
(1878) 08 AHC CK 0003

Allahabad High Court

Case No: None

Raynor

APPELLANT

Vs

The Mussoorie Bank

RESPONDENT

Date of Decision: Aug. 22, 1878

Citation: (1880) ILR (All) 55

Hon'ble Judges: Robert Stuart, C.J; Pearson, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

I am clearly of opinion that the Subordinate Judge is wrong, and that this appeal must be allowed. The portion of the

will material for the question before us is as follows:--"I give to my dearly beloved wife Mary Anne Raynor the whole of my property, both real

and personal, including my Government Promissory notes, Delhi Bank shares, my house at Firozpur, No. 50, together with all my plate and plated

ware, and whatever money, furniture, carriages, horses, &c, may be in my possession at the time of my decease, together with all moneys due or

which may afterwards become due, feeling confident that she will act justly to our children in dividing the same when no longer required by her.

These last words undoubtedly create a trust in Mrs. Raynor for the benefit of her children, and limit her own estate in the property to a mere life-

interest, or to the income of the property so long as she may require it. The testator feels confident that his wife will act "justly" to their children, that

is, he tells her by this will he expects that she will act towards them, not from mere caprice, but fairly, and he confides in her sense of justice

towards them, and she is to act in this way by dividing the same, that is, by dividing all the property immediately before described. In fact the will

makes Mrs. Raynor a trustee with a power of appointment over the whole property comprised in the will in favour of the children.

2. The authorities referred to at the hearing strongly support this view of the relative position of Mrs. Raynor and her children, and the case of

Curnick v. Tucker LR 17 IndAp 320 cited by the counsel for the appellant appears to be directly in point. There the testator by his will said--"" I

hereby appoint my dear wife, Elizabeth Tucker, sole executrix, to whom I leave all my property, landed, personal, and of every description

whatsoever and wheresoever, for her sole use and benefit, in the full confidence that she will so dispose of it amongst all our children, both during

her lifetime and at her decease, doing equal justice to each and all of them."" In deciding the case Vice-Chancellor Hall observed: ""I consider that I

am not at liberty to hold otherwise than that there is a gift to her for life, with a trust imposed upon the property in favour of the children, and with a

power to her of disposition between or amongst them in such shares as she may think fit,"" and again: ""I hold, therefore, that this is a gift to Mrs.

Tucker for life, with a power of disposition amongst her children in her lifetime, or by deed or will, as she may deem fit."" Indeed, this is a stronger

case than the present, for there the property was left to Mrs. Tucker ""for her sole use and benefit"" and yet the Vice-Chancellor held that the words

which immediately followed created a trust in her for the benefit of the children, whereas in the present case there is no gift to the wife for her sole

use and benefit, but the property is given to her openly without any such qualification, and with the declaration of the testator's expectation and

intention that she is ultimately to divide the property among all the children. This is a trust which may be executed for the children, and not the mere

expression of a feeling or sentiment in their favour. The same principle will be found stated with great clearness and force in Lewin's well-known

work on Trusts, 6th ed., p. 115, and in Jarman on Wills, 3rd ed., vol. i, p. 356.

Pearson, J.

3. The terms of Captain Raynor's will are: ""I give to my dearly beloved wife Mary Anne Raynor the whole of my property, both real and personal,

including my Government Promissory notes, Delhi Bank shares, my house at Firozpur, No 50, together with my plate and plated ware, and

whatsoever money, furniture, carriages, horses, etc., may be in my possession at the time of my decease, together with all moneys due or which

may afterwards become due, feeling confident that she will act justly to our children in dividing the same when no longer required by her.

Technical language,"" says Mr. Jarman in his Treatise on Wills, ""is not necessary to create a trust. It is enough that the intention is apparent. Thus it

has been long settled that words of recommendation, request, entreaty, wish, or expectation, addressed to a devisee or legatee, will make him a

trustee for the person or persons in whose favour such expressions are used, provided the testator has pointed out, with sufficient clearness and

certainty, both the subject-matter and the object or objects of the intended trust (3rd ed., vol. ii, p. 356).

4. The doctrine thus stated is sanctioned by the authority of decisions to which we have been referred, and I accept it as sound. Applying it to

Captain Raynor's will, I cannot doubt that his widow under its terms became a trustee of his estate for their children, and that her own interest in it

was a limited one. She was at liberty indeed to use it for her own needs, but was bound to divide it among them when no longer required by her.

She performed this duty by the will executed by her on the 5th September 1868, and by that instrument she bequeathed to the plaintiff the twenty-

fourshares in the Delhi and London Bank which are the subject-matter of the present suit. It would seem to follow that the shares in question

belong to the plaintiff and cannot be sold in execution of decree as the property of the late Mrs. Raynor.