

1900.
March 16.

Re Last Will and Testament of A. HENDRICKS and
S. HENDRICKS.

D. C. (Testamentary), Galle, 12.

Last Will—Delay in application for probate.

An executor, who produces in court the last will of a testator who had died many years since its production, should be called on to explain his delay, and if it be found to be wilful, he may properly be punished under section 517 of the Civil Procedure Code.

If a third of a century has not elapsed since the death of the testator the will may be admitted to probate.

In the case of a stale application for letters of administration, the court will not grant them except necessity for administration be shown.

IN his petition to the District Court, dated 5th February, 1900, the petitioner stated that Arnoldus Hendricks and Samalia Hendricks, husband and wife, made a last will on the 14th December, 1868, appointing the petitioner and Charles Samuel their executors; that the testator died about twenty-nine years ago, and the testatrix about twelve years ago; that Charles Samuel was also dead; that as one of the devisees named in the will had sold her share of the property left to her to a person prohibited by the 2nd clause of the will, a probate had now become necessary. The petitioner prayed for a commission of appraisement and citation to next of kin and for probate of will.

The District Judge disallowed the application, as it was too stale.

The petitioner appealed.

Sampayo, for appellant.

Cur. adv. vult.

16th March, 1900. LAWRIE, J.—

An application for probate of an old will should, I think, be dealt with differently from a stale application for administration. In the latter case, the Court will not exercise its power to appoint an administrator except necessity for administration be shown; but in the former case, it is generally right that the question should be tried whether a document produced within, say, a third of a century from the death of a testator be or be not a valid testament.

If it be proved to be genuine, let letters of probate issue to the executors *valeat quantum*. It may be that the estate has meanwhile passed into other hands who are not affected by the provisions of the will. In a recent case from the Negombo District Court, we admitted an old will to probate.

Here, I think, the executor who produces the will of his father and mother who died many years ago should be called on to explain his delay; and if his omission to produce the will earlier be shown to have been wilful, he may properly be punished under section 517 of the Civil Procedure Code.

The order of the Court below is set aside and case remitted for further proceedings according to law.

BROWNE, A.J.—I agree.

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LAWRENCE, J.

