

(1878) 04 CAL CK 0008

Calcutta High Court

Case No: None

The
Administrator-General
of Bengal

APPELLANT

Vs

Apcar

RESPONDENT

Date of Decision: April 9, 1878

Citation: (1878) ILR (Cal) 553

Hon'ble Judges: Pontifex, J

Bench: Single Bench

Judgement

Pontifex, J.

I think that the gift of this legacy of Rs. 20,000 to Paul Apcar, deceased, falls within the rule that, if a testator leaves a legacy absolutely as regards his estates, but restricts the mode of the legatee's enjoyment to secure certain objects for the benefit of the legatee upon failure of such objects, the absolute gift prevails--*Lassence v. Tierney* 1 M. and G. 551. In that case, however, Lord Cottenham qualified the rule by adding that the intention of the testator was to be collected from the whole will and not from words, which, standing alone, would constitute an absolute gift, and in that case he found words in other parts of the will which made him decide that the gift in that case was not an absolute one. In *Kellet v. Kellett* L.R. 3 H.L. 160 the rule referred to was approved and confirmed. In the present case the gift in the first instance is an absolute one, and the subsequent provisions are simply a qualification of the gift for the benefit of the legatee; and so far from finding in any other point of the will any indication of intention on the part of the testator that the gift should not be an absolute gift, I think, on the contrary, that the fact that the testator does make a limitation over of one of his legacies, namely, the legacy to his grandson Arratoon, shows that he intended the other legacies to be absolute, and I think such intention is further indicated by the provision respecting the legacies to the granddaughters under which the executors are empowered to transfer the granddaughter's legacies to separate trustees, which

shows that it was the intention of the testator to separate the legacies from his general estate. The Administrator-General is therefore entitled to the legacy of Rs. 20,000 left by the testator to his grandson Paul. Costs of all parties, as between attorney and client, to be paid out of the Rs. 20,000.