issued under the former Act the widow was entitled to one-third of the estate, if under the latter Act, she was entitled to the ordinary right of a Hindu widow under Hindu law. Now it is clear that the grant could issue under the former Act only if the parties were not Hindus: see S. 331 of the Act. One of the arguments was that by reason of the marriage and the declaration under it, made at the time by the deceased owner and the applicant, they ceased to be Hindus. The learned Judge before whom the petition came for hearing took time to consider his judgment and came to the conclusion that a Bramho who married under the provisions of the Special Marriage Act did not cease to be a Hindu and the succession to his property would be governed by the Hindu law. The arguments which have been addressed to me as to the meaning to be attached to the words in the preamble or S. 2, Special Marriage Act, and as to the effect of the declaration under the Act were addressed to the Judge in that case. Further the learned Judge pointed out that there was a uniform practice on the testamentary side in the Calcutta High Court that in cases like this, where marriage had taken place under the Special Marriage Act, letters of administration were granted only under the Probate and Administration Act.

I may also refer to the Full Bench case of *Matungini Gupta* v. *Ram Rutton Roy* (3). The judgment, in the light of the facts and the arguments in that case, lends support to the conclusion to which I have come. The facts were that a Hindu widow inherited the property of her husband taking therein the estate of a Hindu widow. She afterwards married a second husband not a Hindu, in a form provided by Act 3 of 1872, having first made a declaration, as required by S. 10 of the Act, that she was not a Hindu. The question arose whether by that marriage she forfeited her interest in her first husband's estate in favour of the next heir. It was argued in substance that she ceased to be a Hindu as soon as she married under Act 3 of 1872, and, therefore, the Hindu Widows Re-marriage Act 15 of 1856, which only applies to Hindu widows, did not apply, and, therefore, she did not forfeit her interest in her first husband's estate. The question was referred to a Full Bench and it was held by the Judges (Prinsep, J, dissenting) that Act 15 of 1856 applied and the widow had forfeited her interest in her first husband's estate on account of her marriage under Act 3 of 1872.

I am, therefore, of opinion that the rights of the parties before me are: firstly, governed by the Special Marriage Act 3 of 1872; and secondly, they are governed by the personal law of the parties, namely the Hindu law. That being the case, it is clear that the defendant has no interest to sustain this caveat. In the result the caveat must be dismissed with costs. Letters of administration would issue to the plaintiff. If the plaintiff is not able to recover attorney and client costs from the defendant, then she would be entitled to recover them from the estate of the deceased.

S.J. *Caveat dismissed.*

(3) [1891] 19 Cal. 289 (F. B.).

A. I. R. 1928 Bombay 77

FAWCETT, J.

Emperor.

v.

Phillip Spratt (No. 2).

Fifth Criminal Sessions No. 1 of 1927, Decided on 21st November 1927.

Evidence Act, Ss. 9 and 14—Admissibility of copy of letter written by accused as evidence when the original one was not forthcoming.

Where the prosecution, when trying a person for sedition, brought a copy of a letter written by him and found in his possession which was alleged to have been sent by him along with the objected writing and it was contended on behalf of the accused that it is necessary for the prosecution to prove that such a letter was sent before this document can be admitted:

Held: that (1) the copy of the letter was relevant to show the accused's intention and could be admitted as evidence; and (2) it is not necessary for the prosecution to prove that such a letter was sent before the copy could be admitted as evidence. [P 77 C 2, P. 78 C 1]

Kanga and *O'Gorman*—for the Crown.

F. S. Talyarkhan, Gupte, Ambedkar and *Ratanlal Ranchhoddas*—for Accused.

Judgment.—I hold the document is relevant and admissible.

It is relied on regarding accused's intention and if this is what he wrote or typed, it falls under Ss. 9 and 14 Indian Evidence Act.

It is an original, so far as it is relied on as a piece of evidence, found in accused's possession, and alleged to implicate

him; so the question of its being secondary evidence of an original letter does not bar its admission.

As to the question whether a letter in accordance with this document was actually sent to Mr. Horniman: this is a distinct question on which it is open to counsel to argue before the Court or to adduce evidence; but I do not agree with Mr. Talyarkhan that it is necessary for the prosecution to prove that such a letter was sent, before this document can be admitted.

Document admitted, subject to evidence as to the signature being accused's or the typewriting being from the machine, Ex. I.

S.J. *Document admitted.*

A. I. R. 1928 Bombay 78

FAWCETT, J.

Emperor.

v.

Phillip Spratt (No. 3).

Fifth Criminal Sessions No. 1 of 1927, Decided on 23rd November 1927.

Evidence Act, S. 14—Intention of accused charged under S. 124-A, I.P. C.—Writing made by him and found with him is relevant on the question of intention.

Primarily, anything that an accused tried under S. 124-A, I. P. C., has written is, if it comes within the general words of S. 14, relevant and admissible. At the same time, of course, the writing should be within a reasonable time of the particular occurrence, i. e., the particular article or other document, in respect of which he is being charged. [P 79 C 2]

Kanga, O'Gorman—for the Crown.

F. S. Talyarkhan, Gupte, Ambedkar and *Ratanlal Ranchhoddas*—for Accused.

Judgment.— I deferred my ruling yesterday about the admissibility of the document (Ex. K in the Magistrate's Court) until I had time to read it and consider the arguments addressed to me. I have carefully read it. This is not the proper stage at which to discuss it in detail; and I think it suffices to say that, in my opinion, some of its contents are such that the prosecution can reasonably rely on them as evidence of intention regarding the charge against the accused. The fact of this document being, according to evidence in Court, in the handwriting of the accused and found in his possession on 9th September 1927—if it does contain evidence of intention such as I have mentioned—is undoubtedly a fact which shows the existence of a state of mind, viz., the accused's intention, within the meaning of S. 14, Evidence Act. That is going primarily upon the plain wording of the section, but I will consider the objections that have been fairly put before me by Mr. Talyarkhan.

He says, first of all, that there is no connexion shown between this document and the pamphlet (Ex. F). But it is not, in my opinion, necessary to show that there is a definite connexion between a writing that may be evidence of intention, and the particular writing, which is the subject-matter of the charge. The main question is whether the writing that is sought to be put in as evidence of intention does, in fact, contain matter which supports the contention that such intention is thereby shown. Take, for instance, the precedent in this Court of the post card that was found in the accused's possession in the second Tilak trial before Mr. Justice Davar; that is, the case of *Emperor* v. *Bal Gangadahr Tilak* (1). In that case Mr. Justice Davar admitted the post-card as admissible evidence although there was no direct connexion between the contents of that post card and the subject-matter of the charge, except in the sense, that it might be contended that the post card contained evidence of his intention in regard to the writing about which the charge was made. At the same time, I do not mean to say I am deciding as to the weight to be attached to this document in this case. It is, of course, open to the defence to argue, if they can, that in the circumstances of the case and having regarded to its other contents and so on, no weight should be attached to it, and that it does not really constitute evidence of the alleged intention of the accused. Thus, in regard to the particular post-card that I have already mentioned, I see from the report at p. 898 that Mr. Justice Davar told the gentlemen of the jury that, in his opinion, it was not a piece of evidence which should affect their minds. That is, of course, a different question. I am only deciding in favour of its admissibility as a piece of evidence which can be shown to the jury and arguments based upon it.

Then, the second objection raised was based on Ill. (e), S. 14, Evidence Act,

(1) [1908] 10 Bom. L. R. 848.