
(1869) 02 CAL CK 0009

Calcutta High Court

Case No: None

Andrews

APPELLANT

Vs

Joakim

RESPONDENT

Date of Decision: Feb. 23, 1869

Judgement

Phear, J.

On a full consideration of this case, it seems to me that the only question which I have to decide is, whether or not there is a law of State Policy operating to restrain the testator making this disposition of his property. The matter before me is not matter of mere private right, which may depend on special law applicable to individuals taken apart from the rest of the community. It appears to me that, if there exists such a law as is eon-tended for, in order to defeat the disposition of the testator, it must be applicable to the whole community, and not to a section of it here. Now, in the case of Das Mercedes v. Cones (2 Hyde, 65), it has been held by this Court that there is no such law operating in the case of a testator who was born and died in Calcutta. I think that this decision in effect concludes the present case, unless I think it ought not to be followed. I have had no reason given to me for impeaching that decision; and though I am not in strictness bound perhaps to follow the decision of a single Judge sitting in a capacity that would only render his decision co-ordinate with my own, I should, of course, in all cases, consider it extremely improper to maintain, by a decision of mine, a law which had been decided against by one of my colleagues. I do not think Mr. Marindin went the length of asking me to do so, and I feel it right to add, that, so far as I have been able to look into the case and the decision, that it meets with my concurrence. I believe I have only to answer a question, and my answer will be given in the terms of the special case. I shall, therefore, declare that, in the opinion of the Court, the sum of Rs. 4,000 bequeathed to be expended in masses in Calcutta is a valid one.