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qualified persons, and the 195th section of the same Act declares the Court of Wards competent in its discretion to assume or refrain from assuming the superintendence of the person or property of any disqualified person. If, as has been contended, we are to construe the 9th section of Act XXXV of 1858 as conferring on the District Court no authority to appoint a manager of the estate of a lunatic landholder, it follows that, where the Court of Wards abstains from exercising the authority conferred on it and taking charge of the estate, the property of the lunatic will be left unprotected. In our judgment this could not have been the intention of the Legislature, and the language of the Act admits of a reasonable construction which would avoid the anomaly. We consider that the term "in all other cases" applies not only to cases in which no part of the estate would subject the lunatic to the superintendence of the Court of Wards, but also to cases in which the Court of Wards, having authority to assume the superintendence of the property, has not exercised that power. Ordinarily, before appointing a manager in such cases, the District Judge should allow the Court of Wards an opportunity to declare its election, but we can conceive cases in which it may be essential for the protection of the estate that a manager should be at once appointed, and if subsequently the Court of Wards assumed superintendence, the appointment made by the Judge would thereupon be annulled. In the case before us it is not suggested that the Court of Wards has assumed charge of the estate, and we hold that the appointment by the Judge remains valid and entitles the manager to maintain this suit and to verify the plaint.

APPELLATE CIVIL.

1877
August 13.

Before Mr. Justice Pearson and Mr. Justice Turner.

MAN KUAR (PLAINTIFF) v. JASODHA KUAR (DEFENDANT).*

Contract—Consideration—Immoral Consideration—Void Agreement—Act IX of 1872 (Contract Act), ss. 23, 25.

M had for many years lived with G as his concubine. In consideration of such past cohabitation, G, by an agreement in writing dated the 25th March, 1869,

* Regular Appeal, No. 90 of 1876, from a decree of Maulvi Hamid Hasan Khan, Subordinate Judge of Mainpuri, dated the 10th July, 1875.

and duly registered, settled an annuity on *M*, charging a portion of his real estate with the payment of such annuity. *Held*, in a suit by *M* against *G*'s heir, his married wife, to enforce the agreement, that the consideration for the agreement was not, under the law then in force immoral, nor was the agreement, under the same law, void for want of consideration. *Held* also that, before *M* could recover from the defendant on the agreement, it was necessary to show that the defendant had received funds available to meet the claim from the profits of the estate charged with the payment of the annuity or other property of *G*.

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THIS was a suit to establish the validity of an agreement in writing dated the 28th March, 1869, and duly registered, and to recover from the defendant Rs. 442, principal and interest, under the agreement.

The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Sukh Ram* and Babu *Jogindro Nath Chaudhri*, for the appellant.

Mr. *Coulan* and Munshi *Hanuman Prasad*, for the respondent.

The material portion of the High Court's judgment was as follows :

The appellant sued to enforce the provisions of a contract whereby one *Gajadhar Singh*, now deceased, had settled on her an annuity of Rs. 800 secured by a charge on his estate mauza *Lakhnaura*. The appellant had lived for many years with the settlor as his concubine, and there seems no reason to doubt he was attached to her and desired to make a suitable provision for her. The respondent, the married wife of the deceased, pleaded that the deed was void under the provisions of the Indian Contract Act, s. 23, having been executed for an immoral consideration, and if not, that it was void under the provisions of s. 25 of the same Act, it having been executed without consideration, and that the ancestral estate was so much encumbered that its profits were insufficient to defray the charges for interest. The Indian Contract Act had not been passed on the 28th March, 1869, when the deed on which suit is brought was executed. We need not therefore consider whether under the provisions of that Act it would be void. But if the consideration was immoral, as the Court below has held, it would be void under the law administered

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by the Courts of this country before the Act was passed. In our judgment the consideration was not immoral. The annuity was created not in consideration of future cohabitation, which would be an immoral consideration, but to make provision for a woman for whom it was incumbent on the honour of the settlor to make some provision. Nor, as the law stood when the deed was executed, would it have been held that such a contract was void for want of consideration There remains, however, a plea which has not formed the subject of an issue in the Court below. Before the appellant can recover from the respondent, it must be shown that the respondent has received funds available to meet the claim from the profits of Lakhnaura or other property of the deceased. We remand this issue for trial under s. 354.

Cause remanded.

APPELLATE CIVIL.

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 August 3.

Before Mr. Justice Pearson and Mr. Justice Spankie.

MAN SINGH (DEFENDANT) v. NARAYAN DAS AND OTHERS (PLAINTIFFS)*

Res judicata—Act VIII of 1859 (Civil Procedure Code), ss. 2, 139—Trial and Determination of Issues.

A Court of competent jurisdiction, having tried and determined an issue arising in a suit on which the suit might have been disposed of, proceeded to try and determine another issue which also arose out of the pleadings, but the determination of which in that suit was not required for its disposal. *Held* that such Court was not bound under the circumstances to refrain from trying and determining such last-mentioned issue, and that the trial and determination of it could not be treated as a nullity, and the issue could not again be tried and determined in another suit.

THIS was a suit on a bond for money charged on immoveable property. The bond was given on the 10th January, 1864, to one Tula Ram, and charged certain immoveable property. On the 28th January, 1864, the obligees of the bond sold the property

* Special Appeal, No. 681 of 1877, from a decree of Maulvi Maqsud Ali Khan, Subordinate Judge of Bareilly, dated the 25th April, 1877, affirming a decree of Maulvi Abdul Razaq, Munsif of Bisauli, dated the 27th May, 1876.