

(1870) 08 CAL CK 0006

Calcutta High Court

Case No: None

Joseph Ezekiel Judah
and Another

APPELLANT

Vs

Aaron Hye Nusseem
Ezekiel Judah and
Others

RESPONDENT

Date of Decision: Aug. 12, 1870

Judgement

Markby, J.

This is a suit brought by the plaintiffs, as trustees and legatees under the will of Nusseem Ezekiel Judah, to recover a sum of money, now in the hands of the Administrator General, which they allege to be the residue of the testator's estate, and which they claim under the following clause in the testator's will:--"And what may remain, after payment of the above mentioned sums as well as all the debts, shall remain under the control of my brother, Sassoon Ezekiel Judah, and my brother Joseph Ezekiel Judah, for the purpose of defraying therewith the expenses for the year, and making charitable distributions as commanded, and giving alms for my spiritual benefit according to their judgment." I divide this bequest into two parts. I think that down to the word "commanded" the testator is speaking of the expenses and charitable distributions which the witnesses say are considered necessary according to the tenets of their religion, and which are confined to the first year after the testator's death. In the remainder of the sentence he is, in my opinion, speaking of such giving of alms after the year has expired as (though not necessary) is beneficial to the soul of the testator.

2. The defendants all contend that the bequest fails. They are not agreed as to what becomes of the residue if this be so held, but that question is not now before me.

3. It has been held here, and for the purposes of this case I adopt that holding, that the English rule of law which prohibits the bequest of money to superstitious uses has no application in this country.

4. It has also been assumed, on all hands, in the course of this argument, and for the purposes of this case I assume it also, that because the English Court of Chancery departs from its ordinary rules where charitable bequests are concerned, and undertakes to see them carried into execution however indefinite they may be, this Court should do the same under similar circumstances.

5. Notwithstanding these wide assumptions however in favor of the bequest, I still think that part of it which appropriates the residue to giving alms for the testator's spiritual benefit ought not to be considered valid. This is not a purely charitable bequest. The ultimate object of the bequest is the testator's own spiritual benefit. If, therefore, the bequest were to be held valid, this Court, in performing its duty of superintending the administration of the trust, would have to try every application or proposed application of the funds by two distinct tests. It would have to ascertain, first, whether it was "a giving of alms," and secondly, if it was such a giving of alms as would be for the testator's spiritual benefit in accordance with the doctrines of the Jewish religion. We have, therefore, a vague bequest, with a vague restriction upon it. Whether or no, if this Court were to make the attempt, it could ascertain what giving of alms would, and what giving of alms would not, be for the testator's spiritual benefit, I am hardly in a condition to say. But as I understand the English cases, that is not the kind of inquiry which even the English Court of Chancery will undertake, and if it would not be undertaken there, I should certainly say it ought not to be undertaken here.

6. Whether or no the bequest is valid, so far as it relates to the expenses and charitable distributions within the year which, under the Jewish religion, are said to be considered necessary, is a point which does not arise in this case; and I wish it to be clearly understood that I express no opinion upon it. I think that, for the decision of that point, other principles would have to be taken into consideration than those which are involved in the case before me. All I now hold is that, so far as the bequest to the plaintiffs relates to giving of alms for the testator's spiritual benefit, it is void for uncertainty; that so far as it relates to other matters, they were all to be performed within the year of his, the testator's, death, which year has expired. The plaintiffs, therefore, cannot claim the fund now in the hands of the Administrator General, and the suit will be dismissed. The costs of all parties as between attorney and client will be paid out of the fund on scale No. 2.