Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ibrahim Goolam Ariff v. *Saiboo and others from the Chief Court of Lower Burma; delivered the 3rd July* 1907.

Present at the Hearing:

LORD ROBERTSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

The questions raised by this Appeal relate to the succession of Goolam Ariff, a wealthy Mahomedan resident of Rangoon, who died on 16th May 1902. He left a will dated 19th April 1902, by which he bequeathed his property to his heirs according to Mahomedan law. The controversy between the parties is concerned with the validity of certain deeds of gift, dated 2nd April 1902, by which he conveyed to certain of his minor children and wives a certain number of undivided 2,000th shares in certain valuable properties. These deeds are attacked by the executor of the will on two main grounds, the first relating to the physical condition of the deceased at the date of execution, the second founded on the law of Mushua which is said to forbid them. (The attack on the deeds as "colourable" so entirely failed, that it is unnecessary to do more than state that it was made.)

The first of these is a pure question of fact; the two Courts have concurred; and each judgment is supported by careful and elaborate reasoning. The law applicable is not in controversy; the invalidity alleged arises where the

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gift is made under pressure of the sense of the imminence of death.

The difficulty is in applying this to the subtle and conjectural problem of the mental condition of the testator in each case. It would be inappropriate that their Lordships, in reviewing concurrent judgments, should re-discuss the evidence in detail. Goolam Ariff was an elderly man, who had not led a careful life ; he suffered, and knew that he suffered, from degeneration of the arteries and of the liver and he had been sharply ill. His life, therefore, was an old and a bad one. It is highly probable that the execution of the disputed deeds was suggested by his realising the prudence of setting his house in order, but this is the motive of all wills and especially of the wills of the old and ailing. Having examined the evidence, their Lordships consider that the conclusion of the Courts was sound.

The other disputed question is of a very different legal quality. The property which the deceased had to dispose of consisted of freehold land in Rangoon and shares in six companies. Their Lordships assume the law of Mushua to apply to the succession of Mahomedans who reside in Rangoon ; but the serious question is whether it applies to property of the nature described. What was done by Goolam Ariff was this : he (notionally) divided the property to be dealt with into 2,000 shares ; he kept to himself 1,150 shares, and the remaining 850 he distributed among the persons to be benefited, giving 200 shares apiece to three of them, 100 shares apiece to two of them, and 25 shares apiece to two of them. Now it is said that this gift was void, as being contrary to the doctrine of Mushua. In the first place, even if the duty of the Courts were to construct a prohibition of gifts of undivided shares of what is divisible, which should be

applicable to the conditions of modern life, it would seem impossible in the case of the shares, and extremely difficult in the case of freehold property in a town, to carry it out. But the attitude of the law towards this doctrine of Mushua does not involve any such constructive application of the doctrine. It was laid down in the Privy Council case of *Mumtaz Ahmad* v. *Zubaida Jan* (16 I. A. 207, at p. 215) that "The doctrine " relating to the invalidity of gifts of Mushua is " wholly unadapted to a progressive state of " society, and ought to be confined within the " strictest rules." Their Lordships concur in the conclusion arrived at below, that it would be inconsistent with that decision to apply a doctrine, which in its origin applied to very different subjects of property, to shares in companies and freehold property in a great commercial town. The argument of the Appellant was not that the law of Mushua did in fact embrace (in the sense of having been applied to) such property, but that, if the same aspect of life and things were logically applied, it involved the invalidity of the gifts in dispute. But this is not the true criterion.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the Appeal.