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dower debt of the deceased wife of the defendant. The minor was made a defendant under the guardianship of his father; but the decree was against the minor, and it was held that the decree which was obtained against his father as his guardian during his minority bound the minor personally. It was stated in the course of the judgment in that case that no cause was shown why this mode of execution, namely, by means of warrant for his arrest should not have been adopted, nor had the appellant (the judgment-debtor in that case) shown any valid reason against it. This decision is no authority for holding in the present case, which is a case of a minor member of a Hindu family having a joint family business, that he is personally liable under a decree obtained on a pronote executed by the managing member of the family for the purposes of the family business. The law as laid down in Mulla's Principles of Hindu Law and Mayne's Hindu Law clearly goes to show that the liability of the minor only extends to his interest in the joint family property. We agree with the view of the law as stated in Mulla's Principles of Hindu Law and Mayne's Hindu Law.

The order of the District Judge is, therefore, set aside and that of the Munsif restored. The appellant is entitled to his costs.

MACPHERSON, J.—I agree.

Appeal allowed.

REVISIONAL CIVIL.

1931.

Jan., 5, 16.

Before Kulwant Sahay and Macpherson, JJ.

SYED ALI HUSSAIN

v.

BIBI AKHTARI BEGUM.*

Charitable and Religious Trusts Act, 1920 *(Act XIV of* 1920), *section* 3—"*Trust*", *meaning and significance of*—

*Civil Revision no. 444 of 1930, against an order of T. Luby, Esq., I.C.S., District Judge of Bhagalpur, dated the 7th May, 1930.

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whether includes Wakf for public purposes of a charitable or religious nature—valid wakf, existence of, not disputed—mutawalli, denial of, that he is "trustee" and the wakf is "trust" within the meaning of Act XIV of 1920—whether such denial ousts the jurisdiction of District Judge to proceed under the Mussalman Wakf Act, 1923 (*Act XLII of* 1923).

Religious endowments created for public purposes of a charitable or religious nature, either by Hindus or by Muhammadans, are not trusts in the strict sense of the term as understood in English law.

The term "trust", however, as used in Charitable and Religious Trusts Act, 1920 (Act XIV of 1920), and in other Acts of the Legislature does not bear the strict English significance, but is used in a wider sense and includes *wakfs* created for public purposes of a charitable or religious nature.

Vidya Varuthi Thirtha Swamigal v. *Balusami Ayyar*(1), explained and distinguished.

Where the existence of a valid wakf was not disputed but the mutawalli only denied that he was a "trustee" and the wakf under his management was a "trust" within the meaning of Act XIV of 1920, *held,* that such a denial did not oust the jurisdiction of the District Judge to proceed under the Mussalman Wakf Act, 1923 (Act XLII of 1923).

Syed Ali Muhammad v. *The Collector of Bhagalpur*(2), distinguished.

The case originally came up for hearing before Macpherson, J., who referred it to a Division Bench.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

Hasan Jan (with him *Syed Hasan*), for the petitioner: Act XIV of 1920 applies to all wakfs created for public purposes of a charitable or religious nature. The word 'trust' as used in the Act is synonymous with 'wakf' as understood under the Muhammadan Law. It has not the strict legal significance of the English Law.

(1) (1921) I. L. R. 44 Mad. 830, P. C.
(2) (1927) 8 Pat. L. T. 233.

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Chapter VII of Ameer Ali's Muhammadan Law [volume I, edition IV] is headed "Hanafi Law on Muhammadan *Wakf or Trust*." This indicates that the learned author treated these terms as synonymous. This word is also used in the same sense in section 92, Code of Civil Procedure, 1908, which undoubtedly applies to Muhammadan wakfs. Furthermore, the opposite party, Akhtari Begum, in a previous litigation, had contended that section 92 of the Code and section 14 of Act XX of 1863 applied to the wakf in question—[*Syed Diljan Ali* v. *Bibi Akhtari Begum*(1)]

The case of *Vidya Varuthi Thirtha Swamigal* v. *Balusami Ayyar*(2) is distinguishable. That case only lays down that Article 134 of the Limitation Act does not apply to a Hindu or a Muhammadan endowment. The decision can be explained by reference to the words "conveyed to a trustee" occurring in that article. As under the Muhammadan Law the wakf property is not *conveyed* to the mutawalli, their Lordships held that the article was not applicable. The principle of that decision must not, therefore, be pushed too far. I rely on *Sammantha Pandara* v. *Sellappa Chetti*(3).

Lastly, I submit that Act XLII of 1923 also applies. The opposite party did not dispute the existence of the wakf but only questioned the applicability of Act XIV of 1920. The case of *Syed Ali Muhammad* v. *The Collector of Bhagalpur*(4) is, therefore, distinguishable.

Khurshad Husnan (with him *Syed Ali Khan*), for the opposite party: A mutawalli is not a 'trustee' and a Muhammadan wakf is not a 'trust'—[*Vidya Varuthi Thirtha Swamigal* v. *Balusami Ayyar*(2)]. If the legislature had intended to make Act XIV of 1920 applicable to a Muhammadan wakf, why was

(1) (1925) I. L. R. 4 Pat. 741.
(2) (1921) I. L. R. 44 Mad. 880, P. C.
(3) (1879) I. L. R. 2 Mad. 175.
(4) (1927) 8 Pat. L. T. 238.

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not that word, instead of 'trust', used in the Act? Furthermore, if the Act was intended to apply, there was no necessity for enacting Act XLII of 1923, which specifically deals with Muhammadan wakfs. Whenever the legislature has intended to make particular enactments applicable to a wakf, it has taken care to use the term "endowment or wakf, etc."—[Act XX of 1863 and Act XLII of 1923]. Act XIV of 1920, at any rate, does not apply to wakfs which are partly for public purposes and partly for private purposes. Certain objects of the wakf in question being exclusively of a private nature, they cannot be dealt with under that Act.

In the present case the opposite party denied that the wakf was for 'public' purposes; such denial ousts the jurisdiction of the District Judge to proceed under Act XLII of 1923—[*Syed Ali Muhammad* v. *The Collector of Bhagalpur*(1)].

Hasan Jan, in reply.

Cur. adv. vult.

Kulwant Sahay, J.—The petitioner filed an application before the District Judge of Bhagalpur under the provisions of section 3 of the Charitable and Religious Trusts Act (Act XIV of 1920), praying that the opposite party Bibi Akhtari Begum and Syed Wajid Ali, who are described as trustees of a public, religious and charitable trust in the town of Bhagalpur known as the Gola Ghat Trust, be directed to furnish the particulars as regards the nature and object of the trust and of the income belonging thereto, and that the accounts of the trust be examined and audited. The learned District Judge by his order, dated the 22nd January, 1930, asked the Collector to inquire whether the trust was one to which Act XIV of 1920 applied, whether Act XLII of 1923 applied to the trust, and if so, why the mutawallis had not as yet

(1) (1927) 8 Pat. L. T. 233.

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furnished necessary statements under the Act, and what was the approximate income of the trust. The inquiry was, under orders of the Collector, made by a Deputy Collector who made a report to the Collector which was in due course forwarded to the District Judge to the effect that the wakf was not a trust within the meaning of the Act of 1920 and that Act XLII of 1923 was also not applicable. It appears that the opposite party appeared before the Collector and also before the District Judge and opposed the application under section 3 of Act XIV of 1920. The learned District Judge thereupon proceeded to make an inquiry under section 5 of the Act in the presence of the opposite party and after hearing both parties and examining the terms of the deed of endowment, dated the 5th of May, 1874, under which the trust was created, he came to the conclusion that although the petitioner had an interest in the trust so as to entitle him to make the application, yet the wakf in question was not a trust, and that Act XIV of 1920 did not apply. He further held that as the opposite parties were not prepared to admit that the wakf in question was one to which Act XLII of 1923 applied he had no power to decide whether the wakf was one within the meaning of the Act of 1923. He has accordingly dismissed the petition. The petitioner has therefore presented the present application for revision of the order of the District Judge.

The only question for consideration is whether the wakf in question is one to which the Charitable and Religious Trusts Act of 1920 applies. It has been found by the learned District Judge and that finding has not been challenged before us that the bulk of the income was to be devoted to public purposes of a charitable or religious nature. Under the terms of the deed of endowment the income derived from the estate was to be devoted to the defraying of expenses in connection with certain mosques, khankah and

imambara, the entertaining of travellers and fakirs, relief to the poor, and to paying certain allowances to persons named in the deed. Two mutawallis and an assistant called *naib* were appointed to manage the properties. The original mutawallis were (1) Mehdi Husain, a foster son of the sister of Mir Imam Bux, the founder of the endowment and (2) one Tasaduk Husain, and the *naib* was Amjad Ali, son of Mir Imam Bux. Wajid Ali, who is one of the opposite parties in the present proceeding, is the son of Diljan, another son of Imam Bux, and Akhtari Begum, the other opposite party, is the grand-daughter of the son of a sister of Imam Bux, and these two persons are the present mutawallis. It is not denied that by the deed of 1874 a wakf was created and that the present mutawallis are the mutawallis. What is denied is that the deed created a trust so as to attract the operation of Act XIV of 1920. This Act was intended to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a Court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts. Section 3 of the Act authorises any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature to apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, to obtain an order directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and directing that the accounts of the trust shall be examined and audited

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It is contended on behalf of the opposite party and this contention has been accepted by the learned District Judge that the present wakf is not a trust within the meaning of the Act. It has been held in several cases that religious endowments created for public purposes of a charitable or religious nature either by Hindus or by Muhammadans are not trusts in the strict sense of the term as understood in English law. The term 'trust', however, is used in Act XIV of 1920 and in other Acts of the Legislature, and the term so used does not bear the strict English significance and is indiscriminately used to signify endowments for religious and charitable purposes. As was pointed out by the Privy Council in *Vidya Varuthi Thirtha Swamigal* v. *Balusami Ayyar*(1)—a decision upon which the learned District Judge has relied—a mutawalli is not a trustee in the technical sense as the property belonging to the wakf is not vested in him. The Government had prior to 1863 assumed control of all public endowments and benefactions, Hindu as well as Muhammadan, and placed them under the charge of the respective Boards of Revenue. In 1863, as was pointed out by the Privy Council in this case, the Government considered it expedient to divest itself of the charge and control of these institutions and to place them under the management of their own respective creeds, and it was with this object that Act XX of 1863 was enacted, and a system of committees was devised to whom were transferred the powers vested in Government for the appointment of "managers, trustees and superintendents", and rules were enacted to ensure proper management and to empower the superior Court in the District to take cognizance of allegations of misfeasance against the managing authority. Section 14 of the Act uses the term 'trust' in respect of charitable endowments, and speaks of the person in charge as "Trustee, Manager or

(1) (1921) I. L. R. 44 Mad. 830, P. C.

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Superintendent of the mosque, temple or religious establishment." Similarly, section 92 of the Code of Civil Procedure provides for suits in cases of alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature. It is conceded that this section is applicable to Muhammadan wakfs and to the wakf with which we are dealing in the present case. The term 'trust', therefore, as used in section 3 of Act XIV of 1920, with which we are directly concerned here, must be taken in a wider sense than the strict meaning of it under the English law and must be deemed to include wakfs created for public purposes of a charitable or religious nature. The learned District Judge has relied upon the decision of the Privy Council in the case of *Vidya Varuthi Thirtha Swamigal* v. *Balusami Ayyar*(1) (just referred to) and upon the authority of that ruling he has held that a mutawalli is not a trustee. That was a case in which the question arose whether Article 134 of the Indian Limitation Act applied in respect of a Hindu endowment of the nature of a Math, and it was held that neither under the Hindu law nor under the Muhammadan system is any property conveyed to a shebait or a mutawalli in the case of a dedication; nor is any property vested in him; and that whatever property he holds for the idol or the institution, he holds as manager with certain beneficial interest regulated by custom and usage: the shebait or the mutawalli is not a "trustee" as understood in the English system; and that Article 134 did not apply to the case where the head of a Math gave a permanent lease of property which had been granted for the general purposes of the Math and no necessity for the alienation was established. The decision in that case is no authority for holding that the wakf in question is not a trust within the meaning of the term as used in section 3 of Act XIV of 1920. Mr. Ameer Ali in his well-known book of Muhammadan Law has used the term "trust" in

(1) (1921) I. L. R. 44 Mad. 830, P. C.

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respect of Muhammadan wakfs, and it is in the wider sense of the term "trust", and not in its strict sense as understood in English law, that the word is used by the Legislature in the Charitable and Religious Trusts Act.

It is remarkable that in a suit instituted by Diljan, the father of Syed Wajid Ali, one of the opposite parties in the present case, against Akhtari Begum, the other opposite party in the present case, for a declaration that as the heir of the founder of the trust he was entitled to dismiss the defendant from the post of mutawalli on the ground of misappropriation, etc., the defendant, viz., Akhtari Begum, raised the plea that the suit which was instituted in the Court of the Subordinate Judge could not be entertained by the Subordinate Judge and that under the provisions of section 14 of the Religious Endowments Act (XX of 1863), the proper Court for presentation was the principal Civil Court of the district. That case(1) came up to this Court and it was held that in a sense the suit was for the removal of the trustee and for the administration of the trust and that consequently the suit fell within the purview of section 14 of the Religious Endowments Act. The view then taken in this Court lends support to the contention of the petitioner that the wakf in question is a trust and section 3 of Act XIV of 1920 is applicable.

I would, therefore, hold that the learned District Judge had jurisdiction to entertain the application and to proceed in accordance with the provisions of section 5 of the Act. Under that section if the Court, on receipt of the petition under section 3 and after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion that the trust to which the petition relates, is a trust to which the Act applies and that the petitioner is interested therein, it shall fix a date for the hearing of the

(1) *Syed Diljan Ali v. Bibi Akhtari Begum*, (1925) I. L. R. 4 Pat. 741.

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petition and shall cause a copy thereof together with a notice of the date fixed to be served upon the trustee and upon any other person to whom in its opinion notice of the petition should be given. In the present case the opposite parties appeared before the District Judge without notice being given to them under sub-section (*1*) of section 5. It is therefore not necessary to give them further notice. Under sub-section (*3*) of section 5, however, if any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the Court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided. The present decision that the wakf in question is a trust within the meaning of section 3 of the Act. must be subject to the right of the opposite party to have the question adjudicated in a regular suit contemplated by sub-section (*3*). The District Judge will, therefore, proceed to give notice to the opposite parties as contemplated by section 5, and if the opposite parties undertake to institute a suit within three months for the declaration contemplated in sub-rule (*3*) it will be open to him to order a stay of the proceedings for three months, and if the suit is actually instituted, to continue the stay until the final decision of the suit.

It may be noted that the learned District Judge was of opinion that as the opposite parties denied the existence of the wakf, he had no power to call for accounts from the mutawalli under Act XLII of 1923. Here also the learned District Judge seems to be under a misapprehension. It is nowhere denied by the opposite parties that there is a valid wakf. What was denied was that the opposite parties were trustees and the wakf was a trust within the meaning

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of the term as used in section 3 of Act XIV of 1920. The existence of the wakf being admitted, it was open to the District Judge to proceed under Act XLII of 1923. What was held by this Court in *Syed Ali Muhammad* v. *The Collector of Bhagalpur*(1) was that if it is denied that any property is wakf property, then the District Judge has no jurisdiction to proceed under Act XLII of 1923. Here the fact of the property being wakf property is admitted and upon that admission the learned District Judge was clearly entitled to proceed under Act XLII of 1923.

The result is that this application must be allowed, the order of the District Judge must be set aside and the case remanded to him for disposal according to law. The petitioner is entitled to his costs: hearing fee three gold mohurs.

MACPHERSON, J.—I agree.

Order set aside.

FULL BENCH.

Before Jwala Prasad, Kulwant Sahay and Wort, JJ.

NIRSAN SINGH

v.

KISHUNI SINGH.*

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Jan. 19.

Ex parte decree—set aside in a subsequent suit based on fraud—effect of setting aside—question depends on the pleadings, issues and actual decision in the subsequent suit.

The question as to whether, when an ex parte decree in a subsequent suit is set aside, the original suit in which that decree was obtained is revived or not depends upon the pleadings, the issues and the actual decision in the subsequent suit.

* Civil Revision no. 368 of 1929, from an order of Babu Brij Bilas Prasad, Munsif, 1st Court, Begusarai, dated the 27th May, 1929.

(1) (1927) 8 Pat. L. T. 233.