

1931

[IN THE PRIVY COUNCIL.]

Present: Lord Blanesburgh, Lord Russell of Killowen, and Sir
Lancelot Sanderson.

GOONEWARDENE *v.* GOONEWARDENE.

*Last will—Bequest on money invested on mortgage bonds—Will confirmed by
codicil—Effect of confirmation—Ordinance No. 21 of 1844, s. 5.*

By section 5 of the Wills Ordinance, No. 21 of 1844, the effect of confirming a will by a codicil of later date is to make a disposition in the will operate in the same way as it would have operated if the words of the will had been contained in the codicil.

A PPEAL from a judgment of the Supreme Court. The facts appear from the judgment of the Privy Council.

February 24, 1931. Delivered by LORD RUSSELL OF KILLOWEN.

The point for decision upon this appeal arises in the following circumstances.

A testator made his will on August 7, 1913. It contained a disposition (hereafter called the settled legacy) in the following words:—

“ I give and bequeath to my said wife all the moneys now invested by me on mortgage bonds or promissory notes and all cash in deposit to my credit in my No. 2 account in the Mercantile Bank of India, Limited, Galle, subject to the direction that she is to have the interest derived therefrom up to the time of her death or remarriage as aforesaid. Thereafter the same shall vest absolutely in my said three nieces.”

He then made various bequests, including one which ran thus:—

“(g) the rest and residue of my cash found in my possession at the time of my demise and also the money in deposit to my credit in my No. 1 account in the Mercantile Bank of India, Limited, Galle, in the Bank of Madras, Colombo, in the Government Savings Bank, and in the Post Office Savings Bank and the amount of my Policy of Insurance together with the profit thereof and all other movable property absolutely to my said wife Margaret.”

He made a codicil dated August 9, 1927, which he declared to be “a codicil to the last will and testament made by me and dated August 7, 1913.” It gave a pecuniary legacy to a servant, and disposed of a certain house; and it contained these words—“Save as hereby altered or modified I hereby confirm the said will”.

The testator died on August 22, 1927, and the will and codicil were duly admitted to probate.

At the date of the will the testator was entitled to moneys invested on mortgage bonds or promissory notes to an amount of some 39,000 rupees. These debts had all been repaid long before the date of the codicil. At the latter date, the testator was entitled to moneys invested on mortgage bonds or promissory notes to an amount of 214,200 rupees, all of which represented loans made by the testator since the date of his will.

Further, at the date of the will the cash in deposit to the testator's credit in his No. 2 account in the Mercantile Bank was 1,250 rupees. At the date of his death, as also at the date of the codicil, it was 6,920 rupees.

The question arose whether the 214,200 rupees passed under the bequest of the settled legacy, or under the gift of “all other movable property” contained in clause (g). If under the latter, the widow would take absolutely; if under the former, she would only be entitled to a life interest determinable on remarriage.

A similar question arose in regard to the said sum of 6,920 rupees.

The Judge of the District Court of Galle was of opinion that the republication of the will by the codicil brought the date of the will down to the date of the codicil, and that the words of the will must be interpreted as if they had been written in 1927. He accordingly decided that “the testator's nieces are entitled to a reversion of the moneys invested on bonds and notes on the date of the codicil, and to the cash in deposit under account No. 2 in the Mercantile Bank”.

Their Lordships have not seen any copy of the formal order of the District Judge, but they interpret his judgment as being a decision that the items of property in question passed under the bequest of the settled legacy and not under clause (g).

On appeal to the Supreme Court of the Island of Ceylon, the order of the District Court was affirmed. The question is whether these decisions are correct.

It is well settled in England that by virtue of section 34 of the English Wills Act, the effect of confirming a will by codicil is to bring the will down to the date of the codicil, and to effect the same disposition of the testator's property as would have been effected if the testator had at the date of the codicil made a new will containing the same dispositions as in the original will but with the alterations introduced by the codicil. In the language used by North J. in his judgment in *re Champion* ([1893] 1 Ch. 101), the effect is to make a devise in the will "operate in the same way in which it would have operated if the words of the will had been contained in the codicil of later date".

The learned Judges in the Courts below have held that the law which obtains in Ceylon in this respect is the same as the English law, and this, by reason of the provisions contained in Ordinance No. 21 of 1844.

With this view their Lordships agree. Section 5 of the said Ordinance runs thus:—

'Every will re-executed or republished or revived by any codicil shall for the purpose of this Ordinance be deemed to have been made at the time at which the same shall be so re-executed or republished or revived.'

The earlier printed versions of this Ordinance contained the word "purposes" and not "purpose", but, in view of the definition section contained in the Ordinance, it is unnecessary to consider which is the correct version.

It was suggested that the words "for the purpose of this Ordinance" limited the application of the section in such a way as to cause it not to operate in regard to the present case.

Their Lordships are unable to accede to that suggestion. The section appears to them to be framed upon the exact lines of section 34 of the Wills Act: and they agree with the District Judge in the reasons given by him for the view that section 5 of the Ordinance applied.

The result is that the bequest of the settled legacy includes the moneys which on August 9, 1927, stood invested by the testator on mortgage bonds or promissory notes, and also all cash which on the same date stood on deposit to his credit in the particular account.

Their Lordships express no opinion in regard to other points of law, which were dealt with in the judgments of the Supreme Court.

Their Lordships will humbly advise His Majesty that this appeal, with the petition for the admission of a further document, should be dismissed with costs.

Appeal dismissed.