referring to the debate in the Legislative Council. Act X of 1876, s. 12, was cited.

1893 JAN. 30. APPELLATE CIVIL. 18 B. 133.

[136] *Ganpat Sadashiv Rao*, for the respondent, was not called upon.

JUDGMENT.

SARGENT, C. J.—The District Court was wrong in referring to the debate on the bill for the purpose of construing s. 17 of the Act, but we agree with him in his conclusion that the entry in the Settlement Officer's record was conclusive as to the nature and amount of the rent. The words "conclusive and final evidence of the liability" must, in the ordinary and grammatical meaning, have the effect of shutting out any other evidence on the subject which might be adduced before the Civil Court.

It was argued indeed that s. 21 provides for the entries being only binding on the parties until the decision of the survey officer has been reversed by a competent Court, and that the words "when not final" in s. 21 refer only to such matter as by the Revenue Jurisdiction Act of 1876 has been withdrawn from the jurisdiction of the Civil Courts. If that had been the intention we should expect it to be expressed in very different terms. The object of ss. 20, 21, 22 is to point out the course the survey officer is to pursue, when there are disputes between the parties, in order to enable him to make the entries required by s. 17. And the words "when not final" can only, therefore, properly refer to the finality ascribed in s. 17 to the entries of the nature therein mentioned and which follow as contemplated by s. 20 on the survey officer arriving at his decision.

We must, therefore, confirm the decree with costs.

Decree confirmed.

---

18 B. 136.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

DEVSHANKAR NARANBHAI AND OTHERS (*Original Plaintiffs*), *Appellants v.* MOTIRAM JAGESHVAR (*Original Defendant*), *Respondent.** [30th January, 1893.]

Hindu law—Will—Bequest to dharmada—Dharmada—Dharma.

A bequest in favour of *dharmada* is void by reason of uncertainty. The law on this point is the same in the Mofussil as in the Presidency town.

[R., 22 B. 774 (773); 31 C. 895 (897)=8 C. W. N. 653.]

[137] SECOND appeal from the decision of G. McCorkell, District Judge of Ahmedabad, reversing the decree of Rao Saheb Maneklal Narotamdas in suit No. 589 of 1889.

The plaintiffs sued, as executors of the will of one Jethalal Jageshvar, to recover possession of certain moveable property belonging to the testator, or for its value, and for an injunction restraining the defendant from obstructing them in taking possession of the property in dispute.

---

* Second Appeal, No. 864 of 1891.

1893
JAN. 30.
APPELLATE CIVIL.
18 B. 136.

The material portions of the will in question were as follow:—

"After my death my executors shall cause my obsequies to be performed by my brother Motilal and his son Amritlal conformably to the custom of my caste and with reference to the amount of my property. The executors shall pay out of my property Rs. 100 to my brother Motilal and his sons. Should they not perform my funeral ceremonies the same should be performed by my sister's son. And the amount ordered to be paid to my brother should be paid to him. The ceremonies should be performed up to my anniversary. *Should any property remain after what is expended as above, the whole of it should be expended for dharmada after my death by the trustees as they think proper.*"

The defendant contended (*inter alia*) that the will was invalid, and that the residuary bequest to *dharmada* was void for uncertainty.

The Subordinate Judge held that the will was valid; that the residuary bequest was not void on the ground of uncertainty, and that the plaintiffs, as executors, were entitled to recover the property in dispute. He, therefore, awarded the plaintiffs' claim.

This decision was reversed, on appeal, by the District Judge, who held, on the authority of *Lakshmishankar* v. *Vaijnath* (1), that the bequest to *dharmada* was void, and that though the will was valid so far as it related to the performance of the funeral ceremonies and the payment of Rs. 100 to the testator's brother, the plaintiffs were not entitled to recover, as the funeral obsequies had been already performed by the deceased's brother, who was willing to allow his claim for those expenses to be merged in his general title.

[138] Against this decision the plaintiffs preferred a second appeal to the High Court.

Goverdhan M. Tripati, for appellants:—The question in this case is whether a gift in *dharmada* is void for uncertainty. The word *dharmada* is not synonymous with *dharma*. The latter is a term of very wide import, as denoting religion, charity, benevolence, virtue, justice, &c., whilst the term *dharmada* is restricted in its meaning to charitable gifts alone. Bequests to charity are valid under the English law—*In re Douglas* (2); *Wilkinson* v. *Lindgren* (3); *In re Sutton* (4); *Lewis* v. *Allenby* (5). But assuming that *dharmada* and *dharm* are convertible terms, still the law on this subject, as laid down by this High Court in the Presidency town, has no application to the Mofussil. The rulings in *Gangbai* v. *Thavar Mulla* (6) and *Cursandas Govindji* v. *Vundravandas* (7) do not govern the present case. These cases are decided by analogy to Statute 43 Eliz., c. 4. But it would be wrong to extend the analogy of this statute to cases arising in the Mofussil—*The Advocate General* v. *Vishvanath* (8); *Parmanandas Jivandas* v. *Venayekrao* (9).

Manekshah Jehangirshah, for respondent.—There is no difference in meaning between *dharma* and *dharmada*. *Dharmada* is property set apart for *dharma*. It would be wrong to restrict the meaning of *dharmada* to charitable gifts alone. The reason why a bequest to charity is valid under the English law is because the Courts of Equity in England have always attached a definite meaning to the term "charity." Has the word *dharma* such a definite meaning here? It means any kind of charitable, religious, or benevolent objects. It is too vague and uncertain. It is on this account that a bequest in *dharma* is held void. The Court cannot give any effect

(1) 6 B. 24. (2) 35 Ch. D. 472. (3) L.R. 5 Ch. 570.
(4) 28 Ch. D. 464. (5) L.R. 10 Eq. Ca. 668. (6) 1 B. H. C. R. 71.
(7) 14 B. 482. (8) 1 B. H. C. R. App. 9. (9) 7 B. 19.

to such bequest. And the law on this point is now too well settled to be called in question.

JUDGMENT.

FULTON, J.—We have carefully considered the arguments of Mr. Govardhanram, but are unable to hold that there is any real distinction between a bequest to be expended on *dharmada* and [139] a bequest for *dharm*. If it be the case that the latter is void as being too vague a specification of the objects on which the testator desired his money to be expended, it appears to us to follow that a bequest for *dharmada* must equally fail by reason of uncertainty.

Mr. Maneklal Narotamdas, in an able judgment, questioned the correctness of the decisions in which it has been held that bequests for *dharm* are ineffectual; but we think that the point has been settled in this Presidency for so long a time that it is now impossible to reconsider it. The earliest ruling on the subject to which our attention has been called is that of Sir Erskine Perry and Sir W. Yardley in the *Advocate General* v. *Damothar* (1), which was followed in *Pranjivandas* v. *Deokuvarbai* (2) by Sir M. Sausse, C.J., and recently by Mr. Justice Parsons in *Cursandas* v. *Vundravandas* (3). It was urged that these decisions were passed either by the Supreme Court or by the High Court on its original side, and were, therefore, not determinative of the law in the Mofussil; but it appears to us that in a matter of this kind there can be no difference between the law in force in the Presidency town and that of the other parts of the Presidency. The Charter of the Supreme Court required it to be guided by the laws and usages of the Hindus, just as the Mofussil Courts are bound by Reg. II of 1827 to give effect to them. It can hardly be contended that there was any established law or usage regulating the phraseology of Hindu wills in the island of Bombay at variance with the law and usage on the same subject in the district of Ahmedabad; and, therefore, it follows that, if the Supreme Court correctly applied that law and usage in the case of *Advocate General* v. *Damothar*, that application must be followed in the Mofussil just as much as in the town of Bombay. This principle appears to have been recognised by Melvill, J., in *Lakshmishankar* v. *Vaijnath* (4), in which he does not seem to have doubted that a devise to *dharm* without any qualifying expression was too vague an indication of the testator's intention to constitute a valid gift to charity, or to have questioned the propriety of relying [140] on the decisions above referred to as precedents in a Mofussil case.

Whatever, then, might have been our opinion, if the matter had come before us unaffected by previous decisions, we do not feel justified now in re-opening the subject. It is clear that, when the object of a bequest is so vaguely described that it cannot be ascertained, the gift must fail, but the exact point at which the line should be drawn between reasonable certainty and vagueness must necessarily give rise to a good deal of difference of opinion. If, then, there is to be any consistency in the decisions of Courts, and each case is not to be left to the individual opinion of the Judge who happens to try it, it is manifest that, when the vagueness of a word or expression has been pronounced in a course of decisions by Judges of high authority to be such as to render void the bequest to which it has been applied, it becomes the duty of other Judges

(1) Perry's Oriental Cases, 526.
(2) 1 B.H.C. R. 76, note.
(3) 14 B. 482.
(4) 6 B. 24.

1893 JAN. 30. APPELLATE CIVIL. 18 B. 136.

to accept their views, unless it can be said with reasonable certainty that they are erroneous. In the present case, however, this cannot be said; for though there may be some difficulty in distinguishing between many of the objects included in the word "*dharm*" and those comprised in the term "charity," and it may be unsafe to hold that the latter covers a narrower range than the former, we think that the ground on which the decision in the *Advocate General* v. *Damodhar* was based, namely, that the reasons which led the Court of Chancery to uphold the validity of gifts to charity, were inapplicable to gifts to *dharm*, can hardly be disputed. Other reasons might possibly be assigned for holding that the expression "*dharm*" or "*dharmada*" is not vague or indefinite; but apart from English precedents, we think that this question is of so uncertain a character that we ought to be guided by the decisions of the Judges who have already considered it. In a purely discretionary matter of this kind the earlier decisions must prevail in settling the law.

We, therefore, hold that the bequest in favour of *dharmada* was void by reason of uncertainty, and confirm the decree. All costs throughout to be paid out of the testator's estate.

Decree confirmed.

---

18 B. 141.

[141] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

DAYABHAI LALLUBHAI AND ANOTHER (*Original Defendants Nos.* 1 *and* 4), *Appellants v.* GOPALJI DAYABHAI (*Original Plaintiff*), *Respondent.** [2nd February, 1893.]

Landlord and tenant—Joint family—Manager—Lease granted by manager—Right to sue for rent under such lease—Co-sharers—Parties—Practice.

A manager of a joint Hindu family who, as such, has granted a lease, is during his lifetime the only person to sue for rent due under the lease, but after his death his son, who has not succeeded his father in the management, cannot sue without joining the other members of the joint family as parties.

Dada v. *Bahu* (1) and *Sayad Fatula* v. *Bala* (2) followed.

[Rel., 22 M. 326 (327).]

SECOND appeal from the decision of J. B. Alcock, District Judge of Surat.

Suit for rent. The plaintiff sued the defendants for Rs. 139-8, the balance of rent for the year 1946 due on a rent-note alleged to have been passed by the defendants to the plaintiff's father Dayabhai Morarji.

Defendants Nos. 1 and 4 pleaded (*inter alia*) that they had passed the rent-note to the plaintiff's father Dayabhai as the manager of the united family to which the plaintiff belonged, and that the plaintiff could not sue alone, as the other members of the family had a share in the sum sued for.

Defendants Nos. 2 and 3, Bhula Sura and Bhimbhai Bhulabhai, admitted the claim.

---

* Second Appeal No. 884 of 1891.

(1) P.J. 1876, p. 11. (2) P.J. 1884, p. 33.