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on behalf of all these pilgrims, would be clearly guilty of breach of trust in allowing the sacred Granth to be removed from the temple.

The appeal will, therefore, be dismissed, subject to the alteration of the decree as proposed by my learned colleague. The appellant will pay the costs of this suit to the respondents in both the Courts.

*Appeal dismissed.*

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*Before Mr. Justice Cunningham, Mr. Justice Prinsep, and Mr. Justice Wilson.*

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ANUND MOYE DABI (PLAINTIFF) *v.* GRISH CHUNDER MYTI AND ANOTHER (DEFENDANTS).*

*Limitation Act (XV of 1877), s. 10—Trust—Charge of Debts by Testator.*

A charge of debts generally by a testator upon his property or any part of it, will not affect limitation, because it does not at all vary the legal liabilities of the parties, or make any difference with respect to the effect and operation of the Statute itself. The executors take the estate subject to the claim of the creditors, and are in point of law trustees for the creditors, and such a charge adds nothing to their legal liabilities. But the case is different when particular property is given upon trust to pay a particular debt or debts. In such a case the trustee has a new duty, not the ordinary duty of an executor to pay debts generally out of property generally, but a duty to apply a particular property to secure a particular debt; and there is a trust within the meaning of s. 10 of the Limitation Act.

*Scott* v. *Jones* (1), *Williamson* v. *Naylor* (2), and *Philips* v. *Philips* (3) followed.

THIS was a suit to recover the sum of Rs. 24,300 from the infant defendant Grish Chunder Myti and from certain properties which were bequeathed to him by his maternal uncle, one Shib Pershad Giri, under the following circumstances: Shib Pershad Giri borrowed a sum of Rs. 15,000 from the defendant Goluck Chunder Myti, the father of the infant defendant Grish

* Appeal from Original Decree, No. 143 of 1880, against the decree of Baboo Jadu Nath Roy, Subordinate Judge of Midnapore, dated the 5th March 1880.

(1) 4 C. and F., 382. (2) 3 Y. and C., Ex., 208. (3) 3 Hare, 281.

Chunder Myti. On the 26th Bysack 1275 (May 1868), Shib Pershad Giri executed a will in favour of the infant defendant, to whom it was addressed, directing him to pay off that debt out of the properties for which he had obtained a decree against one Joy Narain Giri. The material parts of the will were as follow:—

"Therefore, you being my nephew (sister's son), and competent to give the pinda (funeral cake) to my *peetreelok* (ancestor), I give you under this will the whole of my moveable and immoveable properties specified in the decree of the original suit No. 17 of the District Court and of the Appeals Nos. 167 and 168 of the High Court, under these conditions,—*viz.*, that you will perform my *onteyshtee kreea* (funeral cremation) and rites and ceremonies in the proper manner at the prescribed expenses, and that you will cause the said *kreea* to be performed. The sum of Rs. 15,000, which I took in loan from your father and carried on the cases aforesaid from the Zilla Court up to the Sadr Court, and in which I have been successful, you will repay that loan with interest from the properties specified in the decrees, and you will set me free from the liability of that debt. Your maternal grandmother, who is my mother, and I, who am your maternal uncle, his wife, must be my wife, to these two persons you will give food and raiment, and pay expenses to meet religious rites as will be required, and you will maintain them both accordingly. I have a daughter, who is unmarried. You will find out a worthy lad and give her in marriage. The expenses which will be incurred for that, you will pay. If a son be born of the womb of that daughter of mine,—that is to say, if I have a daughter's son, in that case you will yearly pay him Rs. 200. My opposite party has preferred appeal to the Privy Council against the appeal case abovementioned. You will pay the expense of defending that out of your money, and you will recover the properties specified in the decree and the costs incurred in the lower Court up to the Sadr Court with interest thereof. If it be necessary to furnish security for execution of the decree, when the case is pending in appeal to the Privy Council, in that appeal you will furnish the security and will recover the whole properties with costs as specified in the

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decree. You being a minor, I have appointed your father, Baboo Goluck Chunder Myti, the trustee. He will carry out the whole work specified in this will. I have given to you the whole of the abovementioned property under the condition stated in this will. From to-day I have relinquished my right to the properties. You from this day will become rightfully entitled to my right of the whole of the properties,—that is to say, to the decree numbered aforesaid, and you will obtain from the Court a certificate under this will, and you will cause record of your name in the decree aforesaid, and you will be in possession, and you will maintain my patrimonial rites and ceremonies and the (sheba) worship of the debta (idol), and you will be in enjoyment of the properties as aforesaid."

After the successful termination of the suit in the Privy Council, Goluck Chunder Myti, as guardian of the infant defendant, executed the decree against Joy Narain Giri, and obtained possession of all the properties included in it on the 23rd November 1874, and realized the sum of Rs. 10,200 from Joy Narain Giri.

Subsequently, the plaintiff's husband obtained a decree against Goluck Chunder Myti, and caused Goluck Chunder Myti's right to receive his debts due to him out of the estate bequeathed by Shib Pershad Giri to be sold in execution of his decree, and purchased it himself on the 16th September 1875. The present suit was not instituted until more than three years after that date. The defendants pleaded limitation, and in the Court below the suit was dismissed on that ground.

The plaintiff appealed to the High Court.

Mr. *H. Bell*, Baboo *Mohesh Chunder Chowdhry*, Baboo *Taruck Nath Sen*, and Baboo *Jogesh Chunder Dey* for the appellant.

Baboo *Prannath Pundit* for the respondents.

The following judgments were delivered :—

WILSON, J. (CUNNINGHAM, J., concurring).—This is a suit by a purchaser at an execution-sale of the right, title, and interest of one Goluck Chunder Myti under the will of one Shib Pershad Giri.

The only question before us is one of limitation. If the suit is properly a mere suit for a debt, and if, as was argued before us, the will amounted at most to an acknowledgment of the debt so as to give a new period of three years within which to sue, then, it is conceded, the suit is barred.

If, on the other hand, the will validly charged the debt on immoveable property, or created a valid trust for its payment, then, it is conceded, the suit is in time. (His Lordship then read the will as above set out and continued.)

It has been decided in England that a charge of debts generally in a will upon the testator's personal estate, or any portion of it, creates no trust so as to exclude the Statute of Limitations: *Scott* v. *Jones* (1).

The reason is, "because it does not at all vary the legal liabilities of the parties, or make any difference with respect to the effect and operation of the Statute itself. The executors take the estate subject to the claim of the creditors; they are in point of law the trustees for the creditors; the trust is a legal trust, and there is nothing whatever added to their legal liabilities from the mere circumstance of the testator himself declaring in express terms that the estate shall be subject to the payment of his debts."

In this country there is no distinction between one kind of property and another in respect of its liability for debts. Probably, therefore, upon the principle just referred to (which is not based upon any peculiarity in the English law of trusts), a charge of debts generally by a testator on his property or any part of it would not affect limitation.

But the case is, I think, materially different when particular property is given upon trust to pay a particular debt or particular debts. In such a case the trustee has a new duty, not the ordinary duty of an executor to pay debts generally out of property generally, but a duty to apply particular property to secure a particular debt, and such trusts of personalty have been upheld in English Courts.

In *Williamson* v. *Naylor* (2), a testator gave one-fifth of his residuary personal estate upon trust to pay certain specified

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debts, all of which were barred by limitation at the date of the testator's death. The case came first before Lord Lyndhurst, C.B., and afterwards before Alderson, B., and it was held, that the effect of the will was to revive the barred debts (the effect of the English Statute having been to bar the remedy, not to extinguish the rights); that the trust was a valid trust; and that the creditors claiming under it were entitled as creditors, not as legatees.

This case, it is true, was decided before *Scott* v. *Jones* (1); but the decision was approved and followed in an exactly similar case by Shadwell, V.C., five years after *Scott* v. *Jones* (1) had been decided—*Philips* v. *Philips* (2).

I think the same rule is applicable in this country, and that a gift of property by will upon trust to pay a particular debt or particular debts creates a good trust.

In the present case the testator gives the property in question to the defendant, and expressly directs him to discharge certain duties, one of which is to pay the debt of Goluck Chunder out of the property. It is true that he confides the active administration in the first instance (probably during the defendant's minority) to the defendant's father; but that does not relieve the defendant from discharging the duties imposed, so far as they are undischarged; and then he says expressly, "I have given to you the whole of the abovementioned properties under the condition stated in this will."

This seems to me clearly a gift only on condition of discharging the trust, and I, therefore, think there is a trust within the meaning of s. 10 of the Limitation Act, and that the suit is not barred.

PRINSEP, J.—On reconsideration of this case, and after hearing further argument, I agree in this judgment. The contrary view I formerly entertained was in consequence of understanding the case of *Scott* v. *Jones* (1) differently from the explanation now given. The case will be remanded to the lower Court for trial. Costs to follow the result.

*Case remanded.*

(1) 4 C. and F., 382. (2) 3 Hare, 281.