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the Customary Lay of 1940 make it quite clear that an adopted son succeeds collaterally in the family of his adoptive father. The answer to the later question contains a list of as many as seventeen instances out of which twelve relate to Ajnala tehsil, including two relating to Aulakh Jats, in which adopted sons had succeeded collaterally in the families of their adoptive fathers. No reason has been shown why the special custom, which is being followed in the Amritsar district and according to which an adopted son succeeds collaterally in the family of his adoptive father, should be departed from in the case of this particular family.

For these reasons, I would accept the appeal, set aside the order of the learned District Judge and restore that of the trial Court. There will be no order as to costs.

Dulat, J.—I agree.

B. R. T.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Dulat, J.

PUNJAB STATE AND OTHERS,—*Appellants*

versus

MEHR CHAND,—*Respondent.*

Letters patent Appeal No. 81 of 1954.

1958

Oct., 7th

Administration of Evacuee Property Act (XXX of 1950)—Section 6—Superintendence by the Custodian—Extent and scope of—Assistant Custodian not exercising his own discretion but acting according to the instructions of the Custodian—Effect of—Exercise of discretion—Manner of—Section 40(4) clause (c)—Whether to be interpreted as ejusdem generis to clauses (a) and (b)—Interpretation of Statutes—Doctrine of Ejusdem generis—*Meaning, scope and extent of.*

Held, that the provisions of section 6 of the Administration of Evacuee Property Act, 1950, do not enable either the Custodian or any other officer to issue executive instructions as to the manner in which an Assistant Custodian should exercise the discretion which has been conferred upon him by section 40. In the first place, the provisions of section 6 have been subjected to the other provisions of the statute, including the provisions of section 40; and secondly the power of superintendence conferred by this section cannot be exercised to control the discretion of a subordinate tribunal. The power vested in Custodian to grant or reject an application for confirmation is derived from the legislature and the extent of any discretion in the exercise of such power must depend upon the language which the legislature has chosen to employ. The language confers a wide discretion on the Custodian to reject an application for confirmation if he is of the opinion that the transaction ought not to be confirmed. The discretion must, however, be exercised in accordance with established principles of justice and not arbitrarily or capriciously, fraudulently or without factual basis. It must be exercised in good faith and in the best interest of the persons affected. It must be exercised in consonance with principles of justice, equity and good conscience. It must not cause unnecessary hardship. If discretion is exercised in accordance with these principles the Courts will be powerless to interefere. If, on the other hand, the Custodian bases his action upon an erroneous theory of law or if the action is so arbitrary, capricious, fraudulent, or grossly unjust as to constitute abuse of discretion justifying judicial intereference, the High Court will not hesitate to interfere by the exercise of its superintending power.

Held, that when the legislature confers a discretion on an executive officer, it must be exercised personally by the officer in whom it is vested or by the officer to whom it is delegated in accordance with the provisions of law. This is as it ought to be, for when the only right of the individual which the law gives is that which a designated officer deems best and when the honest decision of that officer is the measure of the right, it is only reasonable that the said officer should bring his own independent mind to bear on the problem placed before him and exercise his own judgment and discretion unfettered by executive or other

instructions issued by superior authorities, Where the Assistant Custodian does not exercise the discretion vested in him by law but subordinates his discretion to the will of the Custodian, he is guilty of abuse or capricious or arbitrary exercise of discretion and his order is liable to be set aside.

Held, that clause (a) of sub-section (4) of section 40 of the said Act empowers a Custodian to reject the application for confirmation if the transaction has not been entered into in good faith or for valuable consideration; and clause (b) empowers him to reject it if the transaction is prohibited under any law for the time being in force. The specific words appearing in these two clauses exhaust the categories to which they refer, and, therefore, the general words contained in clause (c) were intended to refer to something else and were not intended to be limited by the enumeration in clauses (a) and (b). They confer a wide discretion on the Custodian to reject an application for confirmation when he is of the opinion that the transaction ought not to be confirmed "for any other reason".

Held, that the rule of *ejusdem generis* is that where particular words are followed by general, the general words should not be construed in their widest sense but should be held as applying to objects, persons or things of the same general nature or class as those specifically enumerated, unless of course there is a clear manifestation of a contrary purpose. Or to be put in a slightly different language, where general and special words which are capable of analogous meaning are associating together, they take colour from each other and the general words are restrained and limited to a sense analogous to the less general. *Ejusdem generis* is a rule of construction which enables a Court to ascertain the intention of the Legislature when the intention is not clear, and does not warrant the Court in subverting or defeating the legislative will by confining the operation of a statute within narrower limits than intended by the law-makers. It should be resorted to not for the purpose of defeating the intention of the legislature but for the purpose of elucidating its words and giving effect to its intention. It is based on the idea that if the legislature intended its general words to be used in an unrestricted sense so as to embrace the objects, persons or things covered by the particular words, it would not have taken the trouble of using the particular words at all. The doctrine of *ejusdem generis* should not be invoked

where the intention of the legislature is clear, where it would result in disregarding the plain language of the statute where a persual of the statute as a whole indicates that the legislature intended the general words to go beyond the class specially designated, where the specific things enumerated have no common characteristic and differ greatly from one another, or where the particular words embrace all objects of their class so that the general words must bear a different meaning from the particular words or be meaningless.

Letters Patent Appeal under clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice Bishan Narain, dated 10th September, 1954, in Civil Writ No. 348 of 1953 regarding Mehr Chand vs. *The State of Punjab etc.*

DEWAN CHETAN DASS, for Appellant.

D. N. AGGARWAL, for Respondent.

JUDGMENT

Bhandari, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether the Assistant Custodian was justified in declining to confirm a certain sale under the provisions of sub-section (4) of section 40 of the Administration of Evacuee Property Act, 1950. Bhandari, C. J.

On the 22nd September, 1947, Mehar Chand petitioner purchased two houses, one from Dehru for a sum of Rs. 700 and the other from Hussain for a sum of Rs. 300. He applied to the Custodian for confirmation of the sales but his application was rejected by the Assistant Custodian by means of a small order which was in the following terms:—

> "The transaction relates to sale of house situated in rural area. The Custodian has by his order dated 29th January, 1950 decided that all such transactions shall be treated as relating to land in in rural areas.

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In view of this, the application for confirmation of transaction is dismissed. However, claim for Rs. 700 will be entered in the register as an unsecured claim... ....."

The petitioner presented a petition under Article 226 of the Constitution which came up for hearing before a learned Single Judge of this Court. The learned Single Judge came to the conclusion that the Assistant Custodian did not exercise the jurisdiction which has been vested in him by section 40 of the Act of 1950. He accordingly accepted the petition, set aside the order in question and directed that the application of the petitioner for confirmation of the sales be dealt with in accordance with law. The State has appealed, and the question for this Court is whether the learned Single Judge has come to correct determination in point of law.

Section 40 of the Administration of Evacuee Property Act, 1950 declares that no transfer made after the 14th day of August, 1947, by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective as so to confer any rights or remedies in respect of the transfer on the parties thereto if, at any time after the transfer, the transfor becomes an evacuee or the property of the transferor is declared or notified to be evacuee property unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act. Sub-section (4) of this section is in the following terms:—

"(4) Where an application under sub-section (1) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescrib-

ed manner and may reject the application if he is of opinion that:—

(a) the transaction has not been entered into in good faith or for valuable considertion; or

(b) the transaction is prohibited under any law for the time being in force; or

(c) the transaction ought not to be confirmed for any other reason."

Two questions arises for decision in the present case, namely (1) whether the doctrine of *ejusdem generis* applies to clause (c) of sub-section (4) reproduced above; and (2) whether the Assistant Custodian was justified in dismissing the petitioner's application for confirmation on the ground only that the Custodian had directed that such transactions should not be confirmed.

The first question can be easily disposed of. The rule of *ejusdem generis* is that where particular words are followed by general, the general words should not be construed in their widest sense but should be held as applying to objects, persons or things of the same general nature or class as those specifically enumerated, unless of course there is a clear manifestation of a contrary purpose. Or to be put in a slightly different language, where general and special words which are capable of analogous meaning are associated together, they take colour from each other and the general words are restrained and limited to a sense analogous to the less general. *Ejusdem generis* is a rule of construction which enables a Court to ascertain the intention of the Legislature when the intention is not clear, and does not warrant the Court in subverting or defeating the legislative

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will by confining the operation of a statute within narrower limits than intended by the law makers. It should be resorted to not for the purpose of defeating the intention of the legislature but for the purpose of elucidating its words and giving effect to its intention. It is based on the idea that if the legislature intended its general words to be used in an unrestricted sense so as to embrace the objects, persons or things covered by the particular words, it would not have taken the trouble of using the particular words at all. The doctrine of *ejusdem generis* should not be invoked where the intention of the legislature is clear, where it would result in disregarding the plain language of the statute, where a persual of the statute as a whole indicates that the legislature intended the general words to go beyond the class specially designated, where the specific things enumerated have no common characteristic and differ greatly from one another, or where the particular words embrace all objects of their class so that the general words must bear a different meaning from the particular words or be meaningless.

Clause (a) of sub-section (4) empowers a Custodian to reject the application for confirmation if the transaction has not been entered into in good faith or for valuable consideration; and clause (d) empowers him to reject it if the transaction is prohibited under any law for the time being in force. The specific words appearing in these two clauses exhaust the categories to which they refer, and it seems to me therefore that the general words contained in clause (c) were intended to refer to something else and were not intended to be limited by the enumeration in clause (a) and (b). They confer a wide discretion on the Custodian to reject an application for confirmation

when he is of the opinion that the transaction ought not to be confirmed "for any other reason."

The second question which has been raised in this case remains to be answered. It appears that on the 29th January, 1950 the Custodian issued general instructions to the offices of his department that any transaction relating to the transfer of rural house property may not be confirmed and that such a property will be treated in the same way as agricultural land. On the 9th March, 1950 the Government of India issued a circular letter No. 1. Cir. 50-C.G. for information and guidance of the Custodians of all States that transaction regarding agricultural property should not be confirmed in any case.

It is contended on behalf of the State that the Assistant Custodian was under an obligation to carry out the instructions of the Government of India, for section 53 of the Act of 1950 provides that the Central Government may give directions to any State Government as to the carrying into execution in the State of any other provisions contained in this Act or of any rules or orders made thereunder. It is not necessary, in my opinion, to deal with the circular letter which has been issued by the Government of India, first, because the order passed by the Assistant Custodian was not passed in compliance with the instructions contained therein and secondly, because the instructions issued by the Government of India under section 53 cannot be said to be vested with statutory authority. It was pointed out by their Lordships of the Supreme Court in *Duni Chand* v. *Deputy Commissioner*. (1) that such instructions have no statutory force if no rule is framed under the Act giving effect to those instructions.

(1) A.I.R. 1954 S.C. 150.

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Again, it is argued that having regard to the provisions of section 6, the Assistant Custodian had no alternative but to comply with the instructions of the Custodian. Sub-section (2) of this section provides that, subject to the provisions of this Act, all Custodians, Additional, Deputy or Assistant Custodians of evacuee property shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian-General; and sub-section (3), declares that, subject to the provisions of sub-section (2), Additional, Deputy and Assistant Custodians shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian for the State. These provisions do not, in my opinion, enable either the Custodian or any other officer to issue executive instructions as to the manner in which an Assistant Custodian should exercise the discretion which has been conferred upon him by section 40. In the first place, the provisions of section 6 have been subjected to the other provisions of the statute, including the provisions of section 40; and secondly the power of superintendence confered by this section cannot be exercised to control the discretion of a subordinate tribunal. The power vested in the Custodian to grant or reject an application for confirmation is derived from the legislature and the extent of any discretion in the exercise of such power must depend upon the language which the legislature has chosen to employ. The language, as we have seen, confers a wide discretion on the Custodian to reject an application for confirmation if he is of the opinion that the transaction ought not to be confirmed. The discretion must, however, be exercised in accordance with established principles of justice and not arbitratily or capriciously, fraudulently or without factual basis. It must be

exercised in good faith and in the best interest of the persons affected. It must be exercised in consonace with principles of justice, equity and good conscience. It must not cause unnecessary hardship. If discretion is exercised in accordance with these principles the Courts will be powerless to interfere. If, on the other hand, the Custodian bases his action upon an erroneous theory of law or if the action is so arbitrary, capricious, fraudulent, or grossly unjust as to constitute abuse of discretion justifying judicial interference, this Court, will not hesitate to interfere by the exercise of its superintending power.

It is contended on behalf of the petitioner that the order of the Assistant Custodian is invalid because he failed to exercise his own individual judgment and chose instead to follow the general instructions issued by the Custodian. There is considerable force in this contention, for it is a well-known proposition of law that when the legislature confers a discretion on an executive officer it must be exercised personally by the officer in whom it is vested or by the officer to whom it is delegated in accordance with the provisions of law. This is as it ought to be, for when the only right of the individual which the law gives is that which a designated officer deems best and when the honest decision of that officer is the measure of the right, it is only reasonable that the said officer should bring his own independent mind to bear on the problem placed before him and exercise his own judgment and discretion unfettered by executive or other instructions issued by superior authorities. This point was brought out with admirable clarity in the American case of *School District* v. *Callahan* (1). In pursuance of the provisions of a statute authorising the State Superintendent of Public

(1) (Wis.). 297 N.W. 4Q7.

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Instruction to abolish a school districts and attach them to adjoining districts, the Superintendent upon his motion attached a school district to a contiguous district. An appeal was preferred from this order and it was contended that the Superintendent failed to make a personal decision in that he delegated the matter to a subordinate who made a report and recommendation upon which the Superintendent relied without considering all the facts that the appellants alleged in their complaints, and also because a subordinate drafted the order and affixed the Superintendent's signature at his direction. The Court recognised that the Superintendent's power under the statute to make an order in relation to the consolidation of school districts must be exercised by him in person and not by a subordinate and observed as follows:—

> "Appellants contend that the Superintendent's orders are invalid because he failed to make a personal decision in that he delegated the matter to his subordinate, Merrit, who made a report and recommendation upon which the Superintendent relied without considering all facts that appellants alleged in their complaint; and also because a subordinate drafted the orders and affixed the Superintendent's signature at his direction. As was held in *Joint School District No. 7* v. *Wolfe* (1), the Superintendent's power under the statute to make an order in relation to the consolidation of school districts must be exercised by him in person and not by a subordinate. However, the rule that requires an executive officer to exercise

(1) 12 Wis. 685.

his own judgment and discretion in making an order of such nature does not preclud him from utilising, as a matter of practical administrative procedure. the aid of subordinates directed by him to investigate and report the facts and their recommendation in relation to the advisability of the order and also to draft it in the first instance.....
It suffices that the judgment and discretion finally exercised and the orders finally made by the Superintendent were actually his own; and that there then attaches thereto the presumption of regularity in order to effectuate the intent manifested thereby."

As the Assistant Custodian has not exercised the discretion vested in him by law and as he has subordinated his discretion to the will of the Custodian, I agree with the learned Single Judge that he is guilty of abuse or capricious or arbitrary exercise of discretion. The order of the learned Single Judge must, therefore be affirmed and the appeal dismissed with costs. I would order accordingly.

Dulat, J.—I agree.

B. R. T,

1958

REVISIONAL CIVIL

Before Grover, J.

JAIRAM DAS CHELA KALYAN DASS,—*Petitioner.*

versus

SHANKAR DASS AND OTHERS,—*Respondents.*

Civil Revision No. 361 of 1957.

Code of Civil Procedure (Act V of 1908)—Section 2(2) and Orders 20 and 34—Preliminary decree—Meaning of—Whether confined to the preliminary decree mentioned in Orders 20 and 34—Order IX Rule 8—Suit—Whether can be dismissed in default after the passing of preliminary