MUJIB-UN-NISSA AND OTHERS (PLAINTIFFS) *v.* ABDUR RAHIM AND ANOTHER (DEFENDANTS).

P. C.
J. C.
1900
November 21 *and* 23.
December 8.

On appeal from the High Court for the North-Western Provinces.

Act No. III of 1877 *(Indian Registration Act), sections* 32, 34, 35, 87—*Presentation of document by a person without due authority—Waqf—Family endowment ineffective as a waqf.*

A person, who had executed a document disposing of immovable property made his power-of-attorney to his agent to present it for registration, but died before the presentation. The Registrar was aware of his death, but accepted and registered the document.

Held, that this was not a mere defect in procedure falling under section 87 of Act No. III of 1877, the Indian Registration Act. The registration was illegal and invalid. The power and jurisdiction of the Registrar only arises when he is invoked by a person in direct relation to the document, and the relation of the person authorized by the maker in his life had ceased on his death.

The document, describing itself as a deed of family endowment, declared that the income and profits of the property, after defraying the necessary expenses according to the provisions in the deed, should be applied to charitable purposes. But this liberality was by the conditions in the deed only to an uncertain and discretionary amount and as an incident to an endowment for the family. The dedication was in substance only for the maintenance and increase of the family property and not for charitable purposes. Therefore no waqf was established.

APPEAL from a decree (19th June, 1895) of the High Court, reversing a decree (23rd December, 1892) of the Subordinate Judge of Meerut.

The appellants, the plaintiffs in this suit, were the minor daughters, under the guardianship of their mother Farid-un-nissa, the widow of Syed Mehrban Ali, who died on the 26th October, 1889. The respondents, Abdur Rahim and Abdul Aziz, were the representatives of Ulfat-un-nissa, the defendant, who survived her sister Sharif-un-nissa. These two sisters survived their brother Syed Mehrban Ali, and both were now dead, the latter having died before, and the former after, this appeal.

The questions decided on this appeal were as to the effect of the circumstances under which a deed disposing of immovable property and executed by Syed Mehrban Ali was put upon the register by the Registrar; and the validity of the deed to

Present:—LORDS HOBHOUSE, DAVEY, ROBERTSON and LINDLEY, SIR RICHARD COUCH and SIR FORD NORTH.

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constitute a waqf or dedication to religious or charitable purposes was also in dispute.

The plaint alleged that Mehrban Ali being the owner of property valued at four lakhs executed on the 16th October, 1889, a deed of waqf dedicating the property to charitable and religious uses. Sent to be registered the document was rejected by the Registrar for the reason that the property was not sufficiently described according to the requirements of section 21 of Act No. III of 1877, the Indian Registration Act. A list was then added. The Syed died on the 26th of the same month. The document was taken on the 4th November following to be presented for registration by Syed Habib-ullah, a person described as the general attorney and trustee of the deceased. On this occasion the Registrar accepted it for registration and registered it.

The plaint prayed that this document might be declared to be a valid and enforcible deed of waqf, and that the property might be declared not to be divisible among the sharers.

The two sisters defended the suit on the ground, among other defences not before the Committee on this appeal, that the deed was "illegally registered" and could not be called a registered deed or affect the property. Also that in regard to its terms there was no waqf created. "All that was meant was a settlement" for the preservation of the property and the benefit of the family.

Syed Mehrban Ali stated in the deed his purpose, and that he had made a "waqf khandani." The terms of the deed, which gave a detail of the property subject to the "family endowment" and the conditions attached thereto, are at length stated in their Lordships' judgment.

The proceedings when the deed was presented on both occasions for registration are also stated in that judgment.

Among several issues framed to raise all the questions in dispute were the two that related to two principal points, now the only issues presented on this appeal. They were (1) as to the registration of the deed, and (2) as to the validity of the attempt to establish a waqf or dedication for religious or charitable purposes.

Upon the construction of the deed the Subordinate Judge held that a settlement made by a deed such as the present, wherein a

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man settled property on himself or for the benefit of his descendants, was a charitable act; that this deed of settlement was valid as constituting a waqf; that this waqf was not open to any objection according to Muhammadan or any other law.

The sisters, defendants, appealed to the High Court, their counsel relying only on the defect in procedure under the Indian Registration Act, 1877, and on the invalidity of the alleged waqf-namah or deed to constitute a waqf as not being a dedication to a religious or charitable purpose.

As to the registration, the Judges (BLAIR and BURKITT, JJ.), feeling bound by a Full Bench decision in *Hardei* v. *Ram Lal* (1) admitted the document in evidence and considered its value and effect.* They held that the words used in the deed, translated

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* As to the question of the registration of the waqf-namah, the High Court found as follows:—

BURKITT, J.—"Now as to the registration of this instrument the facts are (as we are informed by both sides) that the waqf-namah was, on October 15th, 1889, written on a stamp paper of Rs. 5, which being insufficient, it was on the following day written out on a stamp paper of Rs. 2,000 and executed by Syed Mehrban Ali. Even then it was not complete, as it did not contain any detail of the property. It was therefore not registered, but was taken back to Mehrban's residence at Gulaoti, where a schedule (signed by Mehrban) of the property intended to be endowed was added to it on October 24th. For some reason unknown it was not then sent to be registered, and Mehrban Ali died on the 26th October before any attempt had been made to have the deed registered. It was subsequently presented for registration at the office of the Sub-Registrar on the 4th November, 1889, by one Syed Habib-ullah, who is brother of Musammat Farid-un-nissa, one of the plaintiffs-respondents, and who at the time of Mehrban Ali's death held a general power-of-attorney from the latter, empowering him *inter alia* to present documents for registration. In the registration endorsement Habib-ullah is described as the person who had been "given charge of" (*muhawwil, ali*) the deed. The registration was effected on the acknowledgment of Habib-ullah, as to whom the registering officer recorded that he had a 'right to appear and make admission, as he was the *muhawwil, ali, i.e.* the custodian of, or the person who had been given charge of, the document.'

"Now section 32 of the Registration Act (III of 1877) tells us who the persons are by whom documents shall be presented for registration. Habib-ullah, the person by whom this instrument was presented for registration, is not one of those persons. He was not the person who executed it. He does not claim under it. He was not the representative nor the assignee of the person who executed it or of any person claiming under it. Nor was he the agent of

(1) (1889) I. L. R., 11 All., 319.

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"family endowment," aptly and *fully described the settlor's intention*. The object which he had in view was spiritual benefit to himself by making a family endowment of his property in favour of his descendants. They expressed their opinion that in executing the so-called waqf-namah, the Syed had nothing in view but to make a permanent provision for his descendants as long as any one descended from him survived, and to provide for the increase of the estate by investment of the surplus income. They declined to give effect to a clause which was not to have operation till after the extinction of the settlor's descendants at some indefinite time in the future, pointing out that a similar dedication in *Abul Fata Mahomed Ishak* v. *Russomoy Dhur Chowdhry* (1) was decided to be illusory on account of its remoteness. Under the deed now in question there was no immediate dedication of any portion of the settlor's property to charitable or religious uses, and the settlor never intended to make any such dedication, his object being to make a perpetual settlement for the support of his descendants.

The judgment of the Subordinate Judge was for these reasons reversed.

On this appeal

"such person (*i.e.*, executant or claimant), representative or assign duly authorized by a power-of-attorney executed and authenticated in a particular manner. The general power-of-attorney which Habib-ullah held from Mehrban ceased to be operative on Mehrban's death, and it is not contended that under the power conferred by it, Habib-ullah could have presented this document for registration. The registration was in fact made on presentation and on admission of execution by a volunteer not authorized under section 32 of the Act. Most careful provision is made in section 33 for the registration of instruments executed by living persons who are unable to appear. But I cannot find any provision for the registration of an instrument executed by a person who is dead at the time of presentation for registration, excepting in section 35, where it is provided that if the person executing the document is dead and his representative or assign appear before the registering officer and admits the execution, the document shall be registered, and perhaps in the case of a person who claims under the instrument presented for registration. That, however, is not the case here. Habib-ullah does not claim under the *waqf-namah*, and was not the representative or assign of the person who executed the document nor the representative assign or agent of any person claiming under it. Under these circumstances it seems to me that it is impossible to say that this instrument

(1) (1894) L. R., 22 I. A., 76.

Mr. *J. D. Mayne* and Mr. *W. A. Raikes*, for the appellants, were directed by their Lordships to take first the point as to the registration. They argued that this should be held valid. In registering this document the Registrar was acting within his jurisdiction, and the act was done in good faith. The registration holds good notwithstanding the irregularity. Act No. III of 1877, section 87, was referred to. There may be an irregularity which will not invalidate. [Sir R. COUCH.—Merely putting the deed on the register is not enough. It must be registered according to the requirements of the Act.] But reference should be made to *Sah Mukhun Lall Panday* v. *Sah Koondun Lall* (1). If the Registrar did not proceed according to the Act in registering the document on the application of a person not formally

"has been registered 'in accordance with the provision of the Registration Act.' It is provided by section 49 of that Act that no document of which the registration is compulsory (as is the case here) shall *inter alia* be admitted in evidence 'unless it has been registered in accordance with the provisions of this Act.' This document, no doubt, has been registered in so far that the *certificate* provided for by section 60 of the Act has been endorsed on it. The second clause of section 60 provides that that certificate shall be admissible 'for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement referred to in section 59 have occurred as therein mentioned.' But that clause does not provide that the certificate shall be conclusive incontrovertible proof that the document has been registered in manner provided by the Registration Act. And if, as I have no doubt, the rules in sections 32, 33, 34, and 35 of the Registration Act are included 'in the provisions of this Act' within the meaning of the last clause of section 49 of the Act, then in the present case the certificate given under section 60 which is admissible in evidence to prove due registration would by its very terms show that the registration had not been made 'in accordance with the provisions of the Registration Act,' execution of the document having been admitted by a person who was neither the representative nor the assign of the deceased executant. For the above reasons I am constrained to hold that the instrument in dispute in this case has not been registered in accordance with the provisions of the Registration Act, and that section 49 prevents us from admitting it in evidence; but our attention was called to the case of *Hardei* v. *Ram Lal* (2), in which a Full Bench of this Court held that a registration made under very similar circumstances was valid for the purpose of section 49 of the Act. In deference to the opinion of the learned Judges who decided that case, my learned brother, who heard this appeal with me, and I thought it better not to exclude the waqfnamah under section 49."

(1) (1875) L. R., 2. I. A., 210, 215. (2) (1889) I. L. R., 11 All., 319.

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empowered, such a registration was not declared by any words in the Act to be a nullity. *Mohammed Ewaz* v. *Birj Lall* (1) was also referred to. Here the defect was one of procedure. Reference was also made to *In re Shaik Abdul Aziz* (2). As soon as application is made the Registrar's jurisdiction comes into existence. Here the application was made by a person who had already shown his authority to represent to the Registrar the wish of the maker of the document that it should be registered. The presence of that person was sufficient to satisfy the Registrar that the registration was desired by the executant; and if he was, *bonâ fide*, under a mistake in registering, the error could not deprive him of the authority that had already attached. His mistake would not have any such retrospective effect, being only a departure from the proper procedure which did not interfere with the result that the parties in good faith requested. Here the first presentation of the deed was by an agent absolutely authorized. True it was that the authority had ceased at the time of actual registration; but even then the person to whom authority had originally been given was present, tendering the deed that had been executed with the intent that it should be registered in accordance with directions given by the maker of it. It was contended that a mere error in procedure would not invalidate the registration.

As to the validity of the waqf which the deed was executed to establish, there was in the waqf-namah a substantial gift to charitable purposes. It was not necessary that the amount should be defined if, as was the case here, it was intimated that the amount was to be substantially liberal. No doubt an illusory gift to the poor would not suffice to save a perpetual family settlement from being void. But where an appropriation is made to charitable purposes it will not fail merely because sufficient particulars and a working scheme are wanting. They can be supplied or Courts can direct them. It was contended that on a general construction of all the clauses in the deed the use of the word "waqf" was justified and appropriate. It was not a mere attempt to make pass a family settlement under colour of a gift for charity. The donees under the deed were to devote

(1) (1877) L. R., 4. I. A., 166, 175. (2) (1887) I. L. R., 11 Bom. 691.

money for charitable objects as the donor had spent it himself. If the whole had been a pretence the powers given to the mutawalli would hardly have been inserted. The case was not governed by the law declared in *Sheik Mahomed Ahsan-ul-la Chowdhry* v. *Amarchand Kundu* (1); *Abdul Gafur* v. *Nizamudin* (2) and *Gnanasambanda Pandara* v. *Velu Pandaram* (3). Reference was also made to *Runchordas Nandrawandas* v. *Parvatibhai* (4) and *Chotalal Lakhmiram* v. *Manohar Ganesh Tambekar* (5). For English cases showing that under English law expressions no more distinct would sufficiently show intention *In re Sutton* (6) and *Lewis* v. *Allenby* (7) were referred to.

The Hedaya, Volume II, Book XV, page 334, Hamilton's translation was cited.

Mr. *J. H. A. Branson*, for the respondents, was called upon only as to the registration. His argument was that the error on the part of the Registrar was not a mere defect in the procedure, but amounted to an entire absence of authority to present for registration under the Act No. III of 1877. The basis of the Registrar's power to register was wanting, and the registration was null and void. According to the Act, section 34, the only person who could present a deed after the death of the person who had executed it was his personal representative or assign. It was besides a fact that the list was still incomplete, and thus the deed could not be accepted for registration with reference to the requirements of section 21.

Mr. *J. D. Mayne* replied.

Afterwards, on 8th December, their Lordships' judgment was delivered by Lord ROBERTSON:—

The appellants were the plaintiffs in a suit before the Subordinate Judge of Meerut, and by their plaint they prayed that it should be declared that a deed executed in October 1889 by Munshi Syed Mehrban Ali, deceased, is a valid deed of waqf. The property affected by this instrument is said to be worth

(1) (1889) L. R., 17 I. A., 28; I. L. R., 17 Calc., 498.
(2) (1892) L. R., 19 I. A., 170; I. L. R., 17 Bom., 1.
(3) (1899) L. R., 27 I. A., 69, 76; I. L. R., 23 Mad., 271.
(4) (1899) L. R., 26 I. A., 71; I. L. R., 23 Bom., 725.
(5) (1899) L. R., 26 I. A., 199; I. L. R., 12 Bom., 247.
(6) (1885) 28 Ch. D. 464.
(7) (1870) L. R., 10 Eq. 668.

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Rs. 4,00,000. The plaintiffs are, respectively, wives and daughters of the deceased, for whom certain provisions are made in the deed. The defendants were two of his sisters, for whom no provision was made in the deed. Both sisters are now dead, and only one of them, Ulfat-un-nissa, is now represented on the record in pursuance of an Order in Council of the 7th August, 1900, which struck off the representatives of the other sister, Sharif-un-nissa, under circumstances set out in that Order.

Of the several issues settled by the Subordinate Judge two only have been argued in this appeal. The first question is raised by the defendants' plea that the deed founded on not having been legally registered cannot be admitted in evidence and cannot affect the property. The second question is raised by the defendants' contention that having regard to the terms of the deed itself, the property did not become a waqf property. Both questions have been considered by their Lordships.

The question about registration turns on the Act No. III of 1877. The deed in dispute being an instrument of gift of immovable property, it came under section 17 of the Act, and registration under the Act was accordingly, by section 49, indispensable in order to render it receivable as evidence of the transaction which it purported to record, and to enable it to affect the immovable property comprised therein. The question is, was it lawfully registered? It was *de facto* registered, but the history of that registration requires to be examined.

The deed as ultimately presented for registration and registered consists of two parts, of which the former part is dated the 16th October, 1889, and contains the deed of endowment and conditions, while the latter part is headed "Supplement or Detail of the Endowed Property," and consists of these particulars. It appears that at first the Munshi who executed the deed, or his advisers, had not adverted to the requirements of section 21 of the Registration Act; and as the deed as at first presented for registration did not contain "a description of the property sufficient to identify the same," the Registrar, on the 16th October 1889, declined to register, but returned the deed "for correction and compliance with" those statutory provisions. The deed had been presented on behalf of the Munshi by Syed Habib-ullah

who held his power-of-attorney. On the 24th October, 1889, the supplement or detail of the endowed property was added, so as to render the deed registrable, and on that day the deed so completed was executed by the Munshi. On 4th November, 1889, that deed of endowment (*i.e.* the completed deed) was presented for registration by the same Syed Habib-ullah. In the interval between the execution of the completed deed and its presentation to the Registrar the Munshi died. The legal question now to be considered turns on this last fact. The narrative, however, may be completed by mentioning that the Registrar accepted the deed and registered it, recording in writing that the man who had executed it and whose attorney presented it for registration was dead. The minute of this proceeding is on the record.

It was not attempted on the part of the appellant to justify the registration of the deed, as regularly done in accordance with the Act. The departure from the Act is indeed palpable, and the only question is whether it invalidates the registration. The Act by section 32 enacts that every document to be registered under it, whether such registration be compulsory (as in the present case) or optional (as in the case of other classes of instruments), shall be presented by some person executing or claiming under the same, or by the representative or assign of such person, or by the agent of such person, representative or assign, duly authorized by power-of-attorney. Now the case in hand is that of a person who when he presented the deed for registration (as he says he did) on 4th November, 1889, stood in no other relation to the deed than that, before the death of the person executing it, he had held his power-of-attorney. It is perfectly plain, not merely from the general law but from the terms of this section 32 itself, that, after the man's death, the only attorney who would have had any *locus standi* would have been the attorney of the representative or assign of the deceased. It has been suggested, however, that the error of the Registrar was a defect in his procedure only, and accordingly under section 87 does not invalidate the act of registration. To their Lordships the error appears to be of a more radical nature. When the terms of section 32 are considered with due regard to the nature of registration of deeds, it is clear that the power and jurisdiction of the Registrar only come into

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play when he is invoked by some person having a direct relation to the deed. It is for those persons to consider whether they will or will not give to the deed the efficacy conferred by registration. The Registrar could not be held to exercise the jurisdiction conferred on him if, hearing of the execution of a deed, he got possession of it and registered it; and the same objection applies to his proceeding at the instigation of a third party, who might be a busybody. Now it seems to their Lordships that when the deed was presented on the 4th November, 1889, it was presented by a volunteer, and the Registrar's minute shows that he proceeded to register at the request of one whom he knew to derive his power-of-attorney from a dead man. Nor is it possible to treat this action of the Registrar as compliance with the request made on the 16th October, 1889, when the principal was alive. Not only had the deed in fact been executed afresh on the 24th October, but it was presented afresh on the 4th November, as the minute itself bears; and even assuming the continuity of the proceeding, the death of the applicant brought it to an end. The Registrar indeed did not merely disregard section 32, for he proceeded to accept the admission of the alleged attorney as a good admission of the execution of the deed, although section 34 requires in the case of a decease the admission of the representative or assign.

Their Lordships were referred to two decisions of this Committee in support of the appellants' contention. Neither case gives any countenance to the view that the absence of any party legally entitled to present a deed for registration is a defect in procedure falling under section 87. In both those cases the Registrar was throughout moved by a person having title and was exercising his jurisdiction. The difference is in their Lordships' judgment vital. They therefore hold the registration of this deed to have been illegal.

Their Lordships have, however, considered the question whether, even assuming it to have been registered, the deed is, according to its terms, a valid deed of waqf. It will be so if the effect of the deed is to give the property in substance to charitable uses. It will not be so if the effect is to give the property in substance to the testator's family.

The deed begins with a statement that the grantor has always devoted a portion of his income to religious and charitable purposes as seemed proper and expedient to him at the time. He goes on to say that, as he has no male issue and it is incumbent on every one not to neglect to secure benefit of his soul in the next world, he wishes to establish a perpetual, lasting and continuing charity, so that the charitable expenses may in future be defrayed without any difficulty or obstacle in his lifetime and also after his death. Hence "in order to secure benefit and honour in the next "world I have of my free will and accord, without coercion or "compulsion and while in a sound state of body and mind, "made a family endowment (waqf khandani) to seek nearness to "God."

He goes on to say that he has withdrawn his proprietary possession from the property, the subject of endowment, and has brought it into his possession as mutawalli, "which I can hold "during my life under the terms of this document. Its income "and profit shall, after defraying its necessary expenses according "to the provisions hereafter made in this document, be applied to "charitable purposes." No one was by reason of his getting any maintenance to have right to exercise proprietary acts, nor should the endowed property be liable to be attached or sold in satisfaction of personal debts of any mutawalli or recipient of allowance, because it being an endowed property all the rights of the mutawalli and those for whom maintenance allowances have been fixed are to exist only for their personal maintenance. A detail of the property (waqf khandani) which was "the subject "of the family endowment under this deed and the conditions "attached thereto" was then given.

The conditions follow the detail of the property and are ten in number.

The 1st appoints the donor himself to act as mutawalli and he is to use the income of the endowed property "in the way I shall "think proper, according to the provisions of the Muhammadan "law and the conditions of this document."

No. 2 provides for one of his wives and thereafter one of his daughters, and after their deaths some direct descendant, being successively mutawalli.

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No. 3 fixes Rs. 300 a month as the allowance of the mutawalli for his or her own expenses and those of his or her children.

No. 4 gives maintenance allowances to the wives and daughters of the donor.

The 5th and 6th purposes are as follows:—"Whatever are "the necessary expenses, such as the salaries of the servants for "the endowed property, the expenses of visitors, marriages, "deaths, presents, offerings and other charitable purposes, like "those of schools, &c., at this time, they shall during the time "of my superintendence be defrayed by me during the term of "my superintendence and afterwards by every mutawalli, subject "to the provisions of this deed, of his own authority and accord-"ing to his own wishes."

6. "The surplus income of the endowed property remaining "after the payment of the Government revenue, the village "expenses, the expenses of the mutawalli, the salaries of the "servants and stipend-holders and others, &c., shall accumulate, "and the money accumulated shall be invested in the purchase of "other properties which shall also appertain to the endowed "property and shall themselves be waqf property. The income of "that also shall in conformity with the 5th paragraph be spent "along with the income of the endowed property."

By the 7th condition the mutawalli is to have a discretionary power, with reference to the increase or decrease in the income of the endowed property, to increase or decrease the fixed allowances or fix a new allowance. No one was to have a right on the ground of relationship, &c., to prefer a claim for increase or decrease or for a new allowance, or a claim against the mutawalli for the time being for rendition of accounts.

The 8th condition forbids sale and mortgage except in certain specified cases.

The 9th condition relates to the contingency of a son being born to the donor after the execution of the deed. He is to be the mutawalli, with the aid of a munsarim during minority. He is to have Rs. 300 a month for his expenses, "and shall be authorized "to spend all the net profits of the endowed property according to "his discretion in purchasing property and making addition to "the endowed property, in the erection of houses, in performing

"shadi-o-ghammi, joyous and mourning ceremonies, and in other "necessary and charitable matters." It was to be optional to him to create new allowances, to reduce, enhance or put a stop to the allowances of the persons receiving allowances. No other recipient of allowances or relative was to have power to take account from the mutawalli.

The 10th (and last) condition declares that "if (which God forbid!)" none of the donor's male or female heirs be in existence at any time, the authority for the time being shall have power to take the endowed property into and under his own possession and superintendence, use its income remaining after the payment of its cost of maintenance for the donor's spiritual benefit in such matters as might according to Muhammadan faith and Hanafi sect, to which the donor belonged, be valid and for the benefit of the Muhammadans. "I have therefore executed this deed of family "endowment in order that the same may serve as evidence and be "of use."

The deed thus closes, as it began, by describing itself as a deed of family endowment. The donor contemplates, it is true, that his own liberality to religious and charitable purposes shall continue in future generations, but this is only (as it turns out) to an uncertain and discretionary amount, and as an incident of the family endowment. When the deed is examined and collated, and its professions tested by its effective provisions, it proves to be, what it calls itself, a "family endowment," pure and simple. Indeed the theory of the deed seems to be that the creation of a family endowment is of itself a religious and meritorious act, and that the perpetual application of the surplus income in the acquisition of new properties to be added to the family estate is a charitable purpose. It is superfluous in the present day to say that this is not the law.

The part of the deed which was most relied on by the appellants is the general statement or declaration with which it opens. The words particularly founded on are those in which the testator declares that "the income and profit of the endowment shall, after "defraying its necessary expenses according to the provisions "hereafter made in this document, be applied to charitable pur-"poses." The reference to the subsequent part of the document

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carries us forward to the conditions where those general intentions are put into concrete and effective shape. Now the 5th and 6th conditions express in clear and definite language the manner in which the testator works out the ideas adumbrated in the words which have been quoted, and they place beyond dispute the relative positions of charity and family endowment in the testator's scheme. The 5th condition provides for the payment of what it calls necessary expenses, and among those it expressly enumerates "offerings and other charitable purposes, like those of schools, "&c., at this time." The 6th condition deals with the surplus income after those "expenses" are paid, and dedicates that income to the purchase of other properties; and the income of the new properties is to follow the same course as the income of the original estate. The amount to be applied under the 5th head is in the absolute and uncontrolled discretion of the mutawalli, and no one has a right to demand an account.

On the terms of the deed itself, therefore, their Lordships hold that the property is not in substance dedicated to charitable purposes, but on the contrary is dedicated substantially to the maintenance and aggrandisement of the family estates for family purposes. The deed, therefore, could not be supported as constituting a waqf. Their Lordships will humbly advise Her Majesty that the appeal should be dismissed and the appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitor for the appellants—Mr. *T. C. Summerhays.*

Solicitors for the respondents—Messrs. *Barrow, Rogers* and *Nevill.*