

## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice  
Subrahmanya Ayyar.*

1906  
January 18.

CAMANI (FOURTH COUNTER-PETITIONER), APPELLANT,

v.

THE ADMINISTRATOR-GENERAL OF MADRAS AND TWO  
OTHERS (PETITIONER AND COUNTER-PETITIONERS  
NOS. 1 TO 3), RESPONDENTS.\*

*Will, construction of.—Fund specified, liable for debts and expenses even when there  
is a residue undisposed of.*

Where a will directs that the funeral and testamentary expenses should be paid out of a legacy but makes no disposition of the residuary estate, such expenses will nevertheless be payable out of the fund specified and the fact that the testatrix at the time she made the will was not aware that she had a residue to dispose of, will not justify the Court in speculating upon what she would or might have done had she been aware of it, and departing from the express directions of the will, to make a new will for her.

THIS appeal arose out of an application by the Administrator-General in regard to certain provisions in the will of the deceased Mrs. Barefoot.

The provisions of the said will were as follows:—

(a) That all ready money and cash standing to her credit in current account with Messrs. Arbuthnot & Co, or which may be otherwise invested in her sole name alone should be taken by her daughter the said Mrs. F. D. Camani absolutely after payment thereout, of all her, Mrs. Matilda Barefoot's just debts and funeral and testamentary expenses.

(b) That the two houses known as Silver Oakes and Valentine cottage belonging to her in Bangalore, together with all household furniture therein, should be sold and the nett proceeds of such sale equally divided between the said James Joseph Barefoot and Cornelius Aaron Barefoot and Mrs. F. D. Camani her children.

(c) That all jewels and trinkets belonging to her should be distributed between her said children in accordance with certain lists entered by her in a book.

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\* Original Side Appeal No. 9 of 1904, presented against the judgment of Mr. Justice Moore, dated the 15th December 1903, in the Original Testamentary jurisdiction of this Court.

(d) That a sum of Rs. 100 should be paid into a Bank for the benefit of her grandson James Cornelius Barefoot.

There was no disposition of any residuary estate and, at the time of making her will, Mrs. Barefoot was not aware that she was entitled to a sum of Rs. 38,000 and odd as her share of a bequest to her son James Barefoot by her husband, which bequest was subsequently held to be void by reason of James having attested his father's will. It was contended by Mrs. F. D. Camani among other things, that although by clause (a) aforesaid of the will, the legacy to her was charged with the payment of debts and testamentary expenses, the residuary estate was primarily liable.

This contention was disallowed by Moore, J., who held that the fund specified was liable.

Mrs. Camani preferred this appeal.

Mr. *Nugent Grant* for appellant.

Mr. *John Adam* for second and third respondents.

JUDGMENT.—The question we have to decide is whether the funeral and testamentary expenses of Mrs. Barefoot should be paid out of the legacy bequeathed by her to her daughter, or out of Mrs. Barefoot's residuary estate. By her will Mrs. Barefoot directed that these expenses should be paid out of the legacy. At the time she made her will she was unaware that she was entitled to a sum of Rs. 38,000 being her share of a bequest to her son James Barefoot by her husband under his will which bequest was subsequently held to be void by reason of James having attested his father's will. The rule as laid down in *Theobald* on 'Wills' is as follows:—

"It would seem, that if no disposition of the residuary estate is attempted, the proper inference is, that the specific fund is operated for the benefit of the next of kin, and that it and not the residue undisposed of is the primary fund for payment of debts and legacies. See *Milnes v. Slater*(1), *Dacre v. Patrikson*(2), *In re Grainger*; *Dawson v. Higgins*(3)." We think the present case falls within the rule as laid down by Mr. Theobald and not within the exceptions to which the learned author refers. No doubt it may be said that if Mrs. Barefoot had been aware that she had residuary estate to dispose of she might not have directed that her

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(1) 8 Ves., 295,

(2) 1 Dr. & Sm., 186,

(3) (1900) 2 Ch., 775.

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testamentary and funeral expenses should be paid out of the specific bequest. But we are not entitled to speculate as to what the testatrix would or might have done and in effect make a new will for her. We must give effect to the express directions in the will. This appeal is dismissed with costs.

Mr. *James Short*, attorney for appellant.

Mr. *A. E. Rencontre*, attorney for respondent.

## APPELLATE CIVIL.

*Before Mr. Justice Subrahmanya Ayyar and Mr. Justice Benson.*

1906.  
January 18.

SABAPATHY MUDALIAR (DEFENDANT), APPELLANT,

v.

SEETHARAMIAH AND OTHERS (PLAINTIFFS), RESPONDENTS.\*

*Copyright Act XX of 1847, s. 14—Act XXV of 1867—Law under section 14 of Act XX of 1847 same as law in England. No copyright in published work except where copyright registered and subsists.*

The law as settled in England is that in the case of a book which has been published, there is no right to sue for piracy except where the copyright is registered and subsists under statutory provisions.

Copinger on 'Copyright,' pages 23 and 33, referred to.

*Maclean v. Richardson and Goubaud v. Wallace*, (7 Ruling Cases, 66 at pp. 67, 70 and 123 respectively), referred to.

The law is the same in India.

The proviso to section 14 of Act XX of 1847 has not effected any change in the law as stated above and does not protect copyright in published works when not registered under Act XX of 1847 or Act XXV of 1867.

*Macmillan v. Suresh Chunder Deb*, (I.L.R., 17 Cal., 951), distinguished.

SUIT for damages for infringement of copyright and an injunction.

The plaintiffs were the proprietors and authors of the calendars called 'Sarva Moolhoortha Panchangam' which they have been publishing and selling every year since 1902. Prior to 1902, first and second plaintiffs alone were the proprietors and authors. Defendant was the proprietor of a press called the 'Chandrica Press' where the calendar for 1903 was printed for the plaintiffs. In 1904,

\* City Civil Court Appeal No. 4 of 1906, presented against the decree of M.R.Ry. C. Jambulingam Mudaliar, City Civil Court Judge, Madras, in Original Suit No. 100 of 1904.