

1899

BALKISHEN
DAS
W. F.
LEGGE.

humbly advise Her Majesty that the appeal be dismissed. The appellants will pay the costs of it.

Appeal dismissed.

Solicitors for the appellants—Messrs Ranken, Ford, Ford and Chester.

Solicitors for the respondents—Messrs. Young, Jackson, Beard and King.

1899
November 20.

CIVIL REFERENCE.

Before Sir Arthur Strachey, Knight Chief Justice and Mr. Justice Banerji.

CHAND MAL AND OTHERS (APPLICANTS) v. LACHMI NARAIN
(OPPOSITE PARTY).*

Act No. V of 1881 (Probate and Administration Act), section 3—Probate—Will—Document intended to take effect partly in the life-time of the executant and partly after the executant's death.

There is no objection to one part of an instrument operating in presenti as a deed and another in futuro as a will. *Cross v. Cross* (1) referred to.

THIS was a reference under sections 17 and 18 of the Ajmere Courts' Regulation (No. 1 of 1877). The facts out of which it arose appear from the order of reference, which was as follows:—

“The plaintiffs in the above case applied, on the 29th March, 1898, to the Commissioner, Ajmere-Merwara as District Judge of Ajmere, under section 56 of the Probate and Administration Act (V of 1881) for the grant of probate of a document purporting to be the will, executed on the 10th April 1887, of Musammat Gulab Kunwar, widow of Seth Sobhagmal of Kuchawan. The said Musammat Gulab Kunwar died on the following day, *viz.*, on the 11th April 1887, at Ajmere, leaving, as is alleged, assets to the value of Rs. 7,200 at Beowar and Pushkar within the Ajmere District.

“After the application for probate was made the defendant Lachmi Narain, minor son of Seth Har Narain, deceased, of Ajmere, by his guardian his mother Musammat Gopi, lodged a caveat, contending *inter alia* that the will was not genuine, that Musammat Gulab Kunwar had only a life interest in the

* Miscellaneous No. 166 of 1899.

(1) (1846) 8 Q. B., 714; S. C.; 15 L. J., (N. S.) Common Law, 217.

property, which devolved on one Dhanrupmal, cousin of Sobhagmal, the deceased husband of the testatrix Musammat Gulab Kunwar, that the caveator had purchased the property situated at Beowar, and subject to the document of which probate was applied for, at a Court sale in execution of a decree passed against Dhanrupmal the next reversionary heir of Seth Sobhagmal, and lastly, that the document for which probate was asked was not a will, inasmuch as it contained provisions which were to take effect during the life-time of the executrix Musammat Gulab Kunwar.

“The District Court rejected on the 20th May 1898, the application for probate, on the ground that the document was not a will, for the reason given in the caveat.

“An appeal was filed in this Court against the order of the District Judge, and was dismissed by Colonel Yate, Officiating Chief Commissioner, on the same grounds that influenced the Court below, namely, that the document for which the probate was applied did not come within the definition of a will.

“Against the order of this Court, which is dated the 27th of September 1898, the plaintiffs have applied for a reference under section 17 of the Ajmere Courts’ Regulation, to their Lordships of the Honourable High Court at Allahabad. The case is accordingly submitted for the High Court’s consideration, together with a copy of all the important documents connected with it.”

Pandit *Sundar Lal* and Pandit *Madan Mohan Malaviya*, for the applicants.

Babu *Jogindro Nath Chaudhri*, for the opposite party.

STRACHEY, C. J. (BANERJI, J., concurring).—Our answer to this reference is that such portions, if any, of the document propounded, as the Court below, after taking evidence, may hold to be a legal declaration of the intentions of Musammat Gulab Kunwar with respect to her property which she desired to be carried into effect after her death, amount, in our opinion, to a will, within the meaning of section 3 of the Probate and Administration Act of 1881, notwithstanding that the same document may contain other provisions which she desired should be carried into effect during her life-time.

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v.
LACHUMI
NARAIN.

We may refer the Court of the Chief Commissioner to the case of *Doe d. Elizabeth Cross v. Arthur Cross* (1) the effect of which is stated in Jarman on Wills (5th ed., vol. 1, p. 25). It was there held that "there was no objection to one part of an instrument operating *in presenti* as a deed and another *in futuro* as a will."

The costs will be disposed of in accordance with section 20 of the Ajmere Courts' Regulation of 1877. Let the case be returned.

1899
December 22.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.

RAMPAL SINGH (DEFENDANT) v. MURRAY & Co. (PLAINTIFFS).*
Act No. IX of 1872 (Indian Contract Act, Sections 148, 151, 152—Contract—Bailment—Liability of bailee—Liability of guest at hotel in respect of furniture used by him.

The defendant's wife went to stay at a hotel owned by the plaintiffs. While there she was seized with cholera and died. In consequence of the infectious nature of the disease, the plaintiffs were obliged to destroy the furniture which was in the rooms of the defendant's wife, and used by her during her illness. The plaintiffs subsequently sued to recover the value of such furniture from the defendant. *Held* that in the absence of evidence to show that the deceased had not taken as much care of the furniture as a person of ordinary prudence would, under similar circumstances, take of his own goods, the defendant was not liable, having regard to sections 121 and 152 of the Indian Contract Act, 1872. *Shields v. Wilkinson*, (2) referred to.

THE facts of the case sufficiently appear from the order of the Chief Justice.

Pandit *Sundar Lal* and Pandit *Madan Mohan Malaviya*, for the appellant.

The respondents were not represented.

STRACHEY, C. J.—This is a reference to the Court by the Local Government under Rule 17 of the Kumaun Rules, 1894, made under section 6 of the Scheduled Districts Act, 1874. The suit out of which it arises was brought in the Court of the Assistant Commissioner of Naini Tal by the proprietors of the Grand Hotel, Naini Tal, against Raja Rampal Singh. The plaintiffs claimed by their plaint to recover Rs. 580 as due by the defendant

* Miscellaneous No. 246 of 1899.

(1) (1846) 8 Q. B., 714; S. C., 15 L. J., (2) (1887) I. L. R., 9 All., 398.
(N. S.) Common Law, 217.