Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mirza Sajjad Husain and another v. *Nawab Wazir Ali Khan and others, from the Court of the Judicial Commissioner of Oudh; delivered the* 13*th June* 1912.

PRESENT AT THE HEARING:

LORD SHAW.
SIR JOHN EDGE.
MR. AMEER ALI.

[DELIVERED BY LORD SHAW.]

This is an Appeal from a Judgment and Decree of the Court of the Judicial Commissioner for Oudh, dated the 27th March 1907, modifying a Decree of the Subordinate Judge of Lucknow, dated the 30th March 1906. The suit was brought on the 1st April 1905.

It prayed for a declaration that all the property comprised in three deeds of endowment was *wakf*, that is to say, was endowed property, and the Plaintiffs (the present Appellants) as trustees under these deeds prayed for possession. The claim in short was, as stated, a "claim for possession of *wakf* property by right of trusteeship."

The claim of the Appellants was dismissed by the Subordinate Judge in its entirety. Upon appeal, the Appellate Court upheld this Decree with respect to the property comprised in one of the three deeds of endowment, viz., that of 13th November 1902, and reversed it with

respect to the property included in the other two deeds. That is to say the endowments under these two deeds were held good.

The only question raised in the present Appeal has reference to the last endowment, viz., that constituted by the deed of 1902. The preceding deeds, on e dated in 1886 and one in 1898, were somewhat limited in their character, and the Defendants' contention under which these deeds were attacked is not now further insisted on.

Many years ago a tomb, or, more properly speaking—as their Lordships are informed—a mausoleum, was erected in the city of Lucknow by one Madad Ali, now dead; and in 1886 he made a *wakf* of certain property for the upkeep of the mausoleum and the performance of religious observances in connection therewith. By the deed of endowment Mehdi Begam was appointed one of two trustees, and upon the death of her co-trustee in 1899 she continued to manage the property alone. In March 1898 she executed a document whereby she purported to add to the endowment, and she appointed the first Plaintiff and her brother, the first Defendant, to be trustees of the original and added property. There appears to be no doubt that Mehdi Begam was much interested in the mausoleum and in its endowment, its upkeep, and its services. She died on the 4th February 1903, having on the previous 13th day of November executed another deed—that with regard to which the parties are now in contention.

Mehdi Begam was a pardanashin woman; she was separated from her husband, she was unable to read or write, and she was possessed at the date of the deed which is questioned of a fortune of about Rs. 50,000. It is not disputed that in the ordinary case of a deed granted by a pardanashin lady, it rests upon those founding

upon the document to establish that she understood its effect and that the deed was intelligently and properly executed by her.

The *wakf* is undoubtedly of a comprehensive character It proceeds upon the following narrative :—

" Whereas this world is unstable and no reliance can be " placed on this borrowed life, and after death there " remains no trace either of soul or body, and whosoever " has come to this world from non-existence will be com- " pletely annihilated one day, according to the proverb 'all " that lies over it is mortal'; but through good and " charitable deeds, or from one's male issue, if he is good " and obedient, the continuance of one's names is possible. " I, the declarant, have no issue of any kind from whom I " may hope for the endurance of my name, consequently it " it seems proper to incline myself to the performance of " good deeds."

The deed thereupon proceeds to endow :—

" With possession in the name of the undermentioned " places in my lifetime in connection with the *Rouza* and " for its maintenance, stability, and expenses, and also for " sending people to Karbala and other holy places, as " detailed below, my personal, moveable and immoveable " property, as specified hereafter, valued at Rs. 50,000."

She constituted herself as *Mutawalli*, that is, as the manager of the religious endowment, and she appointed her brother and her general agent as trustees. Among the succeeding clauses the following appears to be important :—

" That the trustees shall in my lifetime, as well as after " my death, continue to manage the undermentioned things " just like myself, and the carrying out of the under- " mentioned things and of the above conditions shall also " be binding and incumbent on me, as it is incumbent " according to the *Imamia* law. And for my livlihood my " *wusika* and pension are sufficient."

That pension amounted, as is admitted, to somewhere under Rs. 40 per month. Power is given for collection of the income of all property conveyed, such collection to rest only in the general agent, who was one of the trustees.

The document may be described shortly as an *inter vivos* conveyance, taking effect *de presenti*

and stripping the lady of all her possessions, except to the extent of the reservation made to herself of her pension of Rs. 40 per month. It appears to their Lordships that the deed accordingly is of a character justifying a strict and careful application of the rule operating for the protection of *pardanashin* women and demanding affirmative proof on the subject of their intelligent understanding and execution of deeds attributed to them. This view is strengthened by the marked contrast which exists between this document of 1902 and the previous Deed of Endowment of 1898, which was limited in its scope, was purely testamentary, and expressly reserved powers of management of all the affairs of the endowed property to the lady herself, with power of amending and cancelling the endowment.

" According to the principles which have always guided " the Courts in dealing with sales or gifts made by ladies in " such a position (*pardanashin* ladies), the strongest and " most satisfactory proof ought to be given by the person " who claims under a sale or gift from them, that the " transaction was a real and *bonâ fide* one and fully under- " stood by the lady whose property is dealt with."

This is the language of Sir Montagu Smith in *Tavoordeen Tewarry* v. *Nawab Syed Ali Husain Khan* (1 Indian Appeals, 206) and is still the law. In the words of Sir Andrew Scoble in *Shambati Koeri* v. *Jago Bibi* (29 Indian Appeals, 131) :—

" It is a well-known rule of this Committee that in the " case of deeds and powers executed by *pardanashin* ladies, " it is requisite that those who rely upon them should " satisfy the Court that they have been explained to and " understood by those who executed them."

Accordingly, the one and only question in this case is ;—the burden of proof being thus placed, has it been discharged by the party upon whom it rests ? In their Lordships' opinion, Mr. De Gruyther was justified in founding upon the concurrent findings in fact of the Courts

below. The Subordinate Judge, having heard the evidence, says :—

" It does not satisfy me that Mehdi Begam intelligently " understood the deed on which she was placing her seal, " and knew at the time its effects upon her rights as owner " of the property comprised in the deed."

It is unnecessary to go into the details as to the alleged execution of the document in the zenana, as to whether certain witnesses knew the voice of the executant, as to whether the deed in point of fact was read, or was read in circumstances giving any indication of its appreciation by the grantor. The finding of the Subordinate Judge is as stated. In the Judgment passed by the Court of the Judicial Commissioner of Oudh the opinion expressed was as follows :—

" It has not been proved that when Mehdi Begam " executed the *waqfnama* she understood its provisions or " its effects upon her interests."

By Section 596 of the Civil Procedure Code (Act XIV. of 1882) it is specifically provided as follows with reference to Appeals to His Majesty the King in Council :—

" Where the decree appealed from affirms a decision of " of the Court immediately below the Court passing such " decree, the Appeal must involve some substantial question " of law."

Their Lordships put to the learned Counsel for the Appellants what question of law was here involved, and it was replied that, while the findings of fact were concurrent, the Judgment of the Subordinate Judge showed that he had misdirected himself. It turned out that this was rested upon the ground that in the course of a long Judgment certain materials for arriving at a conclusion had not been set out in the narrative which the Judgment contains. These materials were of the most elementary character ; and their Lordships are of opinion that there is no ground

for the suggestion that the Subordinate Judge had not taken them into account. It would be to misconstrue entirely the provisions as to concurrent findings in fact if the Judges of India were to have impliedly the duty laid upon them of making their narrative of the circumstances minutely and completely exhaustive, under the penalty that if they failed to do so, the absence from their mind of elementary considerations might be presumed.

The Courts below accordingly having concurrently found that the facts which it lay upon the Appellants to establish were not proved, it appears to their Lordships that this is to all intents and purposes a concurrent finding on a matter of fact, and that accordingly such a finding cannot be disturbed. The rule so clearly laid down by Lord Macnaghten in *Karuppanan Servai* v *Srinivasa Chetti* (29 Indian Appeals, 39) should be followed.

Their Lordships will accordingly humbly advise His Majesty that that the Appeal should be dismissed with costs.

In the Privy Council.

MIRZA SAJJAD HUSAIN AND ANOTHER

v.

NAWAB WAZIR ALI KHAN AND OTHERS.

DELIVERED BY LORD SHAW.

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