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mentioned in my referring order, and what we have held with regard to this mortgage renders it unnecessary for us to consider the other mortgages mentioned in the judgment of the Court below. The view we have now taken defeats the whole suit. The result is exactly what the learned Chief Justice and my brother Straight have said, *viz.*, that this appeal stands dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

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February 16.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

MARIAM BIBI (PLAINTIFF) *v.* SAKINA AND OTHERS (DEFENDANTS).*

Pardah-nashin woman—Conditions necessary to the valid execution of a document by—

Where a deed executed by a *pardah-nashin* woman is sought to be set aside, it is for the party wishing to uphold the deed to show affirmatively that the transaction intended to be carried out by the deed was a reasonable one, that the executant was fully cognizant of the meaning and legal and practical effect thereof and that she executed the same with her full and free consent, that is to say, that she had independent advice on the subject and was not otherwise, as, *e. g.*, by reason of bodily or mental infirmity, or by reason of fraud or coercion practised upon her, incapable of giving a rational consent to the transaction.

One Mariam Bibi a *pardah-nashin* lady of some 70 years of age, and more or less illiterate, executed on the 11th September 1888, a deed which purported to divest her immediately of all her property in favor of her son Murtaza Husen, who was dumb and imbecile, her daughter Sakina, who was named in the deed as guardian of Murtaza Husen, and that daughter's son, Muhammad Yakub. Muhammad Yakub was betrothed to a daughter of one Fakir Husen and one of Sakina's daughters was married to one Shakurul Husen. Those two persons, *viz.*, Fakir Husen and Shakurul Husen were mainly instrumental in procuring the execution of the deed in question. The deed was drafted in very artificial language, and it was not shown that the executant ever understood its contents or effect. The executant was moreover at the time of execution in ill health and great mental distress, owing to the death of her son, Muhammad Husen, which had happened some months previously. The deed was also executed in the absence of the person who was at that time the executant's chief adviser and the manager of her property. Lastly, it appeared that as soon as the executant came to know what the true nature of the deed was and that proceedings had

* First Appeal No. 189 of 1889 from a decree of Maulvi Shah Ahmad-ullah, Subordinate Judge of Allahabad, dated the 20th August 1889.

been initiated in the Revenue Department for mutation of names, she took immediate measures to show her dissent from the provisions of the deed and her disapproval of what had been done thereunder.

Held that under the circumstances above set forth the deed in question could not be considered as having been executed under the conditions necessary in such cases and must be set aside. *Ashgar Ali* v. *Delroos Banoo Begum* (1). *Mahomed Bukhsh Khan* v. *Hosseini Bibi* (2) *Behari Lal* v. *Habiba Bibi*. (3) and *Kaniz Fatima* v. *Abbas Ali* (4) referred to.

THE facts of this case are sufficiently stated in the judgment of Tyrrell, J.

Pandit *Sunder Lal* and Munshi *Ghulam Mujtaba*, for the appellant.

Munshi *Kashi Prasad*, for the respondents.

TYRRELL, J.—The appellant brought a suit to obtain a declaration that a deed executed by her on the 11th September 1888, may be declared null and void, on the ground that it was fraudulently framed so as not to express her intentions in executing it and is therefore inoperative and null. The defendants are her daughter, the minor son of that daughter, and the plaintiff's adult son, who is dumb and imbecile. The suit was instituted on the 22nd February 1889, and was dismissed by the Subordinate Judge of Allahabad on the 20th August 1889. The defence to the suit was that the deed expresses the declared and true intentions of the plaintiff, who with full knowledge of its contents was a party to its registration and to the subsequent application for mutation of names in favor of the defendants under the terms of the deed and to the possession of the defendants in accordance with the deed. The plaintiff is over 70 years of age, and on the 11th September 1888 was the absolute owner in her own right of an 8 anna share in Rahmanpur in the Allahabad district, with groves appertaining to the same and a house in Rahmanpur, and also of a 2 anna 8 pie *m'afi* estate in the village Amwa in the Mirzapur district, and also of certain decrees and outstanding claims for money, the entire property being valued roundly at 10,000 or 11,000 rupees. Half

(1) I. L. R. 3 Calc., 324.
(2) I. L. R. 15 Calc., 684.
(3) I. L. R. 8 All, 627.
(4) Weekly Notes 1887, p 84.

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of the 8 annas zamíndári share of Rahmanpur was at the time in possession of a mortgagee, but the rest of the property was in the possession of the plaintiff and the plaintiff had acquired this property, not through her deceased husband, but from her own family and otherwise. She had by her deceased husband two sons, the elder, now about 50, being the defendant Murtaza Husen, *alias* Chatar, dumb and imbecile, who lived with and on his mother, the younger named Syed Muhammad Husen, who died in February 1888, aged 45 years, and a daughter, the female defendant, whose minor son, the defendant Muhammad Yakub, is engaged to be married to the daughter of Fakir Husen of Sheikhpur, who was the principal agent in the execution of the deed in question. The loss of her second son, who was the prop of his mother's old age and manager of her estate and business, plunged the plaintiff into the deepest grief, and in August 1888 she fell into severe sickness which made her anxious to dispose of her property before she died. She says in her plaint that her idea was to set apart $\frac{1}{3}$ of her estate for religious objects to the spiritual benefit of herself and her deceased son and to devise the remaining $\frac{2}{3}$ to her daughter Sakina and her imbecile son, who were to take possession thereof in shares in accordance with their interest under the Muhammadan law of succession after her death. At this time her daughter and the minor defendant, whose place of residence is in the Jaunpur district, were on a visit to the plaintiff who had recently negotiated the marriage of Musammat Sakina's daughter with one Shakurul Husen, a resident of Sheikhpur and the betrothal of Musammat Sakina's minor son, the defendant Yakub, with the daughter of Fakir Husen, also a resident of Sheikhpur in the Allahabad district. In the month of September 1888, the plaintiff says that her daughter Sakina, in co-operation with this Shakurul Husen and Fakir Husen, under pretence of bringing about the execution of a deed to carry out the above intentions of the plaintiff, took her away from her house in Rahmanpur to their own place some 7 or 8 *kos* distant and there made her a party to the execution and registration of the deed of the 11th September 1888, and to the initiation of proceedings in the local Revenue Office in connection therewith. The plaintiff alleges

that she was wholly unaware of the main contents and of the legal and actual effect of the deed; that she had no idea that it was a deed which would or could have operative effect in her lifetime; that she was also ignorant of the purport of the application in the Revenue Department, and that it was not till late in October 1888 that she became aware that proceedings were on foot to expunge her name from the public records of title and possession of her Allahabad property. She promptly protested in the Phulpur tahsíl office against the proposed alteration in the public record, but without success, and her appeal in this respect to the Collector of the district was disallowed on the 11th February 1889. In these objections she stated from the first that the respondents had taken advantage of her old age and practised deceit and fraud upon her in the execution and registration of a deed. She derives her cause of action from these proceedings, but declares that no change of possession, in fact, has as yet taken place in respect either of her title or her possession of the property, the subject matter of the suit. The defendant, Musammat Sakina, for herself and as guardian of her minor son Yakub and her imbecile brother Murtaza, admitting the execution and registration of the deed and the institution of the mutation proceedings, denied that the plaintiff was ignorant of any of the terms or of the effect of the deed, maintaining that she was made aware of them and was a party to them with the fullest knowledge, notice and assent. The defendants also claimed to have obtained complete possession under the deed.

The issues set down for trial were :—

(1). Of possession.

(2). Of the knowledge and notice with which the plaintiff executed the deed, *i. e.*, whether the plaintiff, had full knowledge, notice and consenting power in respect of all the terms and of the legal effect of the deed, or the execution thereof was procured by or for the defendants through fraud practised on the plaintiff.

The Court below found that the deed was executed with the full knowledge and understanding of the plaintiff, who at the time

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had full disposing power, and that possession had consequently been delivered to the defendants. I will consider afterwards, as the case was argued before us at length upon all the issues, the evidence and the reasonings which led the Court below to these findings, both of which are in my judgment incorrect. But the main and paramount question raised by the pleadings has not been sufficiently, if at all, taken into consideration in the trial of the case, although it is and must be the real pivot of decision in actions like this for relief from the operation of a deed admittedly executed but challenged on the ground of fraud. This issue of course is whether the Court had reason to be satisfied that the plaintiff appellant was in the true and full sense of the word a consenting party to the deed of the 11th September 1888; that the meaning of all the phrases and clauses of the deed were fully explained to the plaintiff; that she knew, not only what she was doing, but also what the legal and practical effect of the deed to her and her estate would be; and that there was evidence of entire good faith (*uberrimae fidei*) in respect of the entire contract and the proceedings consequent thereupon. The law on this subject has been fully explained in many judgments of their Lordships of the Privy Council, notably in the case of *Asghar Ali* v. *Delroos Banoo Begum* (1), in which it was laid down as a general rule that "it is incumbent on the Court, when dealing with the disposition of her property by a *parda-nashin* woman, to be satisfied that the transaction was explained to her and that she knew what she was doing, and especially so in a case *** where, for no consideration and without any equivalent, a lady has executed a document which deprives her of all property."

This and other rulings are referred to in detail in the cases of *Behari Lal* v. *Habiba Bibi* (2) and *Kaniz Fatima* v. *Abbas Ali* (3), in both of which judgment was delivered by my brother Straight, and in *Mahomed Bukhsh Khan v. Hosseini Bibi* (4) where the Judicial Committee laid down the following tests as being generally applicable to all cases of deeds executed by *pardah-nashin* women in the East, tests which are still more forcibly applicable to a case like the pre-

(1) I. L. R. 3 Calc., 324, at p. 327).
(2) I. L. R., 8 All., 267.
(3) Weekly Notes 1887, p. 84.
(4) I. L. R., 15 Calc., 634.

sent, where all the circumstances of the plaintiff and the medical evidence on the record raise serious doubts whether she was in the months of September and October 1888 in the true and full sense of the words *compos mentis* for the transactions in question. We have to see whether the arrangements embodied in the deed of the 11th September 1888 were righteous in their character, whether they were provident or improvident in regard to the old lady, the plaintiff, whether the arrangements were such as to require that she had previous independent advice regarding them; and what was the origin of her intention to act in the ways the document sets out. Now, except in regard to her mental health and the presumable good will of the parties around her at the time, the Court below has not considered any of these points, and it was frankly admitted at the hearing of the appeal by the learned Counsel for the respondents that the record contains no evidence and no materials for a finding on the paramount question of independent advice. We have an executant far advanced in years, over 70 years of age, shattered in health, and more particularly in her nervous organisation, by an overwhelming calamity which had left her for the first time for very many years without any independent counsellor in her own house. She is evidently a woman of an excitable and morbid temperament. She is illiterate, and she was surrounded by persons who had considerable and conflicting interest in the disposition of her estate. It appears that, though her daughter Sakina Bibi lived mostly with her husband in the Jaunpur district, the plaintiff had been helpful in the nurture and education of her young family, the minor son Yakub being educated and cared for at the plaintiff's house. It also appears that the defendant Murtaza was the almost helpless object of the plaintiff's care and support, but under the Muhammadan Law the defendant Sakina and her brother Murtaza would be the sole heirs upon her death of the plaintiff's property, the former presumably taking $\frac{1}{3}$ and the latter $\frac{2}{3}$ of the whole. On the death of her son, Muhammad Husen, one Yad Ali, a nephew of the plaintiff, took his place in the management of her affairs, and we find that his sister is married to the imbecile Murtaza. I noticed above that Shakurul Husen is married to one of Sakina Bibi's

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daughters, while her minor son Yakub is betrothed to the daughter of Fakir Husen of Sheikhpur. Thus it would be to the interest of Shakurul Husen and Fakir Husen that some provision should be made for Musammat Sakina Bibi's son and daughter just mentioned. One of the modes for effecting this would be to cut down the lawful share of the imbecile defendant and to increase that of Sakina Bibi, an arrangement which would be obviously distasteful to Yad Ali, the brother-in-law of the imbecile heir Murtaza. Evidently, then, here was a case peculiarly calling for independent advice. We will see later on how this condition was fulfilled. To apply the other tests mentioned above, it will be convenient now to glance at the deed. It is printed at page 12 of the appellant's book and is No. 6 of the record. It sets out that Mariam Bibi, aged 70 years, desired to divide all her property among her offspring and heirs and to put every one of them in possession of shares and property "*during her lifetime.*" I may observe here that the document, which is of considerable length, is couched in technical and artificial phraseology, the terms used being generally foreign in their character, mainly Arabic, such as would not ordinarily, or at least readily, be understood by an old, infirm, illiterate and partially deaf woman. For example, the very important words "during my lifetime" are in the vernacular of the deed "*ba hayát apne,*" whereas a person like the plaintiff would certainly not use such a phrase, but would say "*apni zindagi men*" or "*jab tak ki main zinda rahun.*" The property was divided under the deed as follows:—That 8 annas of the Rahmanpur property with the groves and dwelling house should be given and delivered at once to Mir Murtaza Husen and to Muhammad Yakub in equal shares, and that Musammat Sakina should at once have title and possession of all the Mirzapur *m'afi* property and all the plaintiff's decrees and outstanding debts respecting that estate, and that the executant should at once be removed from the Government papers and should have thenceforth no claim to any part of the property. Further, the imbecile defendant Murtaza and his property were placed under the guardianship and protection of Musammat Sakina Bibi. In this way, while half the Allahabad property was given to Sakina Bibi's son Yakub, who was not an

heir at all, Sakina Bibi took all the *m'afi* property in Mirzapur with the decree and other securities attaching thereto, and, in her capacity of guardian of her minor son and imbecile brother, she became practically the mistress of all the Allahabad estate for many years and of Murtaza's half for the full period of his life. The deed was executed in the village of Sheikhpur closely adjoining the village and tahsíl of Phulpur, the plaintiff's name was attached to this deed by the pen of Fakir Husen of Sheikhpur, whom I have mentioned above and her signature professes to have been attested by Muhammad Hanif of Sheikhpur, Muhammad Ishaq of Sheikhpur, Wazir Khan of Sheikhpur, Abdul Ghafur of Sheikhpur and Muhammad Bakhsh of Sheikhpur. I have said that the execution of the deed purports to have been attested by these men. It will appear further on that not one of these men was present when the plaintiff's name was put to the document. On the same 11th September 1888, between 3 and 4 o'clock the deed was presented for registration in the tahsíl of Phulpur by Fakir Husen, the executant at the time lying in her *doli* outside the building. The registering officer recorded that the plaintiff was identified in the *doli* by Fakir Husen and by Abdul Ghafur, one of the attesting witnesses just mentioned, and he wrote that, "the executant requested that the deed after registration should be handed over to her relation Fakir Husen," and the document was registered upon that day. Immediately afterwards the plaintiff, through the same Fakir Husen and Abdul Ghafur, put in the petition No. 35 of the record praying for expungement of her name and record of those of Murtaza Husen and Muhammad Yakub in lieu thereof for the 8 annas zamindári of Rahmanpur; the minor, Muhammad Yakub, to be and to remain under the guardianship of his mother Musammat Sakina Bibi. The plaintiff was again identified in this office by the same Fakir Husen and Abdul Ghafur, and at the same moment a counter-application for record of the names of Sakina, Murtaza Husen and Muhammad Yakub was put in by Shakurul Husen, son-in-law of Sakina Bibi. When the proceedings had reached this stage the lady was taken to her home in Rahmanpur, where, she said, some weeks afterwards she learned with amazement that she had set proceedings on foot

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which would divest her of all title to and possession of her Allahabad property. Let us see now what the character of this transaction was. From the plaintiff's point of view, it can hardly be described as a righteous thing that in her old age and infirmities she should have been put entirely at the mercy of her daughter, whose marriage duties required that she should for the most part reside far away from the plaintiff in her husband's house in Jaunpur, while the other persons to whom she had transferred everything she possessed in the world were an adult imbecile and a young boy. The improvidence of the transaction requires no statement, and it appears to me that the disposition of property contained in the deed is as remote as possible from the ideas which are shown to have possessed the old lady's mind when her intention to deal with her property in anticipation of her death originated. I have said above that it is conceded that there is no evidence whatsoever that the plaintiff had any independent advice in respect of the execution of the deed, and this would itself be a sufficient reason for reversing the decree below and for giving the relief she seeks. But I may as well briefly consider the bearing of the evidence upon the other features of the case. It is incumbent upon the defendants who set up and rely upon the deed to show affirmatively that the plaintiff entered into it with full knowledge and understanding and disposing power, and that the entire transaction was free from circumstances throwing any shadow of doubt or suspicion on the inception, execution and application of the deed. The evidence of Yad Ali, whose interest in the case is of a perfectly justifiable and legitimate character, is instructive upon these points. His interest or bias is limited to this, that he objects to see his sister's husband, Murtaza Husen, deprived of his lawful share in the estate under the Muhammadan Law. This desire seems to me to be not only natural, but, looking to the disabilities of Murtaza Husen, commendable also. Yad Ali proved that he was the person best qualified to advise the plaintiff in August-September 1888 about the disposal of her property; that he was the person most accessible to her at the time; that her main desire then was to deal with $\frac{1}{3}$ of the property for the spiritual benefit of herself and her favorite son, the remainder

of the property being left to follow the ordinary course of Muhammadan law at her death. He stated that he was absent from Rahmanpur in September when the plaintiff was taken alone to the residence of Fakir Husen in Sheikhpur, and that before she left she told him in the presence of Fakir Husen in Rahmanpur that "Fakir Husen agreed in her idea of reserving $\frac{1}{3}$ of the property for religious purposes and leaving the rest to Sakina and Murtaza after her death." He stated that in October he learned by a letter from Sheikhpur, written by a person practising in the Phulpur tahsíl, what the real contents of the document were, and he also heard in this way of the mutation proceedings. He then told the plaintiff that the document was not written in the way she meant and that it contained no provision for religious uses. He said that the plaintiff at once ordered him to recall the document and to bring Fakir Husen to her, but that they could not get either the document or Fakir Husen. The witness shortly afterwards lodged formal objections, on behalf of his brother-in-law and of the plaintiff, to the *dakhil kharij* proceedings. The plaintiff gave similar evidence, and though her testimony contains inconsistencies and contradictions, they appear to me to be due to her peculiar condition at the time when she was ill, nervous, weak, excited and indignant. Her evidence as a whole produced on our minds a strong impression of its substantial truth and honesty. She swore that her wish in August and September 1888 was "to give some property in the name of God and make a mosque for the benefit of myself and my deceased son in the next world, and that the remainder should remain in the name of my dumb son and Sakina during my lifetime." The latter words were cited by the learned counsel for the respondent in support of the provisions of the deed putting Sakina and Murtaza Husen in possession of a part of the property during the plaintiff's lifetime, but this would not be the same thing as making over the property in proprietary possession to any one, and further, however this might be, it is utterly divergent from the terms of the deed, which reserve nothing whatsoever for spiritual uses, and devise part of the property to the minor defendant, Muhammad Yakub. The plaintiff added that the foundation of the mosque had been laid by

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her, and that she was preparing bricks for building it. She swore that when she was taken to Fakir Husen's house and the execution of the deed was proposed to her she bade them send for Yad Ali, but was put off by Fakir Husen, who said that he was at Allahabad. She swore that Fakir Husen never explained the deed to her, nor read it to her, nor gave it to her. She swore that she had no conversation with the attesting witness Muhammad Hanif, and that she never saw the other attesting witness Wazir. She went further and swore that she did not tell any person in Sheikhpur to witness the deed. She added that she keeps *pardah* from the attesting witness Muhammad Ishaq and she disowned all knowledge of the proceedings after registration at the tahsíl of Phulpur. She challenged Fakir Husen, who was present during her examination, "to stand up and say in her presence and in that of the Commissioner taking her evidence that he had explained anything to her." She declared that the moment she heard in October 1888 of the fraud practised upon her, she ejected Sakina Bibi and her family from her house in Rahmanpur. As against this evidence the defence relied on a deposition of the plaintiff made in the Revenue Department on the 10th November 1888, which was admitted in evidence by the Court below against the plaintiff and to which she took no objection. She then said, "I have executed the deed of partition," which no doubt she had, in so far as she authorized Fakir Husen to affix her name to the paper purporting to be the deed of partition of the 11th September 1888; but this admission does not help the respondents, more particularly when we find it accompanied by the statement that the deponent had no wish that any change whatever should be made in respect of her property during her lifetime. The statements of Yad Ali and of the plaintiff as to her intentions prior to the execution of the deed are strongly corroborated by the apparently independent and respectable evidence of the witness Dawar Husen, who is related to the plaintiff and has no apparent interest in this controversy either way. I will now examine the evidence which the respondents rely on in defence of the deed. Fakir Husen of course is the leading witness. I have shown how he was interested in the peculiar provision for the defendant, Mu-

hammad Yakub, who had no title to the plaintiff's inheritance under the Muhammadan law. He deposed that the draft of the document was read over to the plaintiff, but there is no evidence of this fact. He said that "since the execution of the document the defendants are in possession of the property," but I believe this statement to be absolutely untrue. He said that "it was the plaintiff's desire that the document should be completed away from her home in Rahmanpur to avoid the opposition of Yad Ali." There is nothing to support and much to contradict this statement. He said that he handed over the document to the plaintiff after he had affixed her name to it, and he implies that it did not again come to his hands till after registration. I believe this statement to be incorrect for reasons which which will appear below. And lastly, this witness had to admit that he was taking an active part in conducting and supporting the respondents' case, and that Ata Husen, their leading witness on the issue of possession, was closely related to him by marriage. The remaining witnesses belong to the group directly connected with the execution and registration of the deed. Muhammad Hanif was not present when the deed was signed by the plaintiff. He says that he was subsequently asked to make attestation and did so. He makes the surprising statement that "he had read this deed of gift and had read it over to the plaintiff in a loud voice. All the contents of the deed were admitted by the plaintiff." He gives no reason for this unusual proceeding. His attestation, such as it was, was limited to this, that the plaintiff told him she had previously executed the deed. What then would be the need for or likelihood of this *ex post facto* recitation and admission? This is, I think, the first time in many years that I have heard of a marginal witness of this sort being expected or allowed to read a deed to the executant. The witness was no relation or close friend of the plaintiff. He is a brother-in-law of his co-witness Muhammad Ishaq. He is in no way connected with the defendants or with Fakir Husen, but is in a position to swear that this document "was not executed nor any draft of it made with the advice of Kazi Pir Bakhsh, Shakurul Husen and Fakir Husen." But in this he is directly contradicted by the independent witness Muhammad

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Bâkar, who "wrote out the deed from the draft brought to him for that purpose by Kazi Pir Bakhsh, Shakurul Husen and Fakir Husen." He had no idea, he says, where and when the document attested was executed. He said that the plaintiff had never taken his advice on any matter except on this occasion, and he adds the significant statement that there was no one in the room during the interview when he was reading the document to her. I do not believe this witness. The next is Muhammad Ishaq. He also was no witness to the execution of the deed. He says:—"the plaintiff asked me to sign, and so I signed. The deed had already her signature before I attested it." He did not read the deed, but, strange to say, the plaintiff told him its provisions. This witness is the brother-in-law of the preceding witness, and the nephew of Shakurul Husen, son-in-law of the respondent Sakina Bibi. When the witness was asked how he knew that the contents of the deed were in conformity with the executant's wishes he pretended that he read the document after registration and found that it tallied with what the executant had told him. I do not believe this witness. Next in order comes the attesting witness Wazir Khan, a Kanwal or itinerant bard, whom the witness Fakir Husen described as "belonging to a high caste." He professes to know and come into the presence of the plaintiff, which she indignantly denied. He says that he was called into the plaintiff's sitting room and near her bedside he read the deed from beginning to end and then attested it. At this interview also no one but the witness was present. The remaining marginal witnesses were not examined, or at least their evidence has not been brought before us, although one of them was the Abdul Ghafur who professed to identify the plaintiff in the registration of the deed and in the mutation department.

I find it difficult to understand how upon such evidence as this, contrasted with that of the plaintiff, of Yad Ali, and of Dawar Husen, the Court below persuaded itself that the deed was executed with the full knowledge and comprehension of the plaintiff on her part and without fraud or undue advantage of any sort practised on the other side. The rest of the evidence is devoted to showing on

the one hand that the plaintiff never for a day parted with possession of her property, and, on the other, that the defendants after the mutation of names obtained possession of all the property, except such as was in the hands of a mortgagee. It is enough to say on this point that I find the balance of testimony largely in favor of the plaintiff; the few insignificant instances of rent alleged to have been paid to the respondents on the Mirzapur property being evidently manufactured for the purposes of this suit, and not being such, even if they occurred, as to indicate any real or practical possession in defeasance of the plaintiff's possession. I will now only notice briefly the reasons which influenced the Court below. The learned Subordinate Judge made a point against the plaintiff out of the 4th paragraph of her plaint in which she, a *Sunni*, professed an intention of providing a *wakf* for "*Imambara* and *Majlis* in honor of the two Imams," whereas such a dedication of property would be made by a *Shia* Muhammadan only, but the Subordinate Judge himself had noticed that the intention of the plaintiff, as described in her own evidence and in that of her witnesses, was to build a mosque, which it appears was in course of erection during the trial of the suit below, while the development about the *Imambara* and *Majlis* appears for the first time in the plaint. I think it is more fair to judge the plaintiff by her proved wishes in August-September 1888, than by the coloring they received in her plaint in February 1889, which was drawn up by her *Shia* friend and karinda, Yad Ali. However this may be, the deed would remain equally divergent from her expressed wishes, whether they referred to a mosque only or to *Imambara* and *Majlis* purposes also. The Court below was wrong in finding that the registration endorsement on the deed shows that the contents were read out to the executant. On the contrary, it shows that the contents, of s. 82, Act III of 1877, were explained to the executant, which is a very different thing. It is not evident, as the Court below said, "from the testimony of Muhammad Hanif, Muhammad Ishaq and Fakir Husen that the contents of the deed were read out to plaintiff and the purport of the deed was also explained to her. As I pointed out above, Fakir Husen did not prove that the con-

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tents were read out to the executant. I explained why I disbelieve that Muhammad Hanif or Muhammad Ishaq read the paper at all, and no witness pretended that he or any one else explained the deed to the plaintiff. The learned Subordinate Judge's remark "that the plaintiff's object would have been frustrated if she had embodied it in a will instead of a deed of gift, because a will operates as regards one-third only of the property," is misleading, because he overlooks the limitation to the rule in the case of consent of heirs. The Court below derived a further presumption against the plaintiff from the fact that "she remained silent for a long time after she had come to know that the deed had been executed contrary to her wishes." But she did not do so. Some time in October, probably early in the month, Yad Ali got a hint of the facts of the case and told his employer, who took the promptest action possible in the matter by at once ejecting Sakina and her family from her house and society. She did not do this immediately on her return from Sheikhpur to her home, as the Court below thought, but some time afterwards when her suspicions were roused as to the honesty of the transaction.

It is needless to consider the rest of the judgment upon the legal aspect of the sort of possession requisite to make a gift good under the Muhammadan law, as I am satisfied that possession did not pass at all. For the reasons which I have stated above I hold that the plaintiff should have got a decree, not only on the sufficient ground that she had been led into this deed disposing of her property under suspicious circumstances and without independent advice, but also because she has in my opinion furnished good reasons for holding that she was deceived into putting her name to that deed under the impression that its contents were substantially different from what in fact they are. Allowing the appeal I would reverse the decree of the Court below and decree the appellant's claim with costs of both the Courts.

STRAIGHT, J.—I entirely concur in the judgment of my brother Tyrrell.

Appeal decreed.