

1934

MUHAMMAD
TAQI
KHAN
v.
JANG
SINGH

enunciated by my learned brother BENNET, J., in the concluding portion of his judgment.

BY THE COURT:—The answer to the first question is in the negative.

The answer to the second question is that it is not open to a mortgagor to say that the mortgage transaction was not for the sum stated therein, but it is open to him to show that he had not in fact received the full amount of the mortgage money.

The third question remains unanswered.

TESTAMENTARY JURISDICTION

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Mr. Justice Bennet*

1935

March, 15

IN THE MATTER OF THE ESTATE OF ALICE SKINNER*

Probate court—Functions of—Questions of title or interpretation arising after grant of probate and in course of administration of the estate—Jurisdiction.

After probate has been granted it is not the function of the probate court to decide questions of title, or of interpretation of the will, arising in course of administration of the estate by the executor; they are matters which should be decided in a regular suit.

Mr. *M. A. Aziz*, for the applicant.

Messrs. *B. E. O'Connor* and *G. S. Pathak*, for the opposite party.

SULAIMAN, C.J. and BENNET, J.:—This is an application against an executor to whom probate has been granted by this Court, calling upon him to render and explain all accounts of the various estates, to deliver to the petitioners their full share in the estate of the deceased, and to deliver possession to them of their share in the movable property. The application winds up by asking for the removal of the executor, or in the alternative for an injunction against him, and for costs. We think that this application is utterly misconceived. It

*Testamentary Case No. 10 of 1923.

is not the function of this Court to decide questions of title or interpret the true meaning of the will. That is a matter which should be fought out in a regular suit. No breach of trust has been alleged in the application except the dispute as regards the applicants' share. We do not think that we can grant the prayers asked for. The application is accordingly dismissed.

1935

IN THE
MATTER OF
THE ESTATE
OF ALICE
SKINNER

REVISIONAL CRIMINAL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Mr. Justice Bennet*

EMPEROR *v.* SAHDEO RAM*

1935
March, 15

Oaths Act (X of 1873), sections 6, 13—Child witness—No exemption from oath or affirmation—"Omission to take oath"—Deliberate omission to administer oath—Criminal Procedure Code, section 423(1)(b)—Appellate court ordering the accused to be committed for trial—Procedure—Fresh proceedings under chapter XVIII not contemplated.

If a child of tender years fulfils the criterion for a witness laid down by section 118 of the Evidence Act, i.e. he is able to understand the questions put to him and to give rational answers to them, then it is obligatory on the court, under section 6 of the Oaths Act, to administer oath or solemn affirmation to him. The Oaths Act does not recognize any criterion that oath or affirmation may be dispensed with because the child, being of tender years, can not understand its significance, although he is sufficiently grown up to be able to understand, and give rational answers to, questions put to him.

Where the court deliberately refrained from administering oath or solemn affirmation to a child witness on the ground that the child could not understand the nature and significance of an oath, the defect was cured by section 13 of the Oaths Act. That section covers both accidental omissions and intentional omissions to administer oath or affirmation.

[*Per* SULAIMAN, C.J.—There may be extreme cases, e.g. where a court defies the law, and knowing that the law requires an oath or solemn affirmation to be given to an adult witness deliberately omits to administer it or prevents the witness from

*Criminal Revision No. 996 of 1934, from an order of V. Mehta, Additional Sessions Judge of Ghazipur, dated the 5th of November, 1934.