pay the same, then the amount shall be realized from my moveable and immoveable properties and from my person."

The District Judge directed the Subordinate Judge before whom the execution proceedings were pending to call upon the surety to produce the judgment-debtor. The surety took no objection to this action on the part of the Subordinate Judge but, before the Sudordinate Judge, asked for time and he got it. Eventually the judgment-debtor was not produced, and on the 27th of March 1900 the District Judge assigned the bond to the present plaintiffs who are now suing upon it. The Court below has decreed the suit.

Two objections are taken by the appellant: *first*, he says that there was no breach of the condition of the bond inasmuch as there was no demand made by the District Judge of Dacca to **[165]** produce the judgment-debtor. There is no substance in this objection. Having regard to the nature of the bond and the circumstances under which the bond was given, the contention that the defendant is not liable to be sued because the District Judge himself did not personally demand the production of the insolvent cannot, I think, be sustained. He authorised the Subordinate Judge before whom the proceedings were pending to make the demand, and he made it, and no exception was ever taken by the defendant to this. The first point fails.

Then it is said that the District Judge had no power to assign the bond to the plaintiffs. I can find no authority for such proposition: nor has any been cited. It was held in the case of *Mingale* v. *Antone Kane* v. *Ramchandra Baje* (1) that that was the proper course to adopt, and I think it was.

I think it would be a useful thing if there was a prescribed form of bond for these cases.

The appeal is dismissed with costs.

GEIDT, J. I concur.

Appeal dismissed.

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[166] ORIGINAL CIVIL.

Before Mr. Justice Harington.

MANORAMA DASSI *v.* KALI CHARAN BANERJEE.*

[31st August and 1st and 3rd September, 1903.]

Hindu law—Will, construction of—Charitable bequest—Residuary bequest—Shebait, appointment of—bequest to poor relatives—Uncertain bequests.

A testator by his will appointed B shebait for life and directed that after B's death the eldest male issue of B, or if no issue, the adopted son of B, or if no adopted son, then such person as B should by deed or will appoint, should become shebait:—

Held, that the limitation to B was valid.

A direction to the executors to set apart a specific sum for distribution among the testator's "poor relations, dependents and servants," is a valid charitable bequest.

Morice v. *Bishop of Durham* (2) distinguished.

Attorney-General v. *Duke of Northumberland* (3) and *Horde* v. *Earl of Suffolk* (4) referred to.

* Original Civil Suit No. 677 of 1901.

(1) (1894) I. L. R. 19 Bom. 694.
(2) (1805) 90 Ves. 522.
(3) (1877) 7 Ch. D. 745.
(4) (1833) 2 Myl. & K. 59.

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Where a testator devised specific immoveable property to C for life only, and further directed his executors to sell the residue of his moveable and immoveable properties and transfer it to a University:—

Held, that the reversion in the property devised to C for life, passed on his death, under the specific residuary devise to the University.

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[Ref. 11 O. C. 271.]

THIS was a suit brought by Sreemutty Manorama Dassi daughter of one Guru Prosanna Ghose, for construction of the will and codicil of her father above named who died on the 18th January 1901 leaving him surviving, the plaintiff, his only daughter and heiress under the Hindu Law. At the time of Guru Prosanna's death he was possessed of considerable property, both moveable and immoveable, partly situated within and partly without the jurisdiction of the High Court.

The will of Guru Prosanna was made and published on the 21st February 1899. He also made and published a codicil on [167] the same date. By his will he devised the premises No. 47 Baniapooker Road to his daughter Manorama for her life, and devised another dwelling house to his nephew, Akhoy Kumar Ghose, with a proviso that should he die without leaving male issue or an adopted son, the property should revert to and form part of his estate. And he directed his executors and trustees to set apart at their discretion a sum not exceeding Rs. 25,000 for distribution among his "poor relations, dependants, and servants," and left the amounts, and persons to be entitled to the benefit of this provision, entirely to the discretion of his executors and trustees.

The testator further provided that after payment of his debts by his executors, and costs likely to be incurred in the administration of his estate, the executors should sell the residue of his landed property, together with his jewellery, furniture, and such securities as he should die possessed of, and make over the same to the University of Calcutta. And the testator further provided in his will that his house No. 18 Hara Lal Mitter's Street should be dedicated to the deity known as Sree Sree Sreedharjee, and appointed his nephew Akhoy Kumar Ghose shebait during his life and after his death to his eldest male issue, or if there be no issue to his adopted son, or if he should not have adopted, to such person as he should appoint by deed or will.

In the month of April 1901, probate of the will and codicil of Guru Prosanna Ghose was granted to the defendant, Kali Charan Banerjee and Akhoy Kumar Ghose the executors appointed under the will; and Akhoy Kumar Ghose took possession of the whole of the testator's estate.

The Calcutta University in their written statement stated that the the bequest of Rs. 25,000 provided for in the will, for the benefit of the poor relatives, dependents and servants of the testator was invalid, and that such sum should become part of the residuary estate of the testator, and submitted that they were entitled to possession of the residuary estate for the purpose of carrying out the trusts for which the estate had been set apart, and they suggested that a scheme should be framed under the direction of the Court for the due performance of these trusts.

[168] Mr. *A. Chaudhuri* (Mr. *Garth* with him) for the plaintiff. The whole of the shebait clause in the will after Akhoy's death is bad for excluding younger sons; *Jatindra Mohan Tagore* v. *Ganendra Mohan*

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Tagore (1), *Gnanasambanda Pandara Sanadhi* v. *Velu Pandaram* (2) *Gopal Chunder Bose* v. *Kartick Chander Dey* (3). If the limitations are void as I submit they are, then I am the shebait. If the provision in the will relating to the sum of Rs, 25,000 is void, I submit, that sum will go to me and not to the University of Calcutta. The moveable property such as horses, carriages, furniture, arrears of rent, and shares in companies cannot go to the University ; *Ogle* v. *Kinpe* (4), *Chitty* v. *Maitland* (5). I submit that the bequest of Rs. 25,000 is a void bequest ; *Joseph Ezekiel Judah* v. *Ezikiel Judah* (6), *Dwarkanath Bysack* v. *Burroda Parsaud Bysack* (7), *Bai Bapi* v. *Jamnadas Hathisang* (8). Furniture does not include watches and other articles which do not come under the ordinary definition of furniture; *Manton* v. *Tabois* (9).

Mr. *S. Bonnerjee* for the Calcutta University. According to the testator's will, it was his intention to make the University a residuary legatee : *Morice* v. *Bishop of Durham* (10), *Runchordas Vandrovandas* v. *Parvatibai* (11). If the gift of Rs. 25,000 is bad it would fall into the residue and come to the University. Household furniture comprises all properties kept in the house, whether for use or ornament: *Cole* v. *Fitzgerald* (12), *Cremorne* v. *Antrobus* (13).

Mr. *Chakravarti* (Mr. *Pugh*, *Offg. Advocate-General*, and Mr. *Sinha* with him) for the executors. The gift of Rs. 25,000 in the will is, I submit entirely for charity and is not void; *Horde* v. *Earl of Suffolk* (14), *Waldo* v. *Caley* (15), *Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore* (1), Theobald on Wills, **[169]** 5th Edn., p. 335, para. 3. The Court can carry out the general charitable intention of the testator by directing a scheme for that purpose with regard to the gift of Rs. 25,000: see Theobald on Wills, p. 333.

Mr. *Garth*, in reply. The bequest of Rs. 25,000 is void for uncertainty : see *Hunter* v. *Attorney-General* (16), and Theobald on Wills, 5th Edn., p. 664. All that the devisees can get is what the testator intended to give ; but the heir takes by intent of law. It can never be said here that the testator intended that the devisees should get the sum of Rs. 25,000 : *St. Barbe Tregonwell* v. *John Sydenham* (17), *Gravenor* v. *Hallum* (18), *Springotti* v. *Jenings* (19).

Cur. adv. vult.

HARINGTON, J. Guru Prosanna Ghose died on the 18th January 1901, leaving the plaintiff his only daughter surviving him.

The present suit is brought for the purpose of determining certain questions which arise on the construction of his will.

The first question is with reference to a devise of a house No. 47, Baniapooker Road. It is directed that the plaintiff shall be entitled to the rents and profits of that house for her life subject to her keeping the same in repair ; the rates and taxes having to be paid out of the testator's estate. No express provision is to be found in the will as to what will happen to the house in question on the determination of the plaintiff's

(1) (1872) 9 B. L. R. 377.
(2) (1899) I. L. R. 23 Mad. 271.
(3) (1902) I. L. R. 29 Cal. 716.
(4) (1869) L. R. 8 Eq. 434.
(5) (1896) 74 L. T. R. 274.
(6) (1870) 5 B. L. R. 433.
(7) (1878) I. L. R. 4 Cal. 443.
(8) (1897) I. L. R. 22 Bom. 774.
(9) (1885) 30 Ch. D. 92, 97.
(10) (1805) 10 Ves. 522, 532.
(11) (1899) I. L. R. 23 Bom. 725 ; L. R. 26 I. A. 71, 80.
(12) (1823) 1 Sim. & St. 189.
(13) (1828) 5 Russ. 312.
(14) (1833) 2 Myl & K. 59.
(15) (1809) 16 Ves. 206.
(16) (1899) A. C. 309.
(17) (1815) 3 Dow. 194, 210.
(18) (1767) 2 Amb. 643.
(19) (1871) L. R. 6 Ch. App. 333.

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life estate, but there is a provision directing the executors, after carrying out the provisions of the will, to sell the residue of such of the estate as consists of landed property and to make over the proceeds thereof to the University of Calcutta. In my opinion the reversion in No. 47, Baniapooker Road, expectant on the determination of the plaintiff's life interest passes under the specific residuary devise in favour of the University of Calcutta, and that the executors must sell the same and apply the proceeds as directed in the provisions of the will in favour of the University of Calcutta.

[170] The second question that arises is as to what provision is to be made for the plaintiff's residence in the testator's family dwelling house. His will contains this provision :—" My daughter, and the widow of my nephew Dwijendra Kumar Ghose if she continues to lead a virtuous life, shall be at liberty to live in the said house during their respective lives and have suitable rooms set apart for their residence.

The executors have undertaken to provide suitable rooms for the plaintiff ; no order therefore will be made as to that but if the parties should disagree as to the suitability of the accomodation provided by the executors, they must apply to the Court and then a reference will be ordered.

The third question which arises is as to the location of the *Thakur*. The testator, after dedicating a house to the service of the *Thakur*, provides :—" The said deity shall be located in my house and duly worshipped." In my opinion " my house " refers to the family dwelling-house in which the *Thakur* was located. Therefore the answer to the third question is that the *Thakur* is to be located in the family dwelling-house.

The fourth question which arises is as to a disposition which the testator has made for the purpose of endowing a shebaitship.

It is contended that this disposition is void under the Hindu Law as offending against the rules laid down in the *Tagore case* (1).

The testator appointed his nephew Akhoy Kumar Ghose a *shebait* for life and after his death directed that if he left a son or adopted son, that son or adopted son should be the *shebait*. Then comes a proviso preferring the eldest to younger sons and giving Akhoy Kumar Ghose a power of appointment by deed or will. Akhoy Kumar Ghose has a son who is not a party to these proceedings. The limitation to Akhoy Kumar Ghose is perfectly valid, and the limitation to the son who is now alive is equally valid.

In the present suit the question as to what may be the effect of these limitations in the event of Akhoy Kumar Ghose dying and leaving no children, without exercising the power of appointment conferred upon him, cannnot be now decided ; first, because one of **[171]** the parties to whom the *shebaitship* is limited is not before the Court ; and, secondly, because it is not the practice of the Court to decide questions which may arise on a contingency which has not yet happened and may never happen. The question as to the legal effect of the testator's will, as far as it establishes the *shebaitship* is not yet ripe for decision, because the question as to whether it is or is not valid, it is conceded, could only arise on a contingency which has not yet come to pass.

The next question which has arisen is whether a devise of Rs. 25,000 is void for uncertainty. The devise is in these terms:—"I also direct

(1) (1872) 9 B. L. R. 377.

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that my executors and trustees shall at their discretion set apart a sum not exceeding rupees twenty-five thousand for distribution amongst my poor relatives, dependants and servants, the amounts and the persons who may be entitled to the benefit of this provision shall be entirely at the discretion of the executors whose decision shall be final." It is contended that that devise is void for uncertainty, and reliance is placed on the case of *Morice* v. *Bishop of Durham* (1). In that case the question was whether a devise could or could not be supported as a charitable gift, and it was decided in that case that it could not. If the present devise cannot be supported as a charitable gift, then it will be void for uncertainty. If, on the other hand, it can be supported as a charitable gift, then the authorities show that it will not be void for uncertainty.

In interpreting the words of the devise I am bound, I think, to interpret them if I can in favour of a valid bequest, rather than in favour of an intestacy. If the word "poor" is taken as referring not only to the word relatives, but to the words servants and dependants which follow, the bequest can be supported as a charitable bequest. Gifts to poor relatives have been supported as charitable gifts, see, for example, the case of *Attorney-General* v. *Duke of Northumberland* (2), and the cases cited in the judgment in that case, and if a gift to poor relatives can be supported, it appears to me a gift to poor dependents and poor servants can equally well be supported.

Without doing violence to the language of the will, I think I may take the word "poor" to apply to all classes of persons to [172] whom the testator expressed his wish to extend his charity, and in construing the devises I hold the gift of the Rs. 25,000 is a charitable gift. That being so, it is very like the devise in the case of *Horde* v. *Earl of Suffolk* (3), and it will be given effect to notwithstanding the very wide discretion which the testator has given to his executors.

The last question which arises on the will, is what is the residue which is given to the Calcutta University. The residuary devise in favour of that body is in these terms :—" I direct that my executors shall, after payment of all my just debts and making due provisions for the objects hereinbefore mentioned, and the costs they are likely to incur in the administration of my estate, sell the rest and residue of such of my estate as consists of landed properties and my jewellery and furniture and make over the proceeds thereof and all moneys or securities for money of which I may die possessed to the University of Calcutta for the following purposes." Then follows a clause which it is unnecessary to specify.

On behalf of the Calcutta University it was contended that this devise covered in effect all the testator's moveable property. It was argued that the words used shewed that he had intended to enumerate all the moveable property he had got to dispose of and that effect should be given to that intention. That argument cannot be supported. It would be in effect making a new will for the testator and disposing of property which he has not thought proper to enumerate. Among the property it is stated that there was menagerie, there were horses and carriages and watches and clocks ; these would not pass under the specific residuary devise which I have just read. It is contended that a watch would pass under a bequest of jewellery. I do not agree with this

(1) (1805) 10 Ves. 522.
(2) (1877) 7 Ch. D. 745.
(3) (1838) 2 Myl. and K. 59.

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submission. A watch set in a lady's gold bracelet or a watch set with gems might possibly be included in jewellery. But a watch which neither consists of precious stones nor is made of precious metal would not come within the description of jewellery, and a watch need not be made of precious metal, and need not have, and usually has not, precious stones to adorn it. Pictures hanging on the walls, I agree, would pass under the bequest of furniture, as they are articles in use for the purpose of adorning the house on whose [173] walls they are hung. The other articles referred to, *viz.*, brass and bell metal utensils, silver plates used on ceremonial occasions, the clothes and the arrears of rent, do not come within the articles enumerated in the residuary bequest.

A question has arisen as to certain shares in joint-stock companies. They in my opinion, so far as they are not secured on the property of the company by way of debentures, do not fall within the description of securities for moneys. Such shares as are secured by mortgage on the property of the company do come within the description of securities for money. That description does not apply to the case of ordinary preference shares of a joint stock company. It was suggested, without being pressed in course of the discussion on the construction of this will, that the Court should direct what property the trustees were to set apart for the purpose of raising a yearly sum to be applied for certain religious purposes, and it was suggested that a scheme might be framed ; but I do not think it is necessary for the Court to interfere with the discretion of the executors. The testator selected gentlemen in whose good sense he presumably had confidence. I do not think the Court should interfere with the exercise of their discretion, unless it is shown that the discretion is being improperly exercised. There has been no suggestion of that in the present case.

The costs of all parties must be paid out of the testator's estate.

[Mr. S. *Bonnerjee*. Will there be any direction to frame a scheme as to the University ?]

It was not pressed before me. There will be liberty to apply if the parties cannot agree, or in case there is any disagreement afterwards.

Attorney for the plaintiff: *H. N. Dutt.*

Attorney for the executors: *B. N. Bose.*

Attorneys for the Calcutta University: *Sanderson & Co.*

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31 C. 174 (=9 C. W. N. 87.)

[174] APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Pargiter.

SURENDRA NARAIN SINGH v. HARI MOHAN MISSER.*

[1st June, 1903.]

Indigo—Manufacture of Indigo—Agricultural purpose—" Purposes of the tenancy "—Injunction—Specific Relief Act (I of 1877), s. 54, Illus. (k)—Bengal Tenancy Act (VIII of 1885), ss. 23, 25 (a), 188.

The manufacture of indigo cakes from indigo plants is not an agricultural purpose.

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* Appeal from Appellate Decree No. 1780 of 1900, against the decree of F. Mac-Blaine, District Judge of Purneah, dated Aug. 16, 1900, reversing the decree of Chakradhar Prosad, Subordinate Judge of that district, dated Sept. 30, 1899.