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nature to his will, are substantially the same as those of the Indian Succession Act X. of 1865, Section 50, for I think the introduction of the word "personal" into the last-mentioned Act is not material in such a case as the present. The question: what is a sufficient acknowledgment by a testator of his signature to his will? was considered in the cases of *Cooper* v. *Bockett*, (1) *Gwillim* v. *Gwillim*, (2) *Smith* v. *Smith*, (3) and *Beckett* v. *Howe*. (4) The rule to be gathered from those cases is that, if the testator produces a paper and makes the witnesses understand that it is his will, that is an acknowledgment of his signature, if the Court is satisfied that his signature was on the will when the witnesses attested it. The circumstances of the present case, coupled with the evidence of Manickbai, have led me to the conclusion that when the testator produced this paper in the office of Messrs. Ralli Brothers, and informed the attesting witnesses that it was his will, and got them to attest it, his signature was already on it. That being so, I must hold that he sufficiently acknowledged his signature to these witnesses. Probate must, therefore, issue to Manickbai. The costs of both parties must come out of the estate, except so far as occasioned by the contention of the caveator that probate ought not to issue on the ground that Bomanji Burjorji had executed another will subsequent to the one propounded. These last-mentioned costs must be paid by the caveator Hormasji Bomanji.

[ORIGINAL CIVIL JURISDICTION.]

March 5.

BHIKAJI SABAJI AND OTHERS (PLAINTIFFS) *v.* BAPU SAJU AND OTHERS (DEFENDANTS).*

Indian Companies Act X. of 1866, *Section* 4—*Partnership—Association—Acquisition of gain—Illegal agreement.*

An association of artizans for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop and dividing the prices of the work done amongst the members according to their skill, is an association that has for its object the acquisition of gain, and if consisting of more than twenty persons must be registered.

Where more than twenty artizans signed an agreement whereby they constituted themselves an association for the above purpose, but which association was not registered as a company under Act. X. of 1866,

(1) 4 Moore P. C. 419. (2) 3 Sw. and Tr. 200.
(3) L. R. 1 P. and D. 143. (4) L. R. 2 P. and D. 1.

* Suit No. 239 of 1877.

Held that the Court could not grant an injunction to restrain the breach of such agreement.

On 14th October 1875 fifty-seven persons following the trade of carvers in wood executed an agreement, the object of which was thus stated in its first clause:—"Of late, we all, the followers of the trade of ornamental work, have, in competition with each other, made this business so cheap that it has come to pass that even our stomachs cannot be filled by means of labour. Some of the makers of ornamental work have left this business and adopted other trades. Therefore, in consequence of this business having become so cheap, all will be compelled to give it up and go away, and no one would even know how to do this sort of work. And as to our Hindustan, which is celebrated for its ornamental work, such fame will vanish and be tarnished. Therefore our executing and delivering this under-written contract being proper, we give it in writing."

The agreement then went on to provide that the first plaintiff should be the president of the society and the second and third plaintiffs and the first three defendants vice-presidents; that the affairs of the society should be regulated by these six members, who should receive all orders for work, distribute it among the members, and fix the price to be paid for it; that a shop should be hired to which all work should be taken; that no member should take any orders separately on his own account, or otherwise than through the president and vice-presidents, or do any work at any price other than that fixed by the president and vice-presidents; that the president and vice-presidents should distribute the work amongst the members according to their skill, and pay to each the price of his own work after deducting As. $1\frac{1}{4}$ in the rupee for charity; that the shop should be hired, and the rent and all other necessary outlays made by the president and vice-presidents should be contributed to by the several members according to what they received, and that the agreement should remain in force for five years.

On 12th November 1875 the president and vice-presidents executed an agreement, binding themselves to carry out and give effect to the agreement of 14th October 1875.

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The plaintiffs sued the defendants for breach of these agreements. The defendants answered that the plaintiffs had themselves committed a breach of the agreement in lowering the price of work without the consent of their colleagues, the first three defendants. A rule *nisi* was granted, calling on the defendants to show cause why they should not be restrained from carrying on the business of working and carving in wood otherwise than in accordance with the provisions of the two agreements of 14th October 1875 and 12th November 1875, entered into by them conjointly with the plaintiffs.

The rule came on for argument before SARGENT, J., on 5th March 1877.

Macpherson for the defendants showed cause:—This society is a partnership or association for the purpose of gain, and consisting of more than twenty persons, it ought to be registered, as required by Act X. of 1866. Not being registered it is an unlawful association, and no effect can be given to the agreement under which it was formed. Even if the agreement can be enforced, still the plaintiffs, having acted in violation of it in lowering the price of work without the consent of the first three defendants, are not entitled in the present case to enforce the agreement against the defendants.

Mayhew in support of the rule:—An association for gain, in Act X. of 1866, means such an association as a partnership or company, in the sense in which those words are ordinarily used. That is, an association the gains of which are paid into a common fund, and then distributed in certain fixed shares. In this society there is no common fund. Each member is paid his own earnings independently of all the rest. The object of the society is not the acquisition of a common gain, but the centralization of a common business. The plaintiffs did not lower the price of work until the defendants had already seceded, and commenced to work independently and in breach of the agreement.

SARGENT, J.:—This matter comes before me on a rule *nisi* obtained by the plaintiffs, calling on the defendants to show cause why they should not be restrained from working in wood, and carving boxes and other articles, independently of two agree-

ments entered into by them conjointly with the plaintiffs. It appears that the parties to this suit are all artizans, carrying on the trade of carvers in wood, or "working box-makers" as they call themselves in their agreement. On 14th October 1875 they all entered into an agreement, by which the first plaintiff was appointed president and five other persons were appointed vice-presidents, to manage, according to a majority of votes, the business of the society for a term of five years. Fifty-seven of these "working box-makers" signed this agreement, binding themselves for five years not to enter in the service of any body, to do the business of "working box-makers," and not to receive work except through the president and vice-presidents. On 12th November 1875 the president and vice-presidents signed an agreement, binding themselves to perform the agreement of 14th October 1875. By these two agreements the parties to them have agreed with one another to form themselves into a society, and the object of such society, or, at any rate, one of the principal objects, was the acquisition of gain by the members by means of raising the price of their work. That this was so, appears from the statement of the object for which the society was formed, contained in the first clause of the agreement of 14th October 1875. [The learned Judge here read the clause set out above, and then continued] Now I think it is difficult to say that this agreement does not create a partnership. But it is not necessary to decide the point, as in any case it creates an association of artizans for the purpose of carrying on their trade with a view to gain by its individual members. The principal object is by means of combination and association to increase the gain which they have heretofore been making from their work, and for this purpose they appoint certain members of their craft as managers who are to superintend the giving out of work according to the skill of the several members who are to be paid accordingly. If, then, this be an association of persons for the acquisition of gain by its individual members, it is, under the provisions of Section 4 of the Indian Companies Act X. of 1866, an unlawful association, for it consists of more than twenty persons, (more than fifty having, in fact, signed the agreement,) and it has not been registered. That section in the Indian Companies Act is in effect identical with the corresponding section of the

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English Act, Statute 25 and 26, Vic. C. 89, Section 4, except that the English Act saves Mining Companies subject to the jurisdiction of the Stannaries, and, therefore, *Harris* v. *Amery* [1], which decided, on the English Act, that an association of more than twenty persons for the purpose of acquisition of gain which had not been registered being illegal, the members of it could not rely on their agreement for the purpose of establishing any right, is an authority applicable to the present case.

Willes, J., says :—" When we find an association like this, which is rendered illegal by an act of parliament, we cannot take notice of the agreement under which they become tenants, for the purpose of establishing a right in a court of law." So, too, Byles, J., says :—"The statute having declared the association in question to be illegal, no rights can be acquired by any of its members which are founded upon that which is so declared to be illegal." So here we have a partnership, or, at any rate, an association, for the purpose of carrying on a business that has for its object the acquisition of gain, and consisting of more than twenty persons, and being unregistered, it is an illegal association. It is obvious, therefore, that none of the parties acquired any rights under their agreement which can be enforced in a court of law. The rule must, therefore, be discharged with costs.

[APPELLATE CIVIL JURISDICTION.]

February 1.

ANANTA (DEFENDANT AND APPELLANT) *v.* RAMABAI (PLAINTIFF AND RESPONDENT).*

Hindu Law—Leprosy—Maintenance—Exclusion from inheritance.

Incurable leprosy of the sanious or ulcerous type, contracted before partition, excludes the person afflicted with it from a share in the ancestral estate.

THIS was a special appeal from the decision of M. B. Baker, Senior Assistant Judge at Sholápur, in the District of Poona, amending the decree of Ravji Govind, 2nd Class Subordinate Judge at Bársi.

Ramabái sued Joti and Ananta for possession of certain land, which she alleged had been sold to her by one Nagu on 17th No-

[1] L. R. 1 C. P. 148.

* Special Appeal No. 251 of 1876.