

CASES

DETERMINED BY

THE HIGH COURT OF JUDICATURE, AT FORT WILLIAM IN BENGAL,

IN ITS

ORIGINAL JURISDICTION.

CIVIL.

Before Mr. Justice Phear.

1866
July 4.

SRIMATI JAYKALI DEBI v. SHIBNATH CHATTERJEE.

Hindu Executor—Probate.

Government Promissory Notes belonging to the estate of a deceased Hindu were endorsed over, without consideration, by A (who had taken out probate of a forged Will, and was acting under the same as executor) to B, who received the same *bonâ fide*, but without due inquiry; and on obtaining a renewal of the same, endorsed the renewed Paper back to A, for the purpose of enabling him to raise money thereon, believing that A had a right so to do. *Held*, that B was liable to account to the representatives of the deceased for the value of the said Promissory Notes as assets of the deceased come into his hands.

The property in the moveable estate of a deceased Hindu does not pass to his executor, as such.

This suit was brought by Jaykali Debi, as widow and heiress of one Ramgopal Banerjee, late a Hindu inhabitant of Calcutta, against Shibnath Chatterjee, Madhusudan Banerjee, Jadunath Chatterjee, and Biswanath Haldar, for an account as against Shibnath Chatterjee, of the estate of the deceased Ramgopal Banerjee, and for a declaration that the other defendants (who were charged with receiving portions of the estate in fraudulent collusion with the first defendant) were trustees for the plaintiff of such portions of the estate of the deceased as had come into their hands respectively. The suit was withdrawn as against Biswanath Haldar, with liberty to bring a fresh suit.

1866

SRIMATI JAY-
KALI DEBI
v.
SHIBNATH
CHATTERJEE.

It appeared on the evidence, that Shibnath Chatterjee, after the death of the testator, set up, in combination with Madhusudan Banerjee, a forged document, purporting to be the last Will of the said Ramgopal Banerjee, and obtained probate of the same in 1860, shortly after the death of Ramgopal, and acted as executor under the same until it was set aside by a decree of Mr. Justice Phear, on the Testamentary and Intestate side of the High Court, on the 7th February 1866.

The defendant, Shibnath Chatterjee, while acting as executor, endorsed over certain Government Promissory Notes to the defendant, Jadunath Chatterjee, his cousin, (then a young man under 20 years of age), and desired him to procure new Notes from the Government Treasury in his own name and re-indorse the same to the said Shibnath Chatterjee, and the said Shibnath Chatterjee alleged, as a reason for this proceeding, that he had occasion to raise money on the said Promissory Notes, but that the Bank of Bengal would not advance money upon his indorsement as executor.

Two pieces of Government Paper which had formed part of the estate of the deceased, had been handed into Court by Madhusudan, and other papers handed into Court were identified as having also formed part of the estate of deceased.

Mr. *Woodroffe* for the plaintiff.

Mr. *Low* for the defendant, Madhusudan Banerjee.

Mr. *Graham* for Jadunath Chatterjee.

The judgment of the Court was as follows :

PHEAR, J.—This suit is the natural sequel to that which was brought before me a few months ago on the Ecclesiastical side of this Court, and during the course of the present trial I have seen very much to assure me of the correctness of the conclusion to which the Court then arrived, namely, that the Will propounded by Shibnath Chatterjee as the Will of his father-in-law, Ramgopal Banerjee, was not in fact his Will. It is conceded that under the judgment then given, standing, as it does, unreversed, Shibnath Chatterjee is bound to account to the plaintiff for all the assets of Ramgopal which came to his hands

The usual decree will, therefore, be made against him with the declaration that all the Government Paper which has been marked in Court, did form part of the intestate's estate in Shibnath's hands.

1866
 SRIMATI JAY-
 KALI DEBI
 v.
 SHIBNATH
 CHATTERJEE.

It follows, as a matter of course, that Madhusudan must be made responsible for the two pieces of Paper endorsed to him by Shibnath, as executor of the alleged Will. He put himself forward as having been a witness to the publication of that Will by Ramgopal, and by his false testimony in Court, and his signature on the document, supported Shibnath's (for a time successful) fraud. It is not necessary to determine the exact point of time when he first became implicated in the transaction. Probably he was so at the earliest period, if he was not the actual originator of the scheme. At any rate, he cannot be allowed to draw advantage from the character conferred on Shibnath by the revoked probate while it remained in force, because he himself was an active party in obtaining that probate from the Court by fraud and deceit. But, further, I disbelieve the account which he gives of the mode in which he became possessed of the two pieces of Paper, and I do not doubt that they form part of the plunder of Ramgopal's estate which fell to his share in consideration of the all important aid afforded by him towards setting up the pretended Will. It must be declared that those two pieces of Paper formed part of Ramgopal's estate in Madhusudan's hands, and he must account for them at their then value with the interest borne by them, and for all premiums or bonuses which may have been derived by the sale of them or otherwise.

As to the case of Jadunath Chatterjee, I have felt considerable doubt. He gave his evidence in the witness box in a very trustworthy manner, and I accept his story as true. According to his representations the part which he took in the dealings with the intestate's estate was entirely free from any dishonest intention. He was, at the time a young man not 20 years of age, and but lately come from School or College. He was also a near relation of Shibnath's, possessing implicit faith in the latter's integrity and ability in business matters, and probably I might add a becoming consciousness of his own inexperience.

1876

SRIMATI JAY-
KALI DEBI
v.
SHIBNATH
CHATTERJEE.

In this situation Shibnath came to him, and stated that he wanted money to meet the necessary expenses for the management of the deceased's estate, and that he had tried to obtain it from the Bank of Bengal on deposit of Comyany's Paper belonging to Ramgopal, but that the Bank would not accept an executor's endorsement. Under these circumstances, Shibnath proposed to endorse the paper to Jadunath, with the view to Jadunath's obtaining a renewal of it in his own name and then endorsing the renewed Paper back to Shibnath. In this way he, Shibnath, would obtain Paper of value equal to that of the original, disembarassed of any special title, which he could deal with, independently of his representative character. Jadunath without hesitation or suspicion acceded to his cousin's proposition. Shibnath obtained the clean Paper, and I need hardly add, as soon as he obtained it, applied it to his own purposes, and thus fraudulently wasted the estate to an enormous extent. Jadunath's part in the transaction appears then to amount to this. With full knowledge of the trust, he enabled Shibnath to convey to strangers without notice. This being so, to whatever extent, notice of the trust could have operated to protect the estate, to that extent I must hold Jadunath responsible for the waste which has ensued.

Here the question presents itself, would notice of the trust have affected strangers taking under it? In other words, could a stranger take Government Paper under endorsement from a Hindu executor of the last endorsee as such, without enquiring into the executor's power of dealing with it? I suppose it is now clear that probate does not confer, upon the executor or a Hindu Will, any personal rights of property analogous in any way to an English estate or interest. The Will gives him just such powers of dealing with the property comprehended in it, as its words express, and no more. Beyond the scope of the will, and so far as he is not constructively restricted by its directions, it may be that he has the powers which are implied in the bare authority of a manager during minority; but these are all he can claim. At any rate, this doctrine seems to have been laid down with regard to immoveable property in the case of *Sreemutty Dossee v. Tarachurn*

Chondoo Chowdry (1), by which I readily admit myself bound to be guided. It follows that a stranger would not be allowed with impunity to take immoveable property from an executor, unless he could show that he had previously satisfied himself by reasonable enquiry that the alienation was justified either by the directions to be found in the Will or by the exigencies of the estate (see *Honeeman Prasad Panday v. Mussamat Babooee Manraj Kunwaree*) (2). Now I apprehend that moveable property is, without doubt, according to Hindu law, in the same predicament as immoveable property. Unless then Government Paper stands in some exceptional position, I must say that Jadunath (innocent as I consider him to have been in intention) took the paper with the executor's trust upon it, and although, in one sense he did not waste the property himself, yet having become responsible for the due administration of so much of it as passed through his hands, he must answer for the waste which by his re-conveyance to Shibnath he enabled the latter to effect, unless he can show that he was deceived into supposing that Shibnath was acting within his powers. And if any distinction exists in favor of Government Paper, it must rest upon some principle which will lead a Court of Equity to refrain from enforcing a trust, rather than that any impediment should be placed in the way of the free transfer from hand to hand of this particular form of proprietary right. Such would be the case, probably, if it *de facot* formed part of the currency of the country. But it does not, in any sense, occupy this position, and I am not aware of any reason which would cause a Court of Equity to treat Government Paper, as it is commonly termed, differently from private Promissory Notes passing by endorsement. The contract which is expressed on the face of the two documents respectively, is the same in each, and the benefit of it is assignable in like manner in both instances. I am unable to detect any special equity as attaching to the bare fact that the Governor General in Council is the promisor. Now obviously the benefit of a contract which is to be rendered in money, is strictly property, and

1866

SRIMATI JAY-
KALI DEBI
v.
SHIBNATH
CHATTERJEE.

(1) Bouke, Pt. VII., 48.

(2) 6 Moore, I, A., 393.

1866

SRI MATI JAY-
KAL DEBI
SHIRNATH
CHATTERJEE.

I can discover no reason resting on the nature of the subject, why an executor should have the power of conveying property of this kind away from the estate when he would be powerless to give a good title in respect of any other. I conceive then that the restrictions on a Hindu executor's power of alienating the testator's property laid down in *Sreemuttj Das v. Taracharan Coondoo Chowdry* (1), apply to his power of assigning away any contract; and, therefore, as a particular case to his power of passing by endorsement a Bill of Exchange or Promissory Note; and I must, therefore, treat Jadunath as at least bound to assure himself that Shibnath was justified in realizing so much of the Government Paper as he took part in converting into money. Now, Jadunath admits that he made no enquiry whatever on this point. Doubtless, had he done so *bonâ fide*, and been misled by Shibnath's representations and by anything that appeared in the pretended Will, he might have been exonerated in a Court of Equity from liability for the constructive trust; or again, even in the absence of enquiry on his part, had Shibnath, in fact, possessed rightful authority to deal, as he did, with the Paper, there would have been no residual liability which could attach to Jadunath, notwithstanding his imprudent want of caution in the mode in which he implicated himself in the trust. But neither of these circumstances occurred. The supposed Will was only so much waste paper, and the powers, slight as they were, which it purports to confer on Shibnath, were absolutely worthless. It is not contended that outside the Will, Shibnath had any justification for selling the large amount of Paper which Jadunath took from him. In truth, it must be admitted, that whether the Will stood or not, Shibnath's act, to which Jadunath was privy, was one of pure waste; and as I have already said, Jadunath is under the circumstances unable to claim the protection which a reasonable enquiry might possibly have obtained for him. On the whole, then, I find myself obliged, however reluctantly, to declare that all the Government Paper endorsed by Shibnath to Jadunath was

(1) Bourke, Pt. VII., 48.

in the hands of the latter, assets of the deceased for which he must account, and which he is liable to make good to the estate (1).

Attorneys for the plaintiff : *Messrs. Owen and Bonnerjee.*

Attorneys for Shibnath Chatterjee : *Messrs. Beeby and Rutter.*

Attorneys for Jadunath Chatterjee : *Messrs. Swinhoe Law, and Co.*

Attorneys for Madhusudan Banerjee : *Messrs. Curruthers and Co.*

1896.
SRIMATI JAY-
KALI DEBI
v.
SHIBNATH
CHATTERJEE.

Before Mr. Justice Markby.

SHEIKH FAIZULLA v. RAMKAMAL MITTER.

1868

Nov. 17.

Principal and Agent—Liability of Banian—Custom.

There is a presumption in Calcutta that where a vendor of goods deals with a banian of an European firm, *quod banian*, he can only look to the banian for the price.

Paliram and Bydonath v. Paterson (2), and *Grant, Smith, and Co. v. Jugobandur Shero* (3) followed.

THIS was a suit to recover the sum of Rs. 1,894-8, being the balance of the price of certain goods which the plaintiff alleged had been sold and delivered by him to two of the defendants.

The plaintiff was a dealer in hides, carrying on business in Calcutta. The defendant, Ramkamal Mitter, carried on business in Calcutta, as a trader and banian, and the other defendants were the members of the firm of D. McMurphy and Co., also carrying on business in Calcutta, as merchants and agents.

The defendants, Messrs. McMurphy, in their written statement, denied that there was any privity of contract between them and the plaintiff. They alleged that at the time the alleged transaction took place, Ramkamal Mitter was their banian ; and that he bought the goods, as such ; that they never authorized Ramkamal Mitter to pledge their credit for any goods

(1).—From this decision the defendant, Jadunath Chatterjee, appealed on two grounds :

1st.—That the judgment was erroneous, inasmuch as neither fraud nor breach of trust was proved against him, but the Court in effect found that he had acted *bona fide*.

2nd.—That the Court was in error in holding that the appellant had assisted the said Shibnath Chatterjee to effect a breach of trust which could not have been effected without a transfer of the nature described in the evidence, and that without a transfer and a renewal of

the Government Security in his own name, the said Shibnath Chatterjee could not have effected the breach of trust in question. Whereas the said Shibnath Chatterjee could, as executor, have obtained a renewal of the Government Security in his own name, or could, as executor, have made a good title to a purchaser.

On the 28th September 1866, the appeal was dismissed with costs, and the decree of the Court below affirmed.

(2) 2 Boulois, 203.

(3) Bourke, Pl. VII., 17.