late licensee, the value of the land as a site for salt manufacture shall not be taken into account in acquiring the proprietary right, but that compensation shall be paid to the late licensee at the rate fixed in section 18. But this Act did not receive the assent of the Governor-General till 30th December 1889, subsequent to this land being taken up under Act X of 1870, and, in the former Salt Act I of 1882, we find no corresponding provision. We observe that the lands were purchased by the company in 1885 and 1886 for about Rs. 3,000, and that in making his offer of Rs. 18,002-11-6 for acquiring them under the Act the Collector has taken into consideration the cost of converting them into salt pans. At the time, therefore, the land was acquired, there was no direction that the Government should only be called upon to pay the value of the land alone and that compensation for its special value should only be paid for at fixed rates. Looking to the definition of 'land' in section 3, Act X of 1870, we are not able to say there was any illegality in the Judge taking into account the value of the works which made the place suitable for a salt factory, and even if, in making his estimate of market value, the Judge was in error in taking into consideration the price paid for neighbouring pans, the mistake would at most be only one concerning the principles of valuation and not an irregularity in the exercise of jurisdiction. We must dismiss the petition with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1894.
Feb. 15, 16.
May 4.

RAHAMTULLAH SAHIB (DEFENDANT), APPELLANT,

v.

RAMA RAU AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Will—Probate—Interest of defendant in testator's estate.

In a suit brought to obtain probate of a will the defendant, before he can contest the will, must show that he has some interest in the testator's estate. The fact of being a legatee under the will, or a creditor of the testator, does not amount to such an interest. But proof of a former will of the testator in which the defendant is interested is a sufficient interest to contest the will set up.

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* Appeal No. 29 of 1893.

RAHAMTULLAH SAHIB v. RAMA RAU.

APPEAL from the decree of Shephard, J., sitting on the original side of the High Court in testamentary original suit No. 10 of 1892.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

Mr. *Michell*, *Subramania Ayyar*, and Mr. *Laing* for appellant.

The *Advocate-General* (Hon. Mr. *Spring Branson*), Mr. *Wedderburn*, Mr. *W. Grant* and Mr. *D. Grant* for respondents.

JUDGMENT.—This was a testamentary suit brought to obtain probate of the last will and testament of the late Raja of Venkatagiri in the district of Nellore. Plaintiffs alleged that the late raja made his last will on the 3rd June 1892 and died on the 6th idem, and, as executors appointed by testator, they claimed probate. Exhibit A is the will propounded by them, and among the legacies mentioned therein, a sum of Rs. 1,000 is given to defendant Haji Muhammad Rahamtullah Saheb. He, however, filed a caveat objecting to the grant of probate on the ground that the will is not genuine; that its execution was procured by fraud, coercion or undue influence; that the testator did not know what he was doing, nor understand the nature and effect of its provisions, if in fact he signed or affixed his mark to the alleged will. Defendant set up another will, dated the 31st May 1892, whereby it is alleged the late raja appointed Dewan Bahadur Raghunadha Row, the Honorable Mir Humayun Jah Bahadur, C.I.E., Kummati Krishnamachari and Dewan Bahadur T. Venkasami Rao as executors. Defendant stated that that will purports to remit, *inter alia*, a debt of Rs. 55,000 due from him to the testator, and further, to give defendant a legacy of Rs. 5,500. He further alleged that the will relied on by him was in the possession or power of the testator's sons and others, including the plaintiffs, Raja T. Rama Row and Ramakrishniah.

Plaintiff's application for probate of the will propounded by him was made on the 12th August 1892 and the defendant's caveat was filed on the 19th idem. On the 24th January 1893 the following four issues were fixed for decision:—

(i) Whether the will dated 3rd June 1892 was genuine?

(ii) Was the deceased raja at the time of executing the same of sound and disposing mind?

(iii) Is the will invalid as having been procured by fraud, coercion, undue influence or such importunity as took away his free agency in the matter?

(iv) Was it duly attested?

On the 7th February 1893 two more issues were framed with reference to plaintiff's averment that defendant had no interest in the estate of the late raja entitling him to intervene in the matter of their application for probate, and to call upon them to prove the will in solemn form. The additional issues are—"whether defendant has any interest in the estate of the deceased raja," and "whether it is competent to the defendant to prove such interest, if any, in this suit." The final hearing was fixed on the 3rd March for the 12th April, and it was also directed that the additional, or the fifth and sixth, issues be tried first. The suit came on for trial before Mr. Justice Shephard on the 19th April 1893, and on that day defendant applied for an adjournment in order that he might bring in the prior will set up by him, and was not ready with his evidence. The learned Judge declined to grant the application on the ground that it was made at the very last stage of the argument. Thereupon, he recorded a judgment, finding the first of the additional and preliminary issues in plaintiff's favour, and decreed that the will dated 3rd June 1892 was the last will and testament of the deceased raja, and that the probate thereof be granted to plaintiffs. Hence this appeal.

Two questions arise for determination in this appeal, viz., whether, apart from the prior will set up by the defendant, there is proof of defendant's interest in the testator's estate, and whether the learned Judge ought to have granted an adjournment to enable defendant to bring in the alleged prior will. As regards the first question, we agree with the learned Judge that, apart from that will, defendant has no interest. It is true that under the will propounded by plaintiffs, defendant is entitled to a legacy of Rs. 1,000, but this circumstance can give him no right to denounce that will and to call for proof of it in solemn form. Another contention on appellant's behalf is that he claims to be also a creditor of the late raja. Adverting to this contention, the learned Judge has observed that in reality there is no evidence that appellant is a creditor of the testator, and even if he is, this will not help him.

The law is clear on this point. In *Hingeston* v. *Tucker*(1) it was held by Sir C. Cresswell that before a person can be permitted

(1) 2 Swaby & Tristrain's Rep., 596.

RAHAM-TULLAH SAHIB v. RAMA RAU.

to contest a will, the party propounding it has a right to call upon him to show that he has some interest. Section 250 of the Indian Succession Act is framed on the same principles. As for the nature of the interest which ought to be proved, it was held in *Kipping* v. *Ash*(1) that the bare possibility of an interest is sufficient. But this possibility should rest on existing facts and not on mere conjecture. In *Crispin* v. *Doglione*(2) it was held by Sir C. Cresswell that the possibility of filling a character which would give the party concerned an interest was not sufficient, but that there must be a possibility of having an interest in the result of setting aside the will. There are also several Indian cases in which an interest was considered necessary and made the subject of inquiry, and we may refer to *In the matter of the petition of Desputty Singh*(3), *Komallochun Dutt* v. *Nilruttun Mundle*(4), *In the matter of the petition of Hurro Lall Shaha*(5), *Nilmoni Singh Deo* v. *Umanath Mookerjee*(6). In *in the matter of the petition of Desputty Singh*(3), and in *Menzies* v. *Pulbrook and Ker*(7) it was decided that a creditor of the testator has no right to contest the will, for the reason that it is indifferent to him whether he shall receive his debt from an executor or an administrator.

There is, however, no doubt that if the defendant proved the prior will, he would have a sufficient interest to contest the will set up by the plaintiffs. The material question, therefore, is whether the defendant was justified in not producing, at the date of the final hearing, evidence to prove the prior will on which he relies. He ought to have been prepared to proceed at once with the case if the sixth issue had been decided in his favour. It is quite possible, however, that he expected that the second preliminary issue would be determined first and hoped to frame his procedure with reference to such determination. Moreover, defendant will be hereafter precluded from proving the will set up by him, as it has been held that when once probate of a will has been granted in solemn form, no one who has been cited or taken part in the proceedings or who was cognizant of those proceedings and stood by, can afterwards seek to have it cancelled. *In re Pitamber Girdhar*(8). We are of opinion therefore that if defendant pays

(1) 1 Robertson's Rep., 270.
(2) 2 Swaby & Tristrain's Rep., 17.
(3) I.L.R., 2 Calc., 208.
(4) I.L.R., 4 Calc., 360.
(5) I.L.R., 8 Calc., 570.
(6) I.L.R., 10 Calc., 28.
(7) 2 Curteis Rep., 846.
(8) I.L.R., 5 Bom., 638.

into Court within one week from the date of re-opening of this Court after the recess all the costs incurred hitherto by plaintiffs both in the Court below and on appeal, the decree of the learned Judge should be setaside and the case remanded for disposal afresh, after giving appellant an opportunity to prove the will set up by him, and that if the appellant fails to make such payment within the time thus allowed, the appeal shall stand dismissed with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

VENKATRAYER (PETITIONER),

v.

JAMBOO AYYAN (RESPONDENT).*

1892. Nov. 25.

Appeal from insolvency order—Code of Civil Procedure—Act XIV of 1882, ss. 588 (17), 589—Act VII of 1888, s. 56—Act X of 1888, s. 3, cl. (a).

Bearing in mind that section 589 of the Code of Civil Procedure was passed to regulate the appellate jurisdiction in appeals from orders, the words 'Court subordinate to that Court' in section 3 of Act X of 1888 must be construed with reference to its appellate jurisdiction. Consequently a District Court has no jurisdiction to hear an appeal from an order in insolvency matters, in a case where it has no jurisdiction to hear an appeal in the suit itself, as when the subject-matter of the suit is more than Rs. 5,000 in value.

PETITION under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of J. A. Davies, District Judge of Tanjore, passed on appeal against order No. 94 of 1891, presented against the order of P. Doraisami Iyer, Acting Subordinate Judge of Tanjore, in insolvency petition No. 2 of 1890 (in connection with original suit No. 36 of 1886).

The defendant in original suit No. 36 of 1886 applied under section 344 of the Code of Civil Procedure to the Subordinate Judge of Tanjore, praying that he might be declared an insolvent, being unable to satisfy his debts, which amounted to over Rs. 9,000. The Subordinate Judge granted the petition. The

* Civil Revision Petition No. 17 of 1892.