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entitled to any share by inheritance from the deceased.
For these reasons we cannot agree with this argument.
We therefore dismiss this appeal with costs.

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Mr. Justice Bennet*

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AMIR AHMAD AND ANOTHER (DEFENDANTS) v. MUHAMMAD
EJAZ HUSAIN AND OTHERS (PLAINTIFFS)*

*Muhammadian law—Wakf—Mussalman Wakf Validating Act
(VI of 1913), section 2(1)—What property can be made a wakf
of—Right and interest of a grove-holder.*

The definition of wakf as given in section 2(1) of the Mussalman Wakf Validating Act, 1913, shows that any property, whether movable or immovable, can be made a wakf of, provided there is a permanent dedication of it. The definition is quite general in its character and would certainly include a wakf of full grove-holder's rights over which the grove-holder has a permanent dominion, although he is not the proprietor of the land; the subject-matter of the wakf need not necessarily be the full proprietary interest in immovable property. The rights of a grove-holder as now recognized by the Tenancy Act are not rights of a temporary character; the grove can be maintained, by replacing all fallen trees by new ones, and in that way the land can retain its character as a grove for ever and be in the possession and enjoyment of the grove-holder and his heirs and transferees. There seems to be nothing even in the strict Muhammadian law against the dedication of such permanent rights which amount to a permanent occupation of the land and full proprietary rights over the trees.

Mr. *Shiva Prasad Sinha*, for the appellants.

Mr. *M. A. Aziz*, for the respondents.

SULAIMAN, C.J., and BENNET, J.:—This is a defendants' appeal arising out of a suit for recovery of possession of certain lands with trees standing upon them, on the allegation that the plaintiffs are mutwallis under a deed of wakf dated the 8th of April, 1916, executed by one Iftikhar Uddin and the defendants are trespassers who have taken a sale deed from the widow of the deceas-

*Second Appeal No. 1054 of 1931, from a decree of Zamirul Islam Khan, Subordinate Judge of Budaun, dated the 25th of June, 1931, reversing a decree of K. C. Dhaun, Munsif of East Budaun, dated the 19th of May, 1930.

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ed Iftikhar Uddin. The first court held that the deceased had only occupancy rights in the land and was not the full proprietor of the site and therefore thought that the wakf of the grove was invalid according to the Muhammadan law. On appeal the lower appellate court has come to the conclusion that although Iftikhar Uddin was originally an occupancy tenant of the site he had acquired the interest of a grove-holder in the grove standing upon the lands, which interest was transferable and was of a permanent character. The court has accordingly held that inasmuch as he had the right to maintain the grove and replace old trees by planting new trees for ever, his rights could be dedicated.

The wakf was made professedly under the Mussalman Wakf Validating Act, Act VI of 1913. We must in second appeal accept the finding that the wakif had acquired the full rights of a grove-holder and was not a mere occupancy tenant of the lands, and further that his rights were transferable. There can be no doubt that the wakif had full dominion over such rights which he could transfer in any way he liked, although the ownership of the site did not vest in him and could not be transferred by him. At the same time he and his heirs had the right to maintain the grove on the land for all time and they were not liable to ejection at the will of the zamindar of the lands.

The question raised in appeal is that the Muhammadan law contemplates that the property which is the subject-matter of wakf should be in the full proprietorship of the wakif and anything short of that is not capable of being made a wakf of. This proposition is too broadly stated. No doubt the essence of a wakf is its permanent character. Any property which is temporarily or for a limited period or without right in the possession of the wakif cannot be validly dedicated because such a dedication can never be of a permanent character. But it does not follow that the subject-matter of the wakf must necessarily be the full proprietary interest in im-

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movable property. On the other hand, although there was at one time some difference of opinion, this Court in *Abu Sayid Khan v. Bakar Ali* (1) held that according to the Mussalman law a wakf of even movable property could be validly constituted. The learned Judges expressly dissented from the view expressed in Calcutta in *Fatima Bibee v. Ariff Ismailjee Bham* (2). There is even authority for the proposition that moneys and shares in Joint Stock Companies and other modern forms of investments might well be the subject-matter of a valid wakf.

All difficulties that might have arisen under the strict Muhammadan law are now removed so far as wakfs governed by the Mussalman Wakf Validating Act is concerned. In section 2(1) "wakf" is defined as "the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable." This definition is practically reproduced in section 2(e) of the Mussalman Wakf Act (Act XLII of 1923) also. It obviously follows that a wakf can be made of movable just as well as of immovable properties and that in fact "any property" can be made wakf of, provided there is "a permanent dedication" of it, and provided further that the object of the wakf is a purpose recognized by the Mussalman law as religious, pious or charitable. We think that the definition of "wakf" as given in this enactment is quite general in its character and would certainly include a wakf of full grove-holder's rights over which the grove-holder has a permanent dominion. The rights of a grove-holder as now recognized by the Tenancy Act are not rights of a temporary character; nor is he liable to ejection arbitrarily. So long as the grove-holder and his heirs and transferees maintain the grove and the land does not lose its character of a grove, even the old trees when they fall down can be replaced by new ones and in that way the land can retain its

(1) (1901) I.L.R., 24 All., 190.

(2) (1881) 9 C.I.R., 66.

character as a grove for ever. There seems to be nothing even in the strict Muhammadan law against the dedication of such permanent rights which amount to a permanent occupation of the land and full proprietary right over the trees that stand on the land and also the right to maintain the grove as such on the land. The position in our opinion has been made still clearer by the definition of the word "wakf" in the Mussalman Wakf Validating Act, which has a very wide and comprehensive scope and must include the rights of a groveholder.

We are, therefore, of the opinion that the plaintiffs are entitled to maintain the suit as trustees under the wakf of 1916. We accordingly uphold the decision of the lower appellate court and dismiss the appeal with costs.

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TESTAMENTARY JURISDICTION

Before Mr. Justice Harries

ADMINISTRATOR-GENERAL (PETITIONER) v.
 A. M. BOWER (OPPOSITE PARTY)*

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Construction of document—Will—Bequest whether of absolute interest or of life interest—Bequest of house with a condition that if legatee sells during her life time she will have life interest in the money, with reversion to her daughters—Condition in restraint of alienation and repugnant to bequest—
—Succession Act (XXXIX of 1925), section 133.

By his will the testator bequeathed his movable property to his wife during her life time, and after her death to his daughters in a specified manner; by another clause of the will he bequeathed his house, and any other immovable property which there might be, to his wife, but added a condition that "should my wife at any time wish to sell or dispose of the house she is hereby authorised to do so at a reasonable price and without detriment or loss to the estate and to invest the whole of the sale proceeds in Government promissory notes, and the interest thereof shall be enjoyed by my wife during her life time", and after her death the interest and the