

1918

GUDDAR MAJ.  
v.  
HET RAM.

of the case, otherwise the rule was likely to be abused by unscrupulous persons.

RICHARDS, C. J., and BANERJI, J.:—In this case the court below refused to allow the fee of the successful respondent's pleader. It appears that the pleader in the case filed a certificate that he had duly received his fee. An affidavit was also filed by a man who purported to be a *karinda* of the respondent, and in this affidavit the *karinda* swore that he had duly paid the fee and that he had not entered into any arrangement to get back the whole or any part of the same. The learned Judge seems to have thought that having regard to rule I, chapter XXI, of the General Rules for Subordinate Civil Courts, the court was not entitled to allow the fee in question. The rule provides that a certificate should be filed by the legal practitioner together with an affidavit made by his client or the latter's "authorized" agent. The word "authorized" does not appear in the corresponding rule of the High Court. It seems the word is rather redundant. A man cannot be the agent of another unless he is "authorized." It is not contended that the authority to pay the fee and to make the affidavit must be in writing. We think that the affidavit in this case *prima facie* at least complied with the rules and, in the absence of other circumstances, the certificate of the pleader accompanied by the affidavit in question was a sufficient compliance with the rule. We allow the appeal and direct that the decree of the court below be amended by allowing the fee of the pleader. As this question was not raised by the opposite party, but by the court itself, we make no order as to costs. As the respondent has not paid court fees, we reject the objection.

*Appeal allowed.*

## TESTAMENTARY JURISDICTION.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

IN THE GOODS OF D MOINTYRE\*.

Act No. I of 1872 (Indian Evidence Act), sections 38 and 45—Foreign law—  
Nature of evidence required to establish a point of foreign law—Will—  
Holograph will executed in India by a person of Scotch domicile.

A holograph will executed in India by a person whose domicile is Scotch is a valid testamentary document.

\* Testamentary Case No. 16 of 1917.

1918

November, 11.

On such a document being propounded, the High Court declined to treat as evidence of the law applicable thereto a treatise on Scots Law, but accepted the opinion (attested before a notary public) of a Writer to the Signet of Edinburgh.

IN this case, on the strength of a notice under section 54 of the Administrator General's Act, 1912, to the effect that Mr. D. MacIntyre, Agent of the Allahabad Bank at Meerut, had died at Meerut on the 29th of May, 1917, intestate, the Administrator General of the United Provinces applied for and obtained from the High Court letters of administration to his estate as in case of intestacy.

Subsequently, however, a document, apparently of a testamentary nature, which had been found amongst the papers of the deceased by the District Magistrate and an official of the Bank, was brought to the notice of the Administrator General. This document, with the exception of the address at the head, was entirely in the hand-writing of the deceased and ran as follows:—  
 "Allahabad Bank, Limited, Meerut, 21st January, 1913. Any property which I possess to be divided equally between my three sisters, Jessie Piercy McIntyre, Helen Anne McIntyre and Mary M. McIntyre, the survivor or survivors. D. McIntyre."

The Administrator General, being of opinion that the domicile of the deceased was Scotch and that the document in question was according to Scotch law a valid testamentary instrument, brought the paper into Court and asked that the previous letters of administration might be amended by the will propounded being annexed. On the first occasion that the matter came before the Court (RICHARDS, C. J., and TUDBALL, J.) he produced (1) evidence as to the hand-writing, (2) evidence as to the domicile of the deceased, and (3) a treatise on the law of Scotland called "Green's Encyclopaedia of Scots Law" as to the validity according to the law of Scotland of a holograph will such as the document produced. The Court accepted the evidence as to the handwriting, but considered that as to domicile insufficient and declined altogether to treat Green's Encyclopaedia as affording evidence as to what was the Law of Scotland on the subject of holograph wills. The case was accordingly adjourned to enable the Administrator General to produce further evidence.

1918

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When the case came again before the Court (RICHARDS, C. J., and BANERJI, J.) the Administrator General produced further evidence as to the domicile of the deceased in the shape of affidavits from persons who had known him and his family in Scotland, together with a certified copy of the deceased's birth certificate, and on the third point a legal opinion from the Hon'ble James William Moncrieff, Writer to the Signet, of Edinburgh. The material portion of that opinion ran as follows:—"By the Common Law of Scotland a holograph will is valid wherever made and needs no witnesses. The person founding on the deed as holograph must prove that it is so either by the evidence of persons who saw it written or by evidence as to hand-writing which satisfies the court."

This further evidence was considered and accepted by the Bench which passed orders as below:—

Upon reading the papers before us including the affidavit of James W. Moncrieff, Writer to the Signet, we are of opinion that the paper-writing, dated the 21st of January, 1913, is in the hand-writing of the deceased D. MacIntyre, and that according to Scotch Law it constitutes a valid will and that the said D. MacIntyre was a domiciled Scotchman at the time of his death. We accordingly cancel the grant of letters of administration previously directed to be issued to the Administrator General and in lieu thereof direct that letters of administration with the aforesaid document of the 21st of January, 1913, as the last will of D. MacIntyre, annexed do issue to the Administrator General.

## APPELLATE CIVIL.

1918

December, 7.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice*

*Sir Pramada Charan Banerji.*

NARAIN DAS (DEFENDANT) v. DILAWAR AND OTHERS (PLAINTIFFS) AND SHANTI PRAKASH (DEFENDANT)\*

*Mortgage—Consideration—Recital in mortgage deed of receipt of consideration—Evidence—Burden of proof.*

Where execution of a mortgage deed has been proved as required by law, an acknowledgment contained therein of receipt of consideration is evidence

\* Second Appeal No. 262 of 1917, from a decree of L. Johnston, District Judge of Meerut, dated the 21st of December, 1916, reversing a decree of Abdul Hasan, Subordinate Judge of Meerut, dated the 29th of June, 1916.