were drawn up by the Subordinate Judge for the trial of the suit. In fact, the Judge seems to have constituted himself as a general Court of revision, a position which is not recognized by law.

1878

NIROD KRISHNO ROY v. WOOMANATH MOOKERJEE.

*Case remanded.*

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# ORIGINAL CIVIL.

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*Before Mr. Justice Pontifex.*

IN THE GOODS OF SIR JOHN WEMYSS.

1879 *Feb.* 20.

*Will—Probate—Document referring to Will.*

After letters of administration with the will annexed had been granted, the administrator found a book containing memoranda in the testator's handwriting, made after the date of the will, and directing certain dispositions of his property. One entry referred in express terms to the will. The testator was a domiciled Scotchman.

*Held*, on a petition by the administrator, asking that the memoranda might be admitted to probate, that the memoranda were not testamentary documents, and the petition was, therefore, dismissed.

IN this case letters of administration with the will annexed to the estate of Sir John Wemyss, deceased, had been granted to the Administrator-General of Bengal. Since then the private memorandum book of the deceased had come into the possession of the Administrator-General, and by certain entries therein in the handwriting of, and signed by, Sir John Wemyss, it appeared that he had directed that the various articles specified in the entries should, in the event of his death, be sent to certain persons. Sir John Wemyss was a domiciled Scotchman at the time of his death. The Administrator-General now presented a petition praying that it might be decided whether these entries were good and valid testamentary documents and admissible to probate, and if so, that copies of the entries might be added to the will annexed to the grant of letters of administration.

Mr. *J. D. Bell* for the petitioner.—The memoranda in the book are in the testator's handwriting, the testator was a domi-

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IN THE GOODS OF SIR JOHN WEMYSS.

ciled Scotchman, and such entries would be codicils. The intention of the testator was, that these entries should be treated as testamentary documents, and should take effect after his death. The form of a paper does not affect its title to probate, provided that it is the intention of the deceased that it should operate after his death—*Masterman* v. *Maberly* (1). That principle was followed in *In the goods of Morgan* (2). It is not necessary that the directions contained in documents allowed to operate as testamentary should be in direct and imperative terms: Williams on Executors, 7th edn., p. 108. [PONTIFEX, J.—None of these authorities go to the extent of saying that when a will is in existence, memoranda can be added as codicils.] Probate may be granted both of the will and the memoranda; they are testamentary documents according to Scotch law, and may revoke the will to a certain extent: *Lemage* v. *Goodban* (3).

PONTIFEX, J.—None of these authorities go to the extent of showing that where a will has been made, memoranda in a book can be treated as a codicil.

All the memoranda in the book appear to have been made after the date of the will. One memorandum is dated the 11th January 1878, and says, "My will is in an iron safe in my house, whereby I have given to my brother David," &c. All the other memoranda are in January 1877. The memorandum dated the 11th January 1878 sets up the will entirely.

On this ground also that I do not think the memoranda are testamentary, I must refuse probate of them.

Application refused. Administrator-General's costs of application to be paid out of the estate.

*Application refused.*

Attorneys for the Petitioner: Messrs. *Roberts, Morgan, and Co.*

(1) 2 Hagg., 235. (2) L. R., 1 P. and D., 214.
(3) L. R., 1 P. and D., 57.