The plaintiffs appeal, and it is contended that the defendants have made an acknowledgement of their liability, which, under the provisions of section 19 of the Limitation Act, operates to save limitation. This acknowledgement is said to be found in the defendants' account books. Extracts of these account books are on the record. They contain certain entries relating to the rent of the land in suit. The plaintiffs, however, have failed to show that these accounts bear the signature of the defendants or their authorized agent. In this respect they have failed to satisfy us that the entries in question operate as an acknowledgement within the meaning of section 19 of the Limitation Act.

If is further contended that the lease being a registered one, they are entitled to sue within six years under article 116. In a similar case decided by Mr. Justice BURKITT, *Ram Narain* v. *Kamta Singh* (1), it was decided that article 110 was applicable to a suit of this nature. The learned Judge observed:—"I do not understand why when the article (110) apparently plainly provides for the case now before me, I should go out of my way and hold that article 116 applies." We entirely agree with the view of Mr. Justice BURKITT in the case referred to. We are aware that the question has been decided differently elsewhere, but there has been no unanimity of opinion. Under these circumstances we prefer to follow the decision of our own Court. The appeal is dismissed with costs.

Appeal dismissed.

1912

April 13.

Before Mr. Justice Banerji and Mr. Justice Piggott.

AHMAD-UD-DIN (PLAINTIFF) v. ILAHI BAKHSH AND OTHERS (DEFENDANTS).*

Muhammadan Law—Gift of a fixed share of offerings made at a shrine—Validity of—Possession of subject of gift.

Held that a gift of the right to receive a certain share of the offerings which might be made at a particular shrine was a valid gift and not repugnant to the doctrines of the Muhammadan Law. *Amtul Nissa Begam* v. *Mir Nurudin Hussein Khan* (2) distinguished.

This was a suit to recover possession of certain property as the heir of one Maksud-un-nissa. It was resisted mainly on the

* First Appeal No. 200 of 1911, from a decree of Gauri Shankar, Subordinate Judge of Moradabad, dated the 21st of June, 1910.

(1) (1903) I. L. R., 26 All., 138. (2) (1896) I. L. R., 22 Bom., 469.

1912

AHMAD-UD-DIN v. ILAHI BAKHSH.

ground that the property had been validly transferred by Maksud-un-nissa some years before her death to one Ilahi Bakhsh, the principal defendant. The court of first instance dismissed the suit, holding that the deed of gift executed on the 11th of January, 1900, in favour of Ilahi Bakhsh was a valid deed. The plaintiff appealed to the High Court, where the main ground of contention was that a portion of the property the subject of the deed of gift was not according to the Muhammadan law susceptible of such transfer.

The Hon'ble Nawab *Muhammad Abdul Majid* (Maulvi *Ghulam Mujtaba* with him), for the appellant :—

A gift of a right to receive offerings is not valid under the Muhammadan law. The thing must be in existence at the time. A gift of future things is void. Ameer Ali's Muhammadan Law, Vol. I., p. 36. Baillie's Digest, p. 515. The donor cannot give possession of future things, e.g., fruits to be borne by a tree and this could not be gifted; *Amtul Nissa Begam* v. *Mir Nurudin Hussein Khan* (1), *Sarkum Abu Torab Abdul Waheb* v. *Rahaman Buksh* (2). A pension is a kind of property and possession can be given of it—but offerings are different. An "incorporeal thing" could not be the subject-matter of a gift; Fatwa Alamgiri, Chapter IV.

The Hon'ble Pandit *Moti Lal Nehru* (Munshi *Gulzari Lal* with him), for the respondents :—

The rule that the thing must be in existence was a corollary from the rule that possession of the thing gifted must be made over. But it only applied to things capable of being made over. Where the subject of a gift is not capable of being handed over, all that is necessary is that the owner should do all that he can to make it over. A gift of an allowance is valid—the test of the thing being in existence would not be satisfied there, because an allowance does not come into existence till it is due. The reason is that the right to recover it is there. Of course, its payment could be enforced. So here, it was not a right to recover offerings but a right to a share of them when made, that was the subject of the gift; Wilson's Muhammadan Law, section 306, p. 325.

A gift is valid if by any appropriate method of transfer all the control that the subject matter admits of is made over to the donee.

(1) (1896) I. L. R., 22 Bom., 489. (2) (1896) I. L. R., 24 Calc., 88.

The Hon'ble Nawab *Muhammad Abdul Majid* was heard in reply.

BANERJI and PIGGOTT, JJ.—The plaintiff appellant in this case is suing to recover possession, as the heir of one Musammat Maksud-un-nissa, of certain property in the hands of the defendant, and the defence with which we are concerned is that the lady above mentioned had, on the 11th of January, 1900, that is to say, almost eight years prior to her death, transferred the property in suit by a registered deed of gift to the first defendant, Ilahi Bakhsh. In the court below the execution of this deed of the 11th of January, 1900, was put in issue and questions were also raised as to the mental capacity of the lady donor at the time of the gift, and as to the influence exercised over her by the defendant, Ilahi Bakhsh. In the memorandum of appeal now before us the question of the *factum* of execution is again raised. We think it sufficient to say that, after considering the evidence, we find no reason whatever to dissent from the conclusion arrived at by the lower court on this point. There is a mass of evidence as to the execution of this deed, and we do not think that it is in any way adequately rebutted by the inconclusive evidence of the witness Muhammad Husain, who was called as an expert on the question of the thumb impression. We have also examined the evidence of the two witnesses, Asad Ali and Sahib-ud-din, who were called on behalf of the plaintiff to give evidence regarding Musammat Maksud-un-nissa's mental capacity. On this point also, we think, that the evidence of the witnesses for the plaintiff is of very small value and is entirely outweighed by the evidence on the other side.

The main point argued before us relates to a portion only of the gifted property, although we are informed that it is the most important and valuable portion. The deed of the 11th of January, 1900, purports to transfer to Ilahi Bakhsh the right of Maksud-un-nissa to receive a specified share in the offerings made by pilgrims at a certain shrine in the town of Amroha. It is contended before us that such a gift is invalid under Muhammadan law, because it is a gift of a thing not in existence at the time and incapable of that actual seisin which the Muhammadan law requires in order to make a gift valid. We think that the thing gifted in this case must be regarded as being the right of the donor to receive a fixed

1912

AHMAD-UD-DIN v. ILAHI BAKHSH.

share in the offerings after they have been made, and this is an enforceable right in the sense that it is enforceable in law as against other co-sharers in the same. Upon the analogy of a transfer by gift of shares in a trading company, it seems to us that the transaction in this case is a transfer of an enforceable right within the meaning of the principle laid down in Mr. Ameer Ali's Muhammadan Law, volume I, p. 27 of the 3rd edition. It is, moreover, a gift of a thing which had a marketable value at the time when the gift was made, because we find on the record abundant evidence that shares in the right to receive offerings at the shrine have been made the subject of transfer in the past by way of sale as well as by way of gift. In this view, the transfer in question is different from the making of a gift of what a particular tree might bear in a certain year, as referred to in the Fatwa Alamgiri, vol. IV, p. 374, quoted at page 36 of Mr. Ameer Ali's book already referred to. On behalf of the appellant reliance was placed on the case of *Amtul Nissa Begam* v. *Mir Nurudin Hussein Khan* (1). We think that that case is clearly distinguishable from the one now before us. We may add that we are quite satisfied on the evidence that there was in this case an effective transfer from the donor to the donee and that the latter obtained from the date of the deed of gift such possession as the thing transferred was in its nature capable of. This appeal, therefore, fails, and we dismiss it with costs.

Appeal dismissed.

1912
April 18.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.

MAHANT PURAN ATAL (DEFENDANT) v. DARSHAN DAS AND ANOTHER (PLAINTIFFS).*

Civil Procedure Code (1882), *section* 539—*Trust*—"*Public charitable or religious purposes*"—*Trust for benefit chiefly of a particular sect not necessarily not a public trust.*

Where it was clearly established by evidence that certain property had been held for very many generations for the purpose of supporting and maintaining *fakirs*, entertaining visitors and for the giving of alms, and there was no evidence that the property was ever held for any other purpose, it was *held* that the court ought to presume the existence of a charitable or religious trust within the meaning of section 539 of the Code of Civil Procedure, 1882. And the trust was none the less a trust for a public purpose if its main object

*Appeal No. 84 of 1911, under section 10 of the Letters Patent.

(1) (1895) I. L. R., 22 Bom., 489.