16. In pursuance of the provisions of the Will, Raseswari the widow adopted the plaintiff on the 26th of April 1916; and a monthly allowance was paid to Indumati for a period of about six years; it was not until the 27th of April 1912 that this suit was brought by the plaintiff, the adopted son. The suit was brought among other things for the administration of the estate, and, on the 6th day of May 1913, a preliminary administration decree was made. An advertisement for creditors was issued; and, on the 18th of March 1914, Indumati filed a claim as a creditor of the estate for arrears of the monthly allowance of Rs. 100 and for provision for the payment of the allowance in the future.

17. A long period elapsed before anything was done with a view to investigating Indumati's claim. We were informed that there was litigation in respect of this Will, which litigation was instituted by a third party, and it was not until June 1921 that Indumati's claim, and the claims of others, were referred to the Assistant Referee for report.

18. The Assistant Referee held an enquiry which occupied a long time (as to the proceedings before him I shall find it necessary to say a word or two later on) and, on the 25th of April 1922, he made a report, the effect of which was as follows, that Indumati Chowdhurani was entitled to get Rs. 100 a month from the estate since the death of the testator but that she would not be entitled to draw her said annuity from the estate, which was due to her since Chaitra 1318 B.S. unless and until she should make good to the said estate the sum of Rs. 30,000 which was paid to her on the 22nd day of May 1905 out of the said estate.

19. Indumati filed objections to this report: I need not refer to them in detail they are set out in the paper-book at pages 12, 13 and 14.

20. Those objections were heard by my learned brother Mr. Justice Greaves; and a point was taken before the learned Judge that it was not open to him in those proceedings to investigate the question whether the alleged payment of Rs. 30,000 was a breach of trust. The learned Judge came to the conclusion that the contention was right, and that it was not open to him to come to a decision on that point, with the result that the learned Judge allowed the exceptions and set aside that portion of the report which dealt with the impounding of Indumati's Rs. 100 a month and which purported to establish her liability for the breach of trust with regard to the sum of Rs. 30,000. Then there was an appeal from the decision to this Court, and the Court of Appeal directed that the matter should be remitted for further investigation by a "learned Judge on the Original Side and that he should be at liberty to enquire into any of the points which were open to the parties in respect of the Assistant Referee's report.

21. The matter was then heard by my learned brother Mr. Justice C. C. Ghose; and he came to the conclusion that Indumati was entitled to the monthly allowance of Rs. 100 without making restitution of the sum of Rs. 30,000 and it is from that judgment that this appeal has been preferred.

22. It seems to me necessary now to state what was the case of Indumati at different stages of these proceedings.

23. It was alleged on behalf of the plaintiff that the executrix and the executor had paid to Indumati, or to her husband on her behalf, the sum of Rs. 30,000 for the purpose of inducing Indumati to withdraw the caveat which she had entered against the Will, and it was alleged that such payment was a breach of trust of which Indumati was cognisant and that Indumati could not claim any further payment of the monthly allowance until she repaid the sum of Rs. 30,000.

24. Indumati's case at the enquiry before the Assistant Referee was that she had not received the sum of Rs. 30,000 and that it had never been paid to her or to any one on her behalf; and there is no doubt that the proceedings before the Assistant Referee were unduly prolonged by reason of the case which Indumati set up.

25. We were informed that Bankim Chunder who was the chief witness on behalf of the plaintiff had been cross-examined for no less than eight days at the instance of Indumati.

26. When the case came to this Court on appeal from my learned brother Mr. Justice Greaves, the learned Counsel who then appeared for Indumati, admitted that the sum of Rs. 30,000 had been paid to Indumati but he asserted that the sum had not been paid out of the funds belonging to the estate; and, in particular he did not admit that Indumati had signed the receipt for the Rs. 30,000 which will be found at page 270 of the paper-book and which had been put to Indumati in the course of the proceedings before the Assistant Referee. I think it is apparent that the reason for the learned Counsel's! refusal to admit that Indumati had signed that receipt was that if it were admitted, it would show that the payment had been made by the executrix and the executor with money out of the estate; for the receipt runs as follows:

Sreemati Raseswari Chowdhurani and Srijukta Babu Rajani Mohan Das executor's estate of Babu Srish Chandra Das deceased.

Written by Sresmati Indumati Dassee wife of Babu Bepin Behari Biswas whose receipt this is. You agreed to pay me the sum of Rs. 30,000 on the basis of the settlement arrived at in the Probate Case No. 32/8 of 1905 etc., I grant you this receipt having got payment of the said sum of Rs. 30,000 dated 22nd day of May 1905 corresponding to 8th Jaitha, 1312 B.S.

27. It purports to be written by Gagan Chandra Ghose, Pleader and to be signed at the side by Indumati.

28. The effect of the decision of this Court, on appeal from my learned brother Mr. Justice Greaves was that the main question which was to be decided by the learned Judge on the further hearing was whether the sum of Rs. 30,000 had been paid out of the estate, although any other question which might be available to the parties on the objections to the report could be investigated,

29. My learned brother Mr. Justice Ghose, found that the money was paid out of the estate. He came to the conclusion that there was a family settlement arrived at, for the purpose of putting an end to possible litigation; that Raseswari was not only the executrix but also the widow of the deceased and that the settlement was within the authority of the widow and that it was a settlement which was arrived at to preserve the harmony, affection and honour of the family and that it was a bona fide and fair compromise.

30. When the case was argued, on the hearing of this appeal, the learned Counsel who appeared for Indumati, admitted, as he was bound to admit, that the sum of Rs. 30,000 had in fact been paid. He further admitted that the receipt, which had been denied by Indumati at the hearing before the Assistant Referee and which had not been admitted by the learned Counsel when the case first came to the Appeal Court was signed by Indumati. The learned Counsel for Indumati, however, still argued that the money had not been paid out of the estate and he contested the learned Judge's finding to that effect., He further argued that even if the money were paid out of the estate it was a bona fide compromise made for the purpose of putting an end to litigation and it was within the authority of the widow to make it: that many years had elapsed before any proceedings were taken to contest that settlement; that it was made by the widow after consulting people who were competent to advise her; and consequently he argued that the appeal ought not to succeed.

31. The first question on the merits of the appeal, is whether the money was paid out of the estate.

32. In my judgment it is clear that the money was paid to Indumati or to her husband on her behalf on the 22nd day of May 1905, that the executrix and the executor had not got sufficient funds of the estate at the time : that it was raised in the manner which is set out in the learned Judge's judgment; that the widow Raseswari had herself advanced, Rs. 4,696 that Bankim Chandra Saha through his wife, advanced Rs. 303 odd annas, and that Rs. 15,000 and Rs. 10,000 were raised elsewhere: and, I have no doubt that on or about the 5th of October 1905 the parties, who had advanced the moneys were re-paid out of the moneys of the estate. Whether the money was actually paid in cash or whether the transaction was effected or completed by making entries to the credit of the different parties, against which they were entitled to draw, to my mind is of no importance in this case. I am convinced that the arrangement was that Rs. 30,000 should be paid to Indumati, that she should withdraw her opposition to the Will and that eventually the money should be paid out of the funds of the estate. It is obvious that it was to the interest of Raseswari to be in a position to

establish the validity of the Will. It is also obvious that Bankim, whose son was to be adopted by the widow, would naturally be anxious to see the validity of the Will established: on the other hand Indumati, if the validity of the Will could be impugned, would benefit thereby; because if Srish Chandra Das died intestate, the widow would succeed to a widow's interest in the estate, and after her death the daughters would succeed to the estate; and, under those circumstances I have no doubt that Bankim, the widow, Indumati and her husband and the executor entered into the arrangement to which I have referred. Whether the money was paid out of the estate on the 5th of October 1905 or on some other date, to my mind, is of no importance whatever, having regard to the arrangement which was undoubtedly made on or about the 22nd day of May 1905.

33. The other part of the case to which it is necessary for me to refer is whether the learned Judge's conclusion as to the arrangement should be upheld.

34. I have had some doubt as to whether Indumati should be allowed to succeed upon the allegation" of the settlement, on the basis that the money was paid out of the funds of the estate, because it is clear from the petition which was filed against the finding of the Assistant Referee, that she was asserting that the money had not been paid out of the estate as for instance, she stated that the Assistant Referee erred in holding that the sum of Rs. 30,000 was paid to her on the 22nd day of May 1905 out of the estate. She further asserted that the Assistant Referee erred in holding that the money was paid out of the estate on behalf of the executors and was paid to buy off her opposition to the Will, whereas he should, have held upon a true construction of the petition of compromise that it was a settlement of family disputes amongst the members of the family brought about by. friends and relations and for the good of the family and the state, and for the purposes set out in the consent petitions filed by Indumati and by the executors and executrix on the 22nd May 1905.

35. Therefore, it seems to me that the case which Indumati was asserting was first of all that the money was not paid out of the estate, and, secondly that the money was paid in pursuance of the family settlement irrespective of the funds of the estate.

36. I have come to the conclusion, however, that this case ought to be decided upon the facts which have been proved in the course of the enquiry.

37. The question whether Indumati ought to be mulcted in costs or deprived of costs by reason of the false case which she set up is another matter: but for the purposes of doing justice between the parties, in my opinion, we ought to decide the case on the facts as the learned Judge found them and as I think they ought to be found.

38. I have already stated that I am convinced that the sum of Rs. 30,000 in effect was paid out of the estate. I am also satisfied that the arrangement, which was made, was within the powers of Raseswari, who was the widow of the

testator and that it was a beneficial and certainly not an improper arrangement.

39. It was argued by Mr. Sircar on behalf of the appellant that at the time this arrangement was made, Raseswari had no control over the estate because a caveat had been entered by Indumati and an administrator pendente lite was in control of the estate. That may be. But it seems to me, there are two answers to that argument: in the first place the arrangement may very well have been made by the widow knowing that if it were carried out the administrator pendent lite would be discharged and she and her co-executor would obtain control of the estate. In the second place, even though the administrator pendente lite was in control of the estate on the 22nd day of May 1905 still she, as the widow, was entitled to the whole of the beneficial interest in the estate at the time; and it would be open to her to make the arrangement to have referred.

40. It is also material to point out that as a result of the arrangement, which was arrived at by the widow and her co-executor, the validity of the Will was, for the time being at all events, established and that the widow was able to adopt the plaintiff as the son of the deceased man. If the validity of the Will had not been established, it might well be that there would have been little or no evidence of any authority vested in the widow to adopt a son. In consequence of this arrangement the validity of the Will was established and the right of the widow to adopt a son was made clear, and, it hardly lies in the mouth of the plaintiff, who becomes entitled to the estate by means of the arrangement, which the widow made to come forward at this late stage and assert that the arrangement was beyond the powers of the widow and was a breach of trust.

41. The result is that, in my judgment, on the facts of the case the appeal fails and should be dismissed.

42. When this matter was before the Appeal Court on the previous occasion, Mr. Justice Richardson and I disposed by our order of the costs of that appeal, but we left it to the learned Judge, who would hear the "case on further consideration to decide as to what should be done about the costs of the proceedings before the Assistant Referee and of the proceedings before my learned brother Mr. Justice Greaves. But my learned brother Mr. Justice Ghose has not dealt with those costs and we have been asked by the parties, instead of remitting the matter to the learned Judge to deal with their costs in this Court. It is clear that the proceedings before the Assistant Referee were prolonged to an excessive degree in consequence of the false case which Indumati set up and by the course which those representing her took. It would perhaps be strictly proper to direct that she should pay the costs of the issues in respect of which she failed, but it would be difficult for the Taxing Officer to arrive at any satisfactory conclusion on that basis; and, therefore, we are of opinion that the proper order to make with regard to the proceedings before the Assistant Referee is that Indumati should pay half the costs of the plaintiff in respect of those proceedings.

43. The proceedings in this appeal have been prolonged and the paper-book has

been increased in size in consequence of the case put forward by Indumati and the attitude adopted by her advisers before the Assistant Referee; in the proceedings before my learned brother Mr. Justice Greaves, Indumati took the point that it was not open to the learned Judge to investigate the question of the alleged breach of trust a point which was given up by her learned Counsel in the Court of Appeal. We are, therefore, of opinion that each party should pay his or her own costs in respect of the proceedings in this appeal and before Mr. Justice Greaves.

44. We do not interfere with the order of Mr. Justice Ghose as regards the costs of the proceedings before him because the matter was within his direction.

45. We have been informed that a Receiver, appointed by the Court is in possession of the estate.

46. The Receiver, therefore, will be at liberty to set off the costs payable by Indumati to the plaintiff against the arrears of allowance due to Indumati.

47. The Receiver will also be at liberty to proceed to pay the monthly allowance to Indumati as it accrues due.

Rankin, J.

48. I agree.

49. This question arises in course of a suit brought in 1912 for the administration of the estate of the deceased Srish who died on the 12th of December 1904. The matter was raised in years which are comparatively recent and a very long time after the actual events had come into question.

50. The question has been smothered in contentions which, in my judgment, come to nothing : and I propose to state shortly (disregarding the contentions which come to nothing) the position as I see it. When the testator died he had been in an extremely dangerous state for some little time. The learned Judge has made a reference to these matters, and it has been objected that the facts mentioned by him were not properly proved but it turns out that it was brought to the notice of the learned Judge, that the whole question of the validity of this Will was the subject of a litigation which came up to this Court and was disposed of by a judgment which is reported.

51. I propose to mention only two facts which seem to me to be important.

52. One is that, although the deceased appears to have given some instructions for the Will in time, at the actual moment when he signed the Will he was unable to do more than sign his initials and he was in such a state of mind that he was not probably able to make a good Will if he had not given his instructions before. The actual proof of those facts it is not, I think necessary to worry about, because there is nothing to be gained by sending this case back in order that the ultimate decision of this Court with regard to this Will might be formally proved. The testator having died at the end of 1904, we know that a violent dispute

arose between Raseswari the widow and the daughter Indumati. We know that Indumati entered a caveat and we know that it was only upon her withdrawing the objections that in May 1905 this Will could be proved in common form.

53. The testator had four daughters, all of them married. Promila and Sukumari appear to have been married to husbands who were comparatively well off. Indumati and Sarojini were not so happily circumstanced and accordingly the testator by his Will gave to each of those two daughters a house and an annuity of Rs. 100 a month. It seems that Indumati's husband Bipin Behari Biswas had been living with the testator who paid all his expenses and generally kept him and his family Indumati when her father died became distinctly objectionable apparently to her mother and distinctly hostile to the Will. The younger daughters had nothing to get from the Will. The eldest daughter Saronji had a son Nirmal who was likely if the Will stood to inherit the whole property, but Indumati and her husband were likely to be much worse off in these circumstances after her father's death than they had been before. It is in evidence apparently that a very objectionable family dispute took place and it is quite clear that Indumati was not minded to let this Will be established if she could help it, and she was prepared apparently to do whatever was possible to prevent her right, after her mother's death, being brought to an end by any adoption.

54. In these circumstances, the position was this : Raseswari as a Hindu widow, was, in my judgment, certainly entitled to spend what was, necessary from the corpus as well as from the income of the estate to defend the right given her by her husband to adopt a son to him. Of that I imagine there can be no doubt. Bankim and his wife Sarojini were plainly very anxious that the Will should be established and that Nirmal should be adopted.

55. Bankim in giving his evidence before the Assistant Referee professed to have known very little about the settlement to have taken no part in the arranging of the settlement but merely to have had the good fortune to have been present when certain transactions were actually carried out. That is all nonsense. It is perfectly plain from the circumstances of this case that the moving spirits with regard to this compromise were Bankim and Saronji acting on behalf of Nirmal. As a matter of fact, books of account show that a telegraphic draft of Rs. 15,000 was sent in his name to Dacca for the purpose of this settlement. It is equally plain that a small sum of money of Rs. 300 odd that was necessary to make up the Rs. 30,000 was provided, after a some little trouble, by Bankim or on his account. So far as the third daughter was concerned, we know this, that her husband who appears to be a gentleman of some position was one of the many well-wishers of the members of the family who, Bankim admits, were anxious that this matter should be settled by a private arrangement and without litigation.

56. As regards the fourth daughter all we know is that when the time came, she too presented a petition to facilitate Probate being granted of this Will and presented it, as it happened by the same Pleader, who was acting for Sarojini on

the 22nd day of May. It is perfectly clear that Indumati's objection to the Will was notorious to the family, if not to the whole neighbourhood. At no time does it appear that the two younger sisters or any one on their behalf made any objection to what had happened. It is perfectly plain that they would know what happened and would be very anxious indeed to ascertain how these disputes between sisters were to be brought to an end. In these circumstances, we find that on the 22nd day of May, there is in the petition of Indumati a statement that "as a consideration of this compromise, and in excess of the provision of the Will the executors have made a proper arrangement by providing for support, maintenance and education of my present and future children." Then the petition goes on to state that whereas it was inconvenient to give her one house in Digbazar the executors were to give her two houses which should be considered as one.

57. Now, there was a compromise. It was not necessary to get the approval of the Probate Court for that compromise. It was apparently not thought necessary to be frank in telling the Court what that compromise exactly was; but that there was a compromise is perfectly clear and it is obvious that there would be no use in compromising such a matter with one person unless all the people who were likely to object to this Will could be brought into the compromise. Now, what took place was, in my judgment, this. With the knowledge and at the instigation of all the people certainly of all the daughters and their husbands these executors--the widow and Rajani agreed to find Rs. 30,000 to buy off Indumati's objections. That it was ever dreamt by any one that the Rs. 30,000 should not come out of the estate I do not believe for a moment, in particular for the reason that there was no other fund that it could come out of. That it did come out of the estate is also, I think, clear. But the position was that an administrator pendente lite was in charge of the assets and the compromise took effect the administrator was to clear off, to wind up his management and go. Accordingly, in order that Indumati might not be given" a mere promise, the arrangement which appears in the books was made to the effect that money was scraped up from four different sources. One of them was the Calcutta branch of the banking business itself; another was a sum of money lent by a stranger; Raseswari lent some of her own, and Bankim lent the remainder. That having put up and Probate having been granted the books prove to demonstration that the estate before the end of that financial year made records in its books whereby it assumed liability for that Rs. 30,000. So far as it is possible to say, everybody acted upon that assumption at least till 1912.

58. In these circumstances, there has been much unnecessary dispute about whether this was a settlement on behalf of the estate or a settlement on the personal responsibility of the executors. It is quite clear that qua executors it was a breach of trust for the widow and Rajani to spend the testator's property in buying off disputes about this Will; and, if the matter had ended there, there would be no difficulty. But in this case, whether the Will was bad or whether it was good, everything went to the widow herself" as the estate of a Hindu widow.

The estate was the widow's. She was fully entitled to represent it and consequently a payment out of the estate necessarily means, as things stood, a payment out of that beneficiary's interest which at the moment was. the "widow's. There is nothing to be gained in endeavouring to make the distinction as between personal responsibility and whether the money was coming out of the estate.

59. The next thing is this. The widow had a limited interest. If this were a case in which that limit was got over by showing that the widow had obtained consent of all the nearest reversioners the transaction certainly could not upon this evidence be supported in that way. The reversioners after the widow were the four daughters who, again, were limited owners. You do not come to an unlimited owner until you find out who was the person who on the death of the four daughters, if there was no adoption, would take the succession. If there was anything wrong in the widows's action you cannot cure it in that way. I am not prepared to say that the matter can be put beyond reach of controversy by regarding it as a family settlement in the strict sense of the expression, because who the parties to the settlement were, or what the terms were, I think was not satisfactorily proved : but you have, I think, to examine this matter on the footing that a Hindu widow was entitled to protect the right that her husband had purported to give by his Will that she should make an adoption and to make a compromise in defence of that right provided always that the transaction, as a whole, was fair and reasonable from the point of view of reversioners. Looking at it in that way, the consent of the other members of the family carries one a very long way indeed towards the validity of this compromise. So far as I can see, it was a reasonable compromise which appeared to the members of the family at the time as such. Bankim and Sarojini were most anxious that their son should be adopted. The younger daughters were not in the least anxious to preserve their possible right after their mother's death. Indumati alone was anxious to prevent Nirmal from becoming the adopted son; and the widow, in these circumstances, having apparently taken all the advice she could by this compromise permitted Rs. 30,000 for the sake of family peace and dignity to come out of the estate which if she chose, would be hers during the whole of her lifetime.

60. By these means Bankim and Sarojini's son was adopted. He was adopted in 1906 entirely on the strength of this Probate long before anybody ever thought of seeking a revocation; and, time goes on till 1912 when, he being still a minor, a serious dispute in the family arose. Then the Will is attacked; it is set aside and it is proved finally after a great deal of controversy and a very expensive litigation the result of which must for long have been uncertain.

61. That being the picture which you get from the evidence of the case we are only concerned not with whether Indumati's allowance should be stopped to answer this debt of Rs. 30,000 to the estate. We are not concerned with the rights of the creditors at all. It is a pure question as between the beneficiaries of

the estate. The order for administration was not made till 1913 and it is no part of the intention of such an order to rip up all previous transactions or to make people put back money unless it is established that the transaction was invalid. It seems to me, in these circumstances, that for Sudhir who has become the proprietor of the estate and executor of this Will to say in course of this suit that Indumati's Rs. 100 a month should be stopped because the transaction of 1905 was invalid and a breach of trust is a contention which requires better evidence than we have got. The evidence of Bankim has much in it to show that the transaction was perfectly reasonable and fair. He certainly thought it so and the family thought it so, and for many years it was acted upon. In these circumstances, although I am bound to say that Indumati and her advisers by refraining as long as possible from having any dealings with the obvious truth of the matter have placed their case in great jeopardy, I do not hold it proved that she owes Rs. 30,000 to the estate or that her allowance can be set off against the debt. I think, therefore, in the end that that judgment of the learned Judge on this matter should be upheld.