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KISHORI LAL v. CHUNNI LAL.

The respondent must pay the costs of the appeals.

Appeals allowed.

Solicitors for the appellant:—*Pyke, Parrott & Co.*

Solicitors for the respondent:—*T. L. Wilson & Co.*

J. V. W.

1908. *December* 1.

APPELLATE CIVIL.

Before Mr. Justice Richards and Mr. Justice Griffin.

BIBA JAN (PLAINTIFF) *v.* KALB HUSAIN AND OTHERS (DEFENDANTS).*

Muhammadan Law—Sunnis—Waqf—Provision for celebration of anniversary of birth of Ali Murtaza, expenses of the Muharram and the death anniversaries of members of the family of the wâqif, also for repairs of imambara—Waqf held to be valid.

A Muhammadan lady belonging to the *Sunni* sect purported to make a waqf of all her property and provided that a sum amounting to decidedly the larger portion of the income of the dedicated property should be applied annually towards the following purposes, *viz.*, the celebration of the birth of Ali Murtaza, the expenses of keeping *tazias* in the month of Muharram, the anniversaries of the deaths of members of the wâqif's family and the expenses for repairs of an imambara which the wâqif had built, and declared that the property had been dedicated to God and charitable and religious purposes.

Held that the dedication was not illusory; there was an intention of creating a substantial waqf for pious and charitable purposes, and the objects for which the waqf was created were valid.

THE facts of the case were as follows:—

The plaintiff alleged that one Musammat Najiban was the daughter of plaintiff's father's sister, and was the owner of considerable movable and immovable property; that she died on the 4th of June 1904, when she was about 90 years old; that Kalb Husain, defendant No. 1, was the *mukhtar-i-am* and servant of Musammat Najiban; that Ata-ullah, defendant No. 2, also lived with the said Musammat at Bareilly, being the brother of the defendant No. 1; that Musammat Maddo Jan, plaintiff's own sister, who was defendant No. 3 in the suit, also lived with the said Musammat Najiban, who on account of her old age and having no child or near heir was under the undue influence of all these defendants; that the plaintiff was living in her husbands'

* First Appeal No. 52 of 1907, from a decree of Girraj Kishor Datt, Subordinate Judge of Bareilly, dated the 17th of November 1906.

house in the Budaun district; that on the death of Musammat Najiban the plaintiff and her sister, defendant No. 3, became entitled to all the property left by the said Musammat in equal shares; that when the plaintiff made efforts to take possession of the property and to obtain mutation of names in her favour in the Revenue Court, she found that the name of the defendant No. 1 had been entered in the revenue papers in respect of a five biswa zamindari share in mauza Gurgawan under a deed of sale, dated 18th February 1902; that the names of defendants Nos. 1 and 2 were so entered in respect of another five biswa share in the said mauza under a waqfnama, dated the 2nd of November 1902, and that the names of all these defendants were entered in respect of the remaining property under a deed of gift, dated 26th February 1903; that the plaintiff desired to bring a separate suit in respect of the deeds of sale and gift, the present suit being only for possession and mesne profits in respect of the plaintiff's share in five out of ten biswas of mahals *mushtaqil* and *ihtimali* in the said mauza Gurgawan and a house named imambara in Bareilly, which were in the possession of the defendants Nos. 1 and 2 as mutawallis under the said waqfnama and for a declaration th at the waqfnama was altogether invalid in law.

The defendants Nos. 1 and 2 contested the suit on the allegations that the plaintiff was not the daughter of Sana-ullah, Musammat Najiban's maternal uncle, and had no right to bring the suit; that the defendants were the sons of the said Sana-ullah, and one Musammat Mammi Jan, being the daughter of the said Sana-ullah, was a necessary party to the suit; that the deed of endowment was valid according to Muhammadan law, and had been executed by Musammat Najiban of her own free will and without any undue influence of any person and while she was in full possession of her senses and in proper health; and the wâqif had relinquished her own possession of the endowed property and had properly put the mutawallis in possession thereof; that the greater part of the income of the endowed property had been assigned for pious and charitable purposes, and a margin of the profits had been left to meet probable contingencies like those of alluvion, diluvion, costs of litigation and arrears, &c., and that if th endowment be held invalid and the plaintiff be proved to be a

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daughter of Sana-ullah, she could only claim one out of seven shares of Musammat Najiban's property and that the mesne profits claimed were excessive.

The Court below found that the plaintiff was one of the two daughters of Sana-ullah; that the defendants Nos. 1 and 2 were not sons of Sana-ullah, although they styled themselves as such, being the sons of one Musammat Dhuman a prostitute, who had never been married to Sana-ullah, although living with him; that Mammi Jan was not a necessary party, being the daughter of the said Musammat Dhuman; that the donor had built the imambara house in which she used to hold *majlises* (religious meetings) during *ashra* (the first ten days) of *muharram*, and being of a charitable and religious turn of mind, used to spend Rs. 1,000 to Rs. 1,200 per annum in these *majlises* and charities, and that the waqfnama had been validly executed by her and was consistent with her religious and charitable ideas; that the deed of endowment was not in favour of the defendants Nos. 1 and 2 except in so far as it made them the Mutawallis, and that the waqf in the present case was a valid waqf under the Muhammadan law. It accordingly dismissed the suit with costs. The plaintiff appealed.

Mr. *Abdul Majid*, for the appellant, submitted that the *Fatawa Alamgiri* was the most authoritative book for Sunni Muhammadans. According to it appropriations for reciting the Quran were void. Observance of *taziadari* ceremonies during the muharram were not in accordance with Sunni tenets. There must be *qurbat* (or nearness) between the appropriation and the object. If a Sunni Muhammadan were to make a waqf for *taziadari* ceremonies, there would be total absence of *qurbat*. He cited Baillie's Digest of Muhammadan Law, pp. 558, 569, 575.

It might be good to hold prayer meetings on the anniversary of a death, but it was not the general practice to observe ceremonies on the anniversary of a birth. The law was that the bulk of the property must go for charitable purposes. If this was not so, the whole waqf was void. The gist of the evidence was that during muharram illuminations took place and some sweets were distributed. These were not the sort of acts which

were meritorious and for which a valid waqf could be made according to Sunni laws. The *fatehah brasi* referred to in the deed could not mean the celebration of the death anniversaries of persons of the family. This was never countenanced by Sunni law. The establishment of an imambara is not a valid object among Sunni Muhammadans. Any sum appropriated for the purposes of the imambara would not go for any valid object, and except for the Imambara no certain object of appropriation was mentioned in the deed. The waqfnama was certainly invalid so far as this was concerned and it was therefore invalid as a whole. Regarding *fatehas*, illuminations and object of waqfs, counsel submitted the following original texts for consideration of the Court:—

(1) "It is reported by Abdullah, son of Masud, that the Prophet of God, may the mercy and peace of God be upon him, has said,—He who beats the cheeks and tears the garments and laments lamentations of the days of dark, is not among us (*i. e.* among my followers)."

"It is reported by Burdah that Abu Musa became unconscious. Then his wife, Umma Abdullah, came and cried out weeping. When he came to his senses, he said, Do you not know (he mentioned the tradition saying) that the Prophet of God, may the mercy and peace of God be upon him, said 'I am angry with the person who gets his head shaved, weeps loudly, and tears his garments.' These traditions are reported by Bokhari and Muslim."

[The Mishkatul Masabih, chapter relating to lamentation on the dead, sub-chapter I, p. 150.]

(2). "Among the objectionable inventions is the act done in most of the towns, *i. e.* the display of large number of *lights* by waste of money on certain nights of the year."

[The *Al-ukudu Duirrat-o fi-tankihil-Fatawat Hamidiyat-i.* p. 359.]

(3). "The Prophet of God, may the mercy and peace of God be upon him, has forbidden the recital of elegies."

[The book of the traditions reported by Ibn-i-Maja, the chapter relating to dead bodies, p. 115.]

So far as *fateha* was concerned there might be some difference of opinion among the authorities. It might be meritorious to some extent. But so far as *taziadari* was concerned there was no authority which considered it meritorious according to Sunni Muhammadans. The case of *Kaleloola* v. *Nuseeruddeen* (1) showed what purposes could be meritorious and what *waqfs*

(1) (1894) I. L. R., 18 Mad., 201.

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might be valid. As in that case, so in this, the waqf contravened the rule against perpetuities. Unless it could be shown that all the objects of *taziadari* were valid, the waqf wholly failed. The case of *Sayed Mustafa* v. *Amina Begam* (1) was a case relating to waqf made by a Shia Muhammadan. Even there the waqf was declared invalid.

There was a difference between Shia and Sunni lawyers as to the definition of waqf: Amir Ali, Muhammadan Law, 390, 2nd ed. According to the Shias a waqf must be for pious objects. According to Sunnis a waqf must lead to the benefit of mankind. The question of the validity of waqf with reference to *fatehah* ceremonies was discussed in *Phul Chand* v. *Akbar Yar Khan* (2), and this was the only reported case counsel could find on the point. The learned Judge had not found whether in this case there was any purpose of endowment pious, religious, or beneficial to mankind according to Sunni ideas. He ought to have found whether the sect or religion to which the waqif was a party countenanced such observances and whether such observances were customary.

So far as the *muallad sharif*, the celebration of the birth ceremony of the Prophet was concerned, it was incumbent on every pious Musalman. But the basal difference between the Sunnis and Shias lay where we came to the position of the fourth Caliph. On the whole, according to Shias, the endowment must be for pious purposes, which according to the Sunnis must be for charitable objects.

It was also to be seen that the waqf was not certain as to all the objects referred to in it—*Fatma Bibi* v. *The Advocate General of Bombay* (3). If their Lordships were of opinion that any of the purposes of waqf mentioned in the deed was illegal the question would remain whether the bulk of the property had been dedicated for charitable purposes or not, or whether it was a perpetual bequest to the mutawallis in the guise of a waqf. The following cases were referred to:—*Phulchand* v. *Akbar Yar Khan* (4), *Muham mad Ahsanulla* v. *Amarchand* (5) and *Abul Fahta* v. *Rasamaya* (6).

(1) (1904) 2 A. L. J. R., 519.
(2) (1896) I. L. R., 19 All. 211.
(3) (1881) I. L. R., 6 Bom., 42.
(4) (1886) I. L. R., 19 All., 211.
(5) (1889) I. L R., 17 Calc., 498.
(6) (1894) I. L. R., 22 Calc., 619.

A consideration of this question would render it necessary for their Lordships to inquire into the total income and expenditure of the endowed property in order to as certain whether the appropriation made in the deed was for valid purposes or not. According to the plaintiff out of a total income of Rs. 2,500 after all appropriations and expenses there was a balance of Rs. 1,500 unprovided for in the deed, and this was clearly to go into the pockets of the mutawallis.

Mr. *Abdul Raoof* (Mr. *B. E. O'Conor* with him), for the respondents. The validity of the waqf was attacked on the ground that the objects for which it had been made were not countenanced by Sunni law and that the persons for the benefit of whose souls the endowment had been made were not regarded as sacred by the Sunni Muhammadans. Hazrat Ali was respected by Sunnis as well as Shias. The other three Caliphs his predecessors were revered by the Sunnis only. To say that any ceremony for the commemoration of Hazrat Ali was illegal would be contrary to Sunni tenets. The essence of the muharram ceremonies was that the Musalmans mourned the sad death of the two Imams Hasan and Husain. They were the grandsons of the Prophet and the sons of Hazrat Ali, whom the Shias and Sunnis would alike revere. The real object of *taziadari* (muharram ceremonies) was to assemble to mourn for the sad death of the two Imams. The merits of the ceremonies were not to be judged by any artificial ceremonials that perhaps had gathered round the true object. The people who assembled there would observe a manner of mourning and it could never make the waqf illegal because the idea of the waqf was to commemorate the death of the two Imams. The original authorities cited on behalf of the appellant had no bearing on this point. In reply to that the respondents submitted various authorities in the original. *Fatehas* are offered for the benefit of the souls of the deceased as the Roman Catholics celebrated their mass. The merits from them would also accrue to the good of those who offered them. It was to be observed also that during all these ceremonies substantial gifts were distributed to the poor and to all those who assembled in the *majlises*.

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It had been argued before their Lordships that portion of the appropriation was bad because the object had not been mentioned with certainty. The words *Fatehah barsi* etc., could not mean *Fatehahs* for the benefit of all dead souls. A reasonable construction was to be put on such language conveying the wâqif's intentions. The language could only mean that the dead persons of the donor's own family were referred to. Ameer Ali *Muhammadan Law*, Vol. 1, 3rd ed. 174.

There was no uncertainty in the subject-matter, neither in the object. The motive was for the good of the poor (*Ibid.* page 323). Even mere vagueness, if there was any, could not invalidate the whole waqf. The law would hold it valid for all the valid purposes enumerated in the deed. Something like the doctrine of *cy-pres* it was submitted, would apply. The case of *Kaleloola* v. *Naseeruddeen* (1) would support the respondents' case better than it would the appellant's. At page 213 it was mentioned that a waqf for *fatehahs* was valid when made for the benefit of the souls of the saints. Again at page 206 the practice, the appellant so strongly objected to, was reported to have been sanctified by long usage and custom. These specific pleas had not been raised in the Court below and so there was no discussion of such matters in the judgment. Had they been so raised there would have been overwhelming evidence to show that the Sunnis as a matter of fact observe such ceremonies.

Upon a proper construction of the deed it would appear that the entire income was to go for charitable purposes. The wâqif herself regarded her entire ten biswas property to be yielding an income of Rs. 2,000 only : for she had leased the whole 10 biswas share for that sum. The *corpus* of the 5 biswa share had been dedicated. The income, whatever it was, (the donor herself regarded it at Rs. 1,000 per annum) was to be regarded as dedicated. No special provisions had been made for the benefit of the mutawalli who were always accountable for the property to the public. It was only when a specific portion of the income was dedicated to charity, side by side with any provisions for the mutawallis that a question could arise whether a substantial dedication for public charity had been made. Any conditions

(1) (1894) I. L. R., 18 Mad., 201.

restricting the accountability of the mutawallis were certainly void, but so was not the waqf. Here the question could not arise whether the whole was a scheme in disguise for the benefit of the mutawallis. The donor herself calculated the income of the endowed property to be Rs. 1,000. The position of the Mutawallis in respect of expenditure from this income was more like that of an executor of will. The mere fact that there could be a possible surplus left with the mutawallis would not invalidate the waqf. The whole corpus and so the whole income, together with any possible increase or diminution, was the subject-matter of the waqf. The case of *Muhammad Munawar Ali* v. *Rasulan* (1) related to the waqf of a Sunni. At page 336 the clauses of the waqf are discussed. There a substantial portion of the property had not been dedicated for charitable purposes. Here the entire property had been so dedicated.

The case of *Luchmiput* v. *Amir Alum* (2), would show how far *fatehahs*, &c., were good purposes for waqf. The word *Urs* as defined in Hughes' *Dictionary of Islam*, showed that they were ceremonies for the celebration of any celebrated saint of Islam.

Only a small portion of the income had not been shown as specifically appropriated to any of the specific objects mentioned in the deed. That was because the up-keep of the estate was expensive. Portions of the mahals were subject to heavy litigation owing to alluvion and diluvion. The extra expenses for all these had to be met. The respondents submitted that no portion of the income was meant for their personal benefit. The respondents also relied on *Phul Chand* v. *Akbar Yar Khan* (3), *Sayed Mustafa* v. *Amina* (4). The original authorities submitted will show that the whole waqf could not be set aside simply because an insignificant portion could be said to be unauthorized. The waqf was not bad either on the ground that it was illusory or upon the ground that the objects were not authorized by Muhammadan law.

Mr. *Abdul Majid*, replied.

RICHARDS and GRIFFIN, JJ.—The plaintiff in this suit seeks to set aside a *waqfnama*, dated the 2nd of November, 1902, executed by one Musammat Najiban, and for possession of a half share in property dealt with by the waqfnama, and for mesne profits.

(1) (1899) I. L. R., 21 All., 329.
(2) (1882) I. L. R., 9 Calc., 176.
(3) (1896) I. L. R., 19 All., 211.
(4) (1904) A. L. J. R., 519.

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The plaintiff alleged that the execution of the deed was brought about by the undue influence of Kalb Husain, that Najiban was insane when she executed the deed and that no valid endowment had been created (1) because the objects were not legal, and (2) because the endowment was illusory and really made for the benefit of Kalb Husain and his brother Ataullah, the mutawallis appointed by the waqfnama. This appeal is closely connected with First Appeal No. 341 of 1906 decided on the 27th November 1908, and also with another First Appeal No. 340 of 1906, which it has been unnecessary for us to decide inasmuch as the parties compromised it. The evidence in all these cases was by consent read as evidence in each case. The two connected appeals Nos. 340 and 341 of 1906 arose out of suits to set aside a deed of sale, executed by Musammat Najiban on the 18th of February, 1903, in favour of Kalb Husain on the grounds of the insanity of Musammat Najiban and the undue influence of Kalb Husain. The case of the plaintiff, so far as the plea of insanity was concerned, completely failed, and we have given our reasons at length in First Appeal No. 341 of 1906 for holding that the case founded on undue influence has also failed. The court below decided in favour of the plaintiff in the connected cases on the ground that the transaction came under the provisions of section 16 of the Contract Act. But the present suit was dismissed, the court below being clearly of opinion that Najiban was not insane and that undue influence was not proved. We agree with the court below in this finding and we do not think it necessary to discuss the evidence, particularly as we have already dealt with it in our judgment in First Appeal No. 341 of 1906.

There remains the question of the validity of the waqfnama. In the court below this was certainly not the main ground of attack on the waqfnama, but it was raised by the pleadings and has been argued by Mr. *Abdul Majid* in support of the appeal. Najiban, it is clear from the evidence, was piously and charitably disposed for a number of years before her death. She had built an Imambara at a cost of several thousand rupees. She was in the habit of keeping *tazias* and distributing gifts of food in charity. Her expenses in these acts

of charity amounted to Rs. 1,000 or Rs. 1,200 a year. She took a special interest in these matters. Before her death she made a pilgrimage to Mecca and after her return she continued the same pious course of action. All this clearly appears from the evidence. The endowed property, which of course includes the imambara, is stated in the waqfnama to be worth Rs. 40,000. The landed property exclusive of the imambara is worth Rs. 30,000. It appears that the tenants were some what unruly and there was considerable amount of litigation in realizing the rents. Part of the landed property consisted of a share in an alluvial mahal, the income of which was subject to fluctuation. The waqfnama is to the following effect:—

"Whereas there are a 5 biswa zamindari share in 10 biswa *patti aurkh* in the village Gurgawan, pargana Aonla, and a *pacca* newly built house used as Imambara No. $\frac{15}{961}$, in Bareilly near the library, bounded as given below, worth Rs. 40,000, and I am up to this time in proprietary possession thereof without the participation of anyone, I have now in a sound state of body and mind without coercion and of my own accord made a *waqf* of the whole of the said property, *i.e.* 5 biswas of the village Gurgawan and the house used as imambara together with all the original and appended rights, zamindari appurtenances, *sir* land, groves, collection houses, *abadi*, *bazar* (market), all the *sewai* items and *muafis*, etc., including *makruka* lands, for religious and charitable purposes subject to the following conditions and have appointed Kalb Husain, general attorney, and Ataullah, sons of Shaikh Sanaullah, as *mutawallis* (superintendents) of the endowed property and put the said *mutawallis* in possession thereof like myself. I shall get mutation of names in respect of the said zamindari share duly effected in the revenue department (Court).

1. The said *mutawallis* should collect rent and every sum of money due in respect of the endowed property, and pay the Government revenue, the village expenses and the salaries of the servants and out of the remaining amount of net profits they should pay under their own management Rs. 200 annually for the expenses of *milad* (birth anniversary) of the last of the Prophets (may the mercy of God be upon him) and that of Ali Murtaza in the months of Rabi-ul-awwal and Ramzan respectively, Rs. 600 for the expenses of making offerings and keeping *tazias* in honour of the chief of the martyrs, namely, Imam Husain and Hasan (may peace be on them) in the month of Muharram, and Rs. 200 for the expenses of the death anniversary of the dead persons and the repairs of the *Imambara*.

2. The said *mutawallis* shall, in no case, have power to sell or mortgage the endowed property, nor shall the said property be liable to pay the debt due by the *mutawallis* or to be sold by auction.

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3. Should the said *mutawallis* die without appointing anyone as *mutawallis* or their representative, a qualified male descendant of the present *mutawallis* shall be appointed as *mutawalli*; no other person shall have a right to be appointed as *mutawalli*. On the other hand this order of succession shall remain in force for all eternity generation after generation. No committee or society can interfere in the endowed property, inasmuch as the profits of the said endowed property have been dedicated for the maintenance of charitable purposes and offerings so that my name may be perpetuated in this world as well as in the next world and my soul benefited in the next world.

4. All the proceedings in the civil, criminal and revenue courts and in the Honourable High Court, Board of Revenue, Privy Council and all the departments in India relating to the affairs of the endowed property shall rest with and be taken under the control of the *mutawallis*.

5. I have made the endowed property God's property from this day and divested myself of all proprietary connection therewith. After agreeing to the aforesaid conditions, I have executed this deed of endowment, in order that it may stand as authority and be of use when needed."

It will be noticed that the mutawallis are directed to collect the rents, then to pay the Government revenue, the village expenses and the salaries of the servants, and then to apply the net profits in certain proportions.

The actual amounts are set out. They come to a sum of Rs. 1,000. It is argued that the property must yield a net profit of more than Rs. 1,000 per annum and that as only Rs. 1,000 is appropriated, the balance would all come into the hands of the mutawallis, Kalb Husain and Ataullah, beneficially. As regards this it must be borne in mind that it is not only Rs. 1,000 which is appropriated by the donor to the service of God. She expressly says that the entire property is appropriated to the service of God. Mr. *Abdul Raoof* counsel on behalf of the respondents, repudiates all claim to any beneficial interest to any part of the income of the estate. If we assume for the purposes of this branch of the case that the objects of the waqf were legal and that the waqfnama was duly executed, the onus of showing that having regard to the value of the property, the waqf was merely illusory lay upon the plaintiff. We have been referred to the extract from the khewat of 1310 fasli, exhibit 15. C., in which the Government revenue of the entire 10 biswa share owned by Najiban is shown as Rs. 3,912 and to an extract from

the jamabandi, for 1310 Fasli showing the income of the 10 biswa share for that year. The patwari of the village was examined as one of the plaintiff's witnesses. He stated that the Government revenue was Rs. 4,537-14-7. That statement was allowed to go unchallenged and it was accepted by the court below. This witness further stated that the village expenses according to the account furnished to him by the agent amounted in 1312 fasli to Rs. 2,244-2-9. The village expenses and the expenses of the management seem no doubt very high, but we think it very probable that for many years the village had been managed in an extravagant way. Musammat Najiban had been a prostitute and a dancing girl. It appears that the whole 10 biswa share had been leased out for a term of 14 years from 1878 to 1892 at a rent of Rs. 2,000. This would leave only Rs. 1,000 as the profits of the endowed property. This lease had expired in 1892 and the estate is now probably of greater value, but we do not think that there would be a very large surplus over and above Rs. 1,000 after defraying the pay of the servants and the cost of managing the estate. Under the waqfnama the mutawallis get no remunertion for their services and they would of course be justified in paying for the services of manager of the property. Taking all the evidence into consideration we are clearly of opinion that it can not be said that the main object of the waqfnama was to benefit the mutawallis under the guise of religious and charitable endowment. On the contrary there was a dedication of the entire property to the objects set out in the waqfnama.

The only point that remains is the question of the validity of the objects of the endowment. The parties are Sunnis and it is contended that to endow the property for the purpose of celebrating the *milad* of Ali Murtaza is not good according to Hanafi School, although it is admitted that a like celebration of the *milad* of the Prophet stands on quite a different footing and is valid. The appropriation of Rs. 600 to muharram is also challenged on like grounds. We have been referred to no authority forbidding the celebration of the birth of Ali Murtaza. As to the muharram expenses, the deed provides for the making of the offerings, *i.e.* feeding of the poor on the occasion of the muharram. This is clearly a charitable object, and the keeping of the tazias is a

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pious and religious ceremony not restricted solely to the Shia sect. It may be that the mode of observing the ceremony differs in the case of each sect, but we are satisfied that in the present case the intention of the donor was to continue and perpetuate the religious ceremonies and charitable works in which she had been engaged during her life. The remaining Rs. 200 is appropriated to the death anniversaries (*barsi ammat*) and to the repairs of the Imambara. The latter is admittedly a legitimate object of waqf. The contention of the respondents is that the death anniversaries (*barsi ammat*) should be understood as meaning the death anniversaries of the members of Najiban's family, and we think that this is a reasonable interpretation to be put on the words. We have come to the conclusion, after considering the evidence and the arguments, that the waqfnama was not illusory and there was an intention of creating a substantial waqf for pious and charitable purposes, and we hold that the objects for which the waqf was created were valid. We therefore dismiss this appeal with costs.

Appeal dismissed.

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December 14.

APPELLATE CRIMINAL.

Before Mr. Justice Aikman and Mr. Justice Karamat Husain.

EMPEROR *v.* GUTALI. *

Act No. XLV of 1865 *(Indian Penal Code), section* 302—*Murder—Poisoning by dhatura—Intention—Knowledge.*

Dhatura was administered with the usual object of facilitating robbery, but in such quantity that the person to whom it was given died in the course of a few hours.

Held that the person so administering dhatura was rightly convicted under section 302 of the Indian Penal Code.

THE facts of this case are fully stated in the judgment of the Court.

The Assistant Government Advocate, (Mr. *W. K. Porter*) for the Crown.

AIKMAN and KARAMAT HUSAIN, JJ.—The appellant Gutali, *alias* Ajudhia, has been convicted of an offence punishable under section 302 of the Indian Penal Code and sentenced to transportation for life. He has also been convicted of an offence punishable

* Criminal Appeal No. 832 of 1903, from an order of S. R. Daniels, Sessions Judge of Bijnor, dated the 7th of September 1903.