

ORIGINAL JURISDICTION.

Longbottom *against* Satoor and others.

A testatrix bequeathed the interest of a Government Promissory Note to "The Calcutta Armenian Orphans, College Funds for the relief and enjoyment of the poor families, widows, orphans and schools of the Armenian nation," to be received half-yearly by the wardens of the funds for the time being. Although there was a charity in Madras called "the Armenian Orphans" College, there was none in Calcutta or elsewhere answering the description of the Calcutta Armenian Orphans' College, but there were two and only two charitable institutions in Calcutta, which provided for the relief and enjoyment of the poor families widows, orphans and schools of the Armenian nation. Of these one, the Church of St. Nazareth, distributed money amongst and gave relief to the poor families, widows, and orphans of Armenian community, and the other, the Armenian Philanthropic Academy, educated gratuitously the poor and orphans of the same community. The note was invested by order of the Court, and there had been a large accumulation of interest thereon. The governors of the two institutions concurred in asking that each should receive a moiety of the accrued and future interest of the fund:—*Held* that the cypres doctrine applied that the accumulated interest should remain invested; but that the accruing interest on the accumulated fund should be paid half-yearly, one moiety to the wardens of St Nazareth's Church and the other to the managers of the Armenian Philanthropic Academy.

STOKES moved before Bittleston, J., in Chambers, on behalf of Carrapiet Arratoon Vertannes, Arratoon Manatsacan Vardon, Johannes George Bagram and Seth Arratoon Apcar, all of Calcutta, for an order according to the prayer of their petition, filed in this cause on the 28th February 1863. The petition, which was supported by affidavits, stated as follows:

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By her will, dated the 25th day of January 1832, Coromseema Eleazar Lambruggen, late of Negapatam, deceased, the widow of Robert Henry Lambruggen deceased, bequeathed to "*the Calcutta Armenian Orphans' College Funds for the relief and enjoyment of the poor families, widows, orphans and schools of the Armenian nation,*" the sum of 10,500 Sicca Rupees in a Promissory Note of the new 4 per cent. loan No. 21 of 1832-33, dated 1st May 1832, the interest of which alone to be received half-yearly by the wardens of the said funds for the time being and applied to the purposes therein specified.

The testatrix appointed the Armenian Orphans' College at Madras (which she called "the Madras Armenian Orphans' College Funds") her residuary legatees, and died on the 21st day of May 1833 without having revoked or altered her said bequest. The will was proved in the same year.

On the 5th day of March 1834, the bill in the cause abovementioned was filed in the late Supreme Court of Judi-

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catre at Madras, by two of the executors in the said will mentioned, for the administration of the estate of the testatrix.

By the decree dated the 28th day of July 1835, made by the Supreme Court in the cause abovementioned, it was ordered that the Sub-Treasurer of Fort Saint George at Madras with the privity of the Accountant General of the Supreme Court should carry to the credit of the cause, to an account to be entitled "*The legacy to the Calcutta Armenian Orphan's College Funds,*" the said Government Promissory Note together with the sum of Madras rupees 871-1-4, being the amount of interest on the Promissory Note applicable to the purposes of the said charity, and that the same, together with all interest from time to time accruing on all the funds standing to the credit of the last mentioned account, should be invested for the purpose of accumulation subject to and until the farther order of the Court.

In pursuance of the decree the Promissory Note, together with the sum of Madras rupees 871-1-4, was carried to the account aforesaid, and the interest from time to time accruing on the same funds has been duly invested for the purpose of accumulation.

The funds now standing to the credit of the said cause to the account aforesaid amount to the sum of rupees 36,311-14-7, consisting of the sum of rupees 35,199-8-0 in Government Promissory Notes or Securities of the Government of India and the sum of rupees 1,112-6-7 in cash.

There is not now and never has been any charity answering the description of "*The Calcutta Armenian Orphans' College Funds.*"

There *are* at Calcutta in the East Indies *two* charitable institutions only which provide for the relief and enjoyment of the poor families, widows, orphans and schools of the Armenian nation, namely, the Armenian Church called "*St. Nazareth's Church,*" which distributes money amongst and gives relief to the poor families, widows and orphans of the Armenian community, and "*the Armenian Philanthropic Academy,*" which educates gratuitously the poor and orphans of the same community.

The petitioners submitted that under the circumstances <sup>1863.</sup> Oct. 28, Nov. 7 hereinbefore appearing, the said charitable legacy given by the will of the testatrix ought to be applied to charitable purposes having regard as near as might be to the objects intended by her by the said specific bequest to the Calcutta Armenian Orphans' College Funds, and that St. Nazareth's Church was entitled to a moiety of the funds representing the said legacy, and that the Armenian Philanthropic Academy was entitled to the other moiety.

The petitioner Carrapiet Arratoon Vertannes was the warden of Saint Nazareth's Church, and as such warden entitled to receive and give discharges for all legacies to the same Church, and the petitioners A. M. V. Johannes, G. Bagram and S. Arratoon Apar were the managers of the Armenian Philanthropic Academy, and as such managers entitled to receive and give discharges for all legacies to the same Academy.

The prayer of the petition was that if the Court should be of opinion that the charitable legacy given by the testatrix's will to the Calcutta Armenian Orphan's College Funds ought to be applied to charitable purposes having regard as nearly as might be to the objects intended by the testatrix by the said bequest, the Secretary and Treasurer of the Bank of Madras with the privity of the Accountant General might be ordered to pay to the petitioner Carrapiet Arratoon Vertannes as warden of the Church of Saint Nazareth, or to his attorney or attornies in that behalf, one moiety of such part or parts of the funds now standing to the credit of the said cause to the account aforesaid as represented the said sum of Madras Rupees 871-1-4, and the interest on the Promissory Note for Sicca Rupees 10,500, to be applied by Carrapiet Arratoon Vertannes for the sustenance and relief of the orphans of the Armenian community at Calcutta, and that the Secretary and Treasurer of the Bank of Madras with the privity of the Accountant General might be ordered to pay to the petitioners Arratoon Manatsacan Vardon, Johannes George Bagram and Seth Arratoon Apar, as the managers of the Armenian Philanthropic Academy, or their attorney or attornies in that behalf, the other moiety of such part

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or parts of the same funds as last aforesaid, to be applied by them the said Arratoon Manatsacan Vardon, Johannes George Bagram and Seth Arratoon Apcar, for the education of the orphans of the Armenian community at Calcutta; and that the Secretary and Treasurer of the Bank of Madras with the privity of the Accountant General might be ordered to pay to the petitioner Carrapiet Arratoon Vertannes, or other the warden or wardens for the time being of St. Nazareth's Church, or his or their attorney or attorneys in that behalf, one moiety of the interest from time to time to accrue due on the Promissory Note to be by him or them applied for the sustenance and relief of the orphans of the Armenian community at Calcutta, and that the said Secretary and Treasurer of the Bank of Madras with the like privity of the Accountant General might be ordered to pay to the petitioners Arratoon Manatsacan Vardon, Johannes George Bagram and Seth Arratoon Apcar or other the managers or manager for the time being of the Armenian Philanthropic Academy, or their or his attorney or attorneys in that behalf, the other moiety of the interest from time to time to accrue due on the Promissory Note, to be by the said Arratoon Manatsacan Vardon, Johannes George Bagram and Seth Arratoon Apcar, or other the manager or managers for the time being of the Armenian Philanthropic Academy, applied for the education of the orphans of the Armenian community at Calcutta.

There had been a previous application in the Court, on the 13th March 1863, before the Chief Justice and Bittleston, J., which stood over in order that further affidavits might be obtained from Calcutta.

*Stokes*, now submitted that the testatrix had a general charitable intention in favour of the poor families, widows, orphans and schools of the Armenians of Calcutta, which intention the Court was bound to effectuate. The Court will act on the doctrine of *cy-pres*: *Moggridge v. Thackwell*(a), *Loscombe v. Wintringham*(b). The present case is almost on all fours with *Bennett v. Hayter*(c).

(a) 7, Ves., 69

(b) 13, Beav., 87.

(c) 2, Beav., 81.

*The Acting Advocate General (Norton)* for the Crown, supported *Stokes'* application, but suggested that some steps should be taken to secure the fund, as the petitioners were not within the jurisdiction. There should at all events be an enquiry as to the proportions in which the Church of St. Nazareth and the Philanthropic Academy should be allowed to share the interest of the fund.

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*Mayne*, for the residuary legatees, the Armenian Orphans' College at Madras. In *Bennett v. Hayter* the testator bequeathed 1000*l.*, to the "Jews' poor, Mile End:" there were two charitable institutions for poor Jews at Mile End, and there being no evidence to shew which was meant, the bequest was divided between them. There the testator had clearly a general charitable intention in favour of the poor Jews at Mile End. Here the testatrix had a special intention to benefit one particular institution corresponding exactly with "the Armenian Orphans' College" at Madras. Such institution does not exist in Calcutta: neither of the two petitioning institutions answers in name or intention that described, and therefore the bequest fails and falls into the residue. At all events there should be a reference to enquire into the existence elsewhere than in Calcutta of such an institution as the will describes.

*Stokes*, in reply. The corpus of the fund is safe, we only ask for the interest. As to the shares in the interest, there are only two institutions in Calcutta, which answer the charitable purposes of the testatrix, and there is no reason why the shares should be unequal. Moreover, the governors of the two institutions concur in the prayer that each should have a moiety. The reference suggested by Mr. *Mayne* would be useless. The will was proved in 1833 and no one has since applied on behalf of such an institution as the will describes. Besides, inasmuch as by the "Madras Armenian Orphans' College," the testatrix admittedly meant the Armenian Orphans' College at Madras, so by the "Calcutta Armenian Orphans' College," she must be taken to have meant the Armenian Orphans' College at Calcutta, the existence of which institution is expressly negatived by the affidavits.

*BITTLESTON, J.* :—As the case was first brought on before the Chief Justice and myself, I will mention it to him before I deliver judgment.

1863. On the 7th November the following judgment was de-  
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BITTLESTON, J. :—It seems to me clearly that the testatrix in the bequest in question had a general charitable intention in favor of the poor families, widows, orphans and schools of the Armenian nation at *Calcutta*, and not a special intention to benefit any particular institution. Doubtless she desired that if there was in *Calcutta* any such institution as an Armenian Orphans' College, (which does appear to be the name of a charitable institution in *Madras*, mentioned in the will), the Governors of that institution should be the instruments for the application of the fund ; but it appears that there is no institution in *Calcutta* so named, and in that respect therefore the bequest cannot be carried out.

The Court, however, is bound to give effect to the general charitable intention of the testatrix as nearly as it can, and the affidavits, upon which the present application is made, disclose that there are in *Calcutta* two institutions and only two, viz., the Armenian Philanthropic Academy and the Armenian Church of St. Nazareth, which do closely answer the charitable purposes contemplated by the testatrix—the funds of the Church of St. Nazareth being exclusively appropriated to the relief of the poor families, widows and orphans of the Armenian nation resident in *Calcutta* ; and the funds of the said Philanthropic Academy being devoted to the purpose of gratuitously instructing and educating the poor and orphans of the Armenian nation resident in *Calcutta*, and also of providing gratuitously a limited number of such poor and orphans with board, lodging and raiment. It seems to me, therefore, that the object of the testatrix will be well carried into effect by directing the payment to the petitioners of the interest accruing due from time to time upon the fund in Court for the purpose of its being applied by them to the general purposes of the institutions, which they respectively represent.

It was suggested by Mr. Mayne, who appeared on behalf of the Governor of the Armenian Orphans' College at *Madras*, the residuary legatees under the will, that a reference to enquire as to the existence in *Calcutta* of such an Institution as the will describes would be proper ; and certainly if there was any ground for doubt as to the fact, such a reference,

ought to be directed. But a great number of years has elapsed since this will was proved in this Court, and no application for the legacy has been made on behalf of any such Institution, nor was Mr. Mayne able to state that his clients suggested any doubt upon the subject ; and if there be no ground for doubting the fact sworn to, the fund should not be put to the expense of an unnecessary inquiry.

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The Advocate General, as representing the Crown, supported the application of the petitioners, but suggested the propriety of some measures being taken to secure the fund, as the petitioners are not within the jurisdiction of this Court.

It appears, however, by the terms of the bequest that it is the interest of the fund only, which should be paid over half-yearly to the wardens or governors of these institutions ; and the petitioners do not ask for the payment out of the principal sum. They do, however, ask for the payment out of the whole accumulation of interest, which has been going on since 1835, until the original sum of rupees 10,500 has grown to rupees 36,800 odd, and upon this application at all events, I think that the prayer of the petitioners ought not to be granted to that extent.

It is clear that it was not the intention of the testatrix to place a large lump sum in the hands of the officers of any institution, which should be the instrument for carrying out her charitable object—her intention was that they should only receive the interest half-yearly as it fell due and apply it at once for the benefit of those who were the objects of her bounty.

Further, if this Court should direct the payment of the whole accumulation of interest to those petitioners, their duty would be to invest it for the purposes of the charities which they represent; and it being already satisfactorily invested, I do not think that I ought to do more than order that the accruing interest on the accumulated sum be paid half-yearly to the petitioners or their duly constituted attorney.

The only other question is, whether any inquiry should be had before the Master as to the proportions in which the Church of St. Nazareth and the Philanthropic Academy should be allowed to share the interest of this fund ? I cannot see that any good would result from such inquiry. There

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is nothing in the bequest itself to suggest any unequal division ; and as the governors of the two Institutions concur in the application that each should receive a moiety, I do not suppose that there is anything in the circumstances of the two Institutions to render any other than an equal division desirable or proper. The costs of all parties as between solicitor and client will be taxed and paid out of the fund.

NOTE.—As to the jurisdiction over charities possessed by the late Supreme Court (and therefore by the present High Court) see *Attorney General v. Brodie*, 4, Moo. I. A. Ca., 190.

ORIGINAL JURISDICTION (a)

*Original Suit No. 120 of 1863.*

RÁJENDRA RAU *against* SÁMA RAU and another.

The High Court has no jurisdiction to entertain a suit on an instrument stipulating for the payment of money generally, when the defendant resides beyond the local limits and such instrument was signed by him beyond those limits.

Jurisdiction to entertain a suit on a promissory note is *prima facie* shewn upon a plaint alleging that the note was delivered by the defendant at Madras, and that he thereby promised to pay at Madras.

Remarks on the maxim *debitum et contractus sunt nullius loci*

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THE plaintiff sued for rupees 3,806-2-10, being the balance of principal and interest due on a Telugu instrument, dated the 23rd July 1859, and signed by the defendants, who resided in the district of Coimbatore, in favour of the plaintiff and his late brother Gundu Rau deceased, on account of arrears of rent due for a bungalow at St. Thomas' Mount in the zila of Chingleput. It appeared that the defendants laid claim to the bungalow and caused it to be sold by auction : the plaintiff and Gundu Rau accordingly sued the defendants and the purchaser in the Court of the Principal Sadr Amin of Chingleput. The Amin decreed for the plaintiffs, declaring them entitled to the bungalow, and on appeal such decree was affirmed. The defendants thereupon signed the instrument in question at Maujakkuppam in the district of Coimbatore, and paid in pursuance thereof three sums of rupees 450, rupees 35 and rupees 45, for which the plaintiff gave credit.

The following is a translation of the instrument :—

“ On the 23rd day of the month of July of the year 1859, Chintapanti SÁma Rau and RÁma Rau residing at Mau-

(a) Present : Scotland, C. J. and Bittleston, J.