Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Maulvi Saiyid Muhammad Munawwar Ali v. (1) *Razia Bibi and Others;* (2) *Rasulan Bibi;* (3) *Aisha Bibi;* (4) *Shakirat-un-nissa Bibi, and* (5) *Shakirat-un-nissa Bibi, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the* 16*th March* 1905.

Present at the Hearing:

LORD DAVEY.
LORD ROBERTSON.
SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

These consolidated Appeals relate to a deed, purporting to be a wakfnama, executed on the 9th March 1881 by a Mahommadan lady, Aliat-un-nissa Bibi, and her husband Muhammad Kaim Ali. The larger part of the property affected by that deed belonged to the lady, the rest to her husband. She died on the 19th April 1881, and her husband remained in possession of the property from that time until his own death on the 11th February 1895.

The executants of the deed had two sons and four daughters; one of the daughters, Asima, died after her mother but before her father, the other children survived both their parents. On the death of the father the elder son, the now Appellant, took possession of the property, claiming to be entitled to it as mutwali under the deed of wakf.

Three suits were thereupon brought by the three surviving daughters, in which they alleged

that the deed created no valid wakf, but that the property descended to the heirs of their mother and father, and they claimed their shares accordingly against the Defendant, now the Appellant, with mesne profits. The Defendant relied upon the validity of the wakfnama, and upon his title as mutwali under it. He also set up other defences which need not now be considered. The Subordinate Judge of Jaunpur, who heard these three cases, held that the deed created no valid wakf, and made decrees in favour of the Plaintiffs.

The next suit was filed by the second son, in which he raised a claim exactly similar to that raised by his sisters in the first three suits, and was met by similar defences. That suit was dismissed on a ground which has since been abandoned. The case therefore now stands on exactly the same footing as the previous cases.

The last suit was filed by one of the daughters, who had been Plaintiff in one of the first three suits. It related to the share of her sister Asima (who, as has been mentioned, died after her mother but before her father) as one of the heirs of her mother, in which share the Plaintiff in this last suit has acquired an interest by purchase. This suit, like the others, raised the question of the validity of the alleged wakf, but it was dismissed on the ground of limitation.

Against all these decisions Appeals were brought to the High Court, and that Court affirmed the decisions of the First Court in the three cases in which it had found in favour of the Plaintiffs, and reversed its decisions in the two cases in which it had found for the Defendants. Against those decrees of the High Court the present Appeals were brought.

The main question raised by the Appellant, the one question common to all the cases, and the only question in the first four of them, is

whether the deed of the 9th March 1881 created a valid wakf. Both the Courts in India have answered the question in the negative. They have laid down the rule of law by which they were guided, and for the purpose of applying it to the deed now in question have minutely examined the clauses of that deed.

As their Lordships are of opinion that those Courts have correctly apprehended the law applicable to the case, and as they agree in the view that has been taken as to the character of the deed, their Lordships think it unnecessary to discuss the law on the subject, which has already been more than once considered by this Board, or to examine in detail all the provisions of the deed. It will be sufficient to point out its character somewhat generally. It begins with recitals in which the intending settlors put their own construction upon the deed, and state the objects for which they executed it and the effect they intended it to have. They say it is necessary "that sufficient provision be made for "the thorough management of the entire pro- "perty, and the *imlak* belonging to the executants, "and the income and profits therefrom (which, "taken as a whole, forms a small estate), so that "the property itself and the principal wealth of "the estate may always be preserved from all "manner of partition, division, transfer, and "succession, and the management thereof in "whole and in part should remain for ever in "the hands of one person, whereby our name "and memory, and the pomp and dignity of the "estate, may continue"; and that "the attain- "ment of the above object is impossible except "by a wakf."

Turning to the operative clauses of the deed, the first and the most general in its terms is paragraph 4, by which the executants "make "wakf . . . in favour of our respective selves,

" and after the death of one of us (the executants)
" in favour of the surviving executant alone,
" and thereafter in favour of our descendants,
" generation after generation, so long as they
" exist, and in favour of the servants and de-
" pendants of the *riasat* (estate) aforesaid and
" in favour of the poor, the beggars and the
" needy for ever in the manner detailed below."

The numerous clauses that follow are entirely in accord with the purpose stated in the preamble and embodied in the fourth paragraph. The bulk of the property is not affected by any religious or charitable trusts. The rules laid down are almost all expressly directed to securing Kaim Ali in the full enjoyment of the whole estate as long as he lived, to keeping that estate in perpetuity entire and inalienable under efficient management by a single person, to maintaining the dignity of the family, and to making provision for its members. The religious and charitable clauses are no exception. They are ancillary to the real purpose of the deed; they deal with matters naturally incident to maintaining the dignity of the family, and their secondary character is further apparent from the fact that, while the deed purported to create the wakf as from its date, the religious and charitable trusts were not to become obligatory till after the deaths of both the executants. The name and form of a wakf are avowedly adopted in the hope of gaining legal recognition for a transaction which without them could have no validity. It follows that the deed created no valid wakf. And this disposes of the first four Appeals.

With regard to the fifth Appeal another point was raised. It was said that Asima having died after her mother but before her father, those who now stand in her place could at most claim, as they do claim, her share in her mother's

estate, but, of course, no share in her father's; and that her father, by his exclusive enjoyment of the mother's estate, had acquired a title to it as against the heirs of the mother, and that, therefore, the claim to Asima's share was barred.

The answer to this contention is that it assumes the father's possession to have been adverse to the heirs of the mother. But the High Court has held that that possession was not adverse, and no reason has been shown to their Lordships which could lead them to dissent from that finding.

Their Lordships will humbly advise His Majesty that these Appeals should be dismissed. The Appellant will pay the costs.