up to the date of the receipt. The words used are "it shall be presumed until the contrary is shown." Here we have an instance in which the same words in the same Act are qualified by the words "until the contrary is shown." Section 44 of the Land Revenue Act (passed the same day as the Tenancy Act) provides that the entries in the Annual Registers "shall be presumed to be true until the contrary is proved." Section 57 provides that all entries in Records of Rights "shall be presumed to be true until the contrary is shown." It cannot be said that where the Legislature intended the words 'shall presume' to create merely a *primâ facie* presumption it never said so. It is true that the expression 'conclusive proof' occurs in section 9. This section, however, refers to all Courts and not merely to a Revenue Court.

The point involved is one of great importance and of frequent occurrence. After full consideration I have no doubt but that the decision of the Court below was correct, and I also would dismiss the appeal with costs.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

1902
April 5.

CHEDA LAL AND ANOTHER (DEFENDANTS) v. GOBIND RAM (PLAINTIFF).*

Will—Construction of document—"Money"—General personal estate.

Where a testator after clearly indicating an intention to exclude entirely certain of his relations from succession to his property, proceeded to bequeathe his "money" to two legatees, with directions as to its disposal, it was *held* that the intention of the testator being apparently, from a perusal of the whole will, to bequeathe all his personal property to the legatees, it was not necessary to construe the term used in its strict limited signification, but the whole of the testator's personal estate passed. *Cadogan* v. *Palagi* (1) referred to.

THE suit out of which this appeal arose was instituted by Gobind Ram, the surviving brother of one Bhawani Das, who died on the 7th September 1898, to recover from the defendants Cheda Lal and Joti Prasad certain movable property which belonged to Bhawani Das at his death. The defendants claimed to be entitled to possession of the property in question under the

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* First Appeal No. 110 of 1899 from a decree of Maula Bakhsh, Officiating Subordinate Judge of Bareilly, dated the 6th of April 1899.

(1) (1883) L. R., 25 Ch. D., 154.

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provisions of a will alleged to have been executed by the deceased on the 9th of March 1888. The plaintiff in his plaint alleged that this will was a fabricated will, and he claimed the property as the surviving member of a joint Hindu family consisting of Bhawani and himself. The Court of first instance (Subordinate Judge of Bareilly) found that the alleged will was a genuine will, but he held that upon the construction of it the property in dispute did not pass to the defendants, but was undisposed of. He also found that the plaintiff Gobind Ram and Bhawani were not members of a joint family, but were separate. The defendants appealed, urging that, on a proper construction of the will of Bhawani Das, not only money strictly so called passed to them, but all the personal estate of the testator. The terms of the will in dispute, so far as they are material, are set forth in the judgment.

Mr. *R. Malcomson*, for the appellants.

The Hon'ble Pandit *Sundar Lal*, for the respondent.

STANLEY, C.J. and BURKITT, J.—This suit was instituted by Gobind Ram, the surviving brother of one Bhawani Das, who died on the 7th September 1898, to recover from the defendants Cheda Lal and Joti Prasad certain movable property which belonged to Bhawani Das at his death. The defendants claim to be entitled to possession of the property in question under the provisions of a will alleged to have been executed by the deceased on the 9th of March 1888. The plaintiff in his plaint alleged that this will was a fabricated will, and he claimed the property as the surviving member of a joint Hindu family consisting of Bhawani and himself. The learned Subordinate Judge found that the alleged will was a genuine will, but he held that upon the construction of it the property in dispute did not pass to the defendants, but was undisposed of. He also found that the plaintiff Gob nd Ram and Bhawani were not members of a joint family, but were separate. The will contains the following provisions. After a recital that his nephews, Ram Chandar and Dina Nath the sons of Gobind Ram, were separate from him; that they had always been troubling him, and that there was an ill-feeling between them and him, and a recital that according to Hindu Law these nephews would inherit his estate after his death,

the testator thereby excluded them from inheriting his estate and "did not wish to give them a single shell from his property." The will then provides that the defendants, the testator's nephew (sister's son) Cheda Lal, and Joti Prasad, son of Ganesh Prasad, Brahman, who were fond of him and with whom he was pleased, should after his death have all his funeral ceremonies performed with "my money and also with money due to me under bonds which may be realized, and after my funeral ceremonies they should also have my *barsi* and *chaubarsi* performed." Then follows a direction that "if any money is left after the performance of the above-mentioned ceremonies it must be laid out on some religious purpose or in building a *thakurdwara* (temple) by which the testator's soul may be benefited and which was proper according to Hindu law." Then there is the following direction:—"But my nephews aforesaid (brother's sons) neither have nor shall have any right whatever in my before-mentioned property," which reiterates the determination of the testator to exclude these nephews from participating in his estate. Possession of all the movable property of the deceased was made over by the Collector to the defendants as the parties entitled to it under the will which was found amongst the testator's papers. The plaintiff, though he alleged that the will was a fabricated document in the Court below, before us on appeal does not dispute its validity, but he alleges that under the terms of the will only money in the restricted signification of the word passed to the defendants, and he claims the rest of the deceased's property consisting of articles of silver and gold, brass and other metals, wearing apparel, etc., as his heir. The testator appears to have considered that the plaintiff's sons would inherit his property under Hindu law. He may have thought that his brother would predecease him. On the part of the defendants the contention is that the will was a disposition of the entire property of the deceased and that they are universal legatees of it upon the trusts mentioned in the document. There is no doubt that in the absence of explanatory context a word such as "money" should be construed in its strict sense; but terms which in their strict and proper signification apply to a particular species of property, as in this case *rupia*, have been held to embrace the general personal estate of a testator.

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The word money, the equivalent of *rupia* (rupees), is often used in a vague sense as denoting a man's personal or movable property, and it has been so interpreted in several cases. This has been done in cases where a testator has shown a clear intention to make a complete disposition of his property, an intention which could only be carried out by giving a wide interpretation to the word money. We have been referred to an authority which illustrates this, namely, the case of *Cadogan* v. *Palagi* (1). In that case the testatrix, who was possessed of cash securities, leaseholds, furniture and effects, by her will, gave one-half of the money of which she was possessed to her sister Honoria Frances Cadogan, and directed that the remainder should be divided equally between certain other sisters and after them their children. It was held that in construing a will no absolute technical meaning should be given to such a word as money, the meaning of which must depend upon the context, if any, which can explain it, and upon such surrounding circumstances as the Court can take into consideration in determining the construction. It was held in that case that the word *money* passed all the personal estate. Now if anything is clear upon the will before us it is that the testator did not intend to die intestate as to any portion of his property. It is to be observed that the Court always leans against so construing a will as to make a testator die partially intestate. This is what we are asked to do in this case. In the opening words of the will the testator declares that he "excludes his nephews (brother's sons) from inheriting his estate." The word which is translated estate is the word *turka, i.e.,* what is left behind, and that he does not wish to give them a single shell from his "property," the word used for property being *jaidad.* Then follows the direction in favour of the two defendants, and in this, the operative part of the will, he directs that they shall perform his funeral ceremonies with his (the testator's) money, and also with the money due to him under bonds, etc. At the end of the will details of the bonds and decrees outstanding in his favour are given. Now it appears to us that when he used the words "my money" coupled with the words "also money due to me" he meant by the words "my money" something outside and other

(1) (1883) L. R., 25 Ch. D., 154.

than the money due to him upon the bonds and decrees stated in the details contained in the will. What was that money? Undoubtedly, as we have said, he did not intend to die partially intestate, and it appears to us that when he used the words "my money" he intended that that word *rupia* (money) should be synonymous with the words *turka* and *jaidad* which he used in the earlier part of the will, and so dispose of by his will whatever he should leave behind him. In the last direction in the will that his nephews should have no right whatever in his property before mentioned, the testator emphasizes his determination to make a complete disposition. We cannot disregard the very clear intention of the testator to dispose of all his property which appears upon the face of this document. For these reasons we think that the learned Subordinate Judge was entirely in error in the construction which he placed upon the will, and that the defendants are entitled to hold all the testator's property upon the trusts and for the purposes declared by the will. We are not asked to state whether the dispositions of the will in favour of religious purposes or for the building of a *thakurdwara* are valid or not. This is a matter which may have to be determined, but with which we have nothing to do in the present appeal; all that we say is that, having regard to the provisions of the will, the plaintiff is not entitled to dispossess the defendants of the testator's property. We therefore allow the appeal, set aside the decree of the Subordinate Judge and dismiss the plaintiff's suit. As to costs, if the plaintiff had instituted his suit for the purposes of determining the true construction of the will, we should have been disposed to allow him his costs in both Courts out of the estate, because no doubt upon the terms of this will there is a fair question for argument, but inasmuch as he impeached the will in the Court below and alleged that it was a fabricated document, we cannot see our way to allow him costs in the Court below, but we shall allow him his costs of this appeal to be paid out of the estate. The defendants will be entitled to the costs of defending the suit in the Court below and also of this appeal out of the estate.

Appeal decreed.