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and that the various ryots affixed their signatures to this *dowl* in testimony of their admission of the correctness of the jumma thereon recited as having been imposed on them. The *dowl* was not in itself a contract. It was no more a contract than are chittas or measurement papers, or what are called *suruthalic* papers, which are constantly signed by ryots, monduls, and other persons in testimony of their concurrence. It appears to us that there is nothing in the law to require a *dowl fehrist* to be either registered or stamped, nor, on the other hand, is it a document which could be regarded as binding or conclusive evidence of a contract. It is a matter of observation of course, and throws the burthen of explanation upon any ryot who having put his signature to it, afterwards disputes the facts which it recites. It may fairly be asked how came you to sign this document if you were not a consenting party to it. It seems to us, therefore, that the Judge was wrong in saying that this document was inadmissible, and that he ought to have taken it into consideration together with the other evidence. The case will be remanded to the lower Appellate Court accordingly.

Case remanded.

PRIVY COUNCIL.

P. C.* 1877 *June* 27, 28.

ASHGAR ALI AND OTHERS (PLAINTIFFS) *v.* DELROOS BANOO BEGUM (DEFENDANT.)

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Purdah Woman—Execution of Documents.

A Court, when dealing with the disposition of her property by a *purdah* woman, ought to be satisfied that the transaction was explained to her, and that she knew what she was doing; especially in a case where, without legal assistance, for no consideration, and without any equivalent, she has executed a document, written in a language she does not understand, which deprives her of all her property. In the case of a purdahnashin woman, who has no legal assistance, the ordinary presumption, that if a person of competent capacity signs a deed he understands the instrument to which he has affixed his name, does not arise.

* *Present*:—SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.

The decision of the High Court that the endowment created by the document was not of such a public character as would sustain a suit under Act XX of 1863, not dissented from.

THIS was an appeal from a decision of a Division Bench of the Calcutta High Court, dated the 20th April 1875, reversing a decision of the Judge of the 24-Pergannas, dated the 21st March 1874, and dismissing the suit instituted by the appellants in the latter Court.

The facts of the case and the questions therein raised for determination are set forth in the report of the case in the Court below (1).

At the hearing of the appeal Mr. *Leith*, Q.C., and Mr. *Doyne* appeared for the appellants, and Mr. *Cowie*, Q.C., and Mr. *J. D. Mayne* for the respondent.

Their LORDSHIPS' judgment, affirming the decision of the High Court, was delivered by

SIR M. E. SMITH.—This suit was instituted under Act XX of 1863, against the respondent, as the *mutawalli* of a Mahomedan religious endowment, for malversation in wasting and misappropriating the estate. The plaintiffs (appellants) sought to obtain an account, the removal of the respondent from the office of *mutawalli*, and the appointment of two of the plaintiffs, who are her nephews and next heirs, in her place. The allegation in the plaint, which is the foundation of the plaintiffs' case, is as follows: "That the defendant has, by a registered *waqfnamah* of the 25th Zikad, 1268, Hijri," answering to the 10th September, 1852, "endowed the entire estate held and owned by her to the Imambara for religious purposes." The Judge of the Court of the 24-Pergannas made a decree in favour of the plaintiffs, establishing the validity of the endowment, and granting the relief prayed. This decree was reversed by the High Court, on the ground that the allegation in the plaint, which has just been cited, was not established. It was also held that the endowment, if established, was not of such a public nature as would sustain a suit under Act XX of 1863.

(1) 15 B. L. R., 167.

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The respondent inherited a large estate from her mother, Nigarara Begum, having survived two brothers, who died in their mother's lifetime. Two of the plaintiffs are the sons of one of these brothers; the other three plaintiffs are persons in no way connected with the family, but who claim the benefit of the endowment. The mother, Nigarara, died in 1850; and about two years afterwards the *tauliutnamah* relied on was executed. The family are Mahomedans of the Sheah sect. The *tauliutnamah* is dated the 10th September, 1852, and the material parts of it are these: "I make a trustworthy declaration and "a legal acknowledgment, and give in writing to the effect that "I consider it indispensable and incumbent upon me to continue "and perpetuate the ceremonies for pious uses of such descrip- "tion as '*fatiha*' (offering prayers for the dead) '*hazrat*,' on "whom be the benedictions, &c., which is the fixed and settled "usage of my family. I have no lawful children or grand- "children who may be my legal heirs, therefore *talooka* of Chit- "pore," describing certain property, "and all the compensation "money, &c., the price of which at present is estimated at one "lakh of Rs. (1,00,000) which I hold in my possession, without "any one having any share therein, and without there being any "other co-partner, as my legal hereditary right, having received "the same from my ancestors in accordance with what is laid down "in separate documents, the same for special pious purposes I "have made *waqf* in perpetuity, with all inherent adventitious "rights and interests, large and small, lying therein attached "thereto, and arising therefrom, with all appurtenances particu- "larly of pious uses. As long as I live, the wife of my brother "of blessed memory, Mussummat Jigri Khanum, the daughter "of the late Moonshi Hidayat Ali, shall remain *mutawalli* of "the afore-mentioned *waqf*. If I, the endower, die before the "aforesaid lady, then the affairs connected with *tauliut* shall, in "a perfect form, revert to the afore-mentioned lady. Should the "afore-mentioned lady die before me, I, the bequeather, alone "will act as a *mutawalli* of the *waqf* endowed property. The "one of us two who may survive the other shall, either at the "time of death or previous to it, appoint whomsoever she finds "most worthy and befitting as a trustee (*mutawalli*) to the en- "dowment." Then the deed goes on, "The specification of the

"expenses is this:—All the income derived from the afore-men-
"tioned endowment has, after the payment of the Government
"revenue, been divided into 28 parts. Of these, 15 parts are to
"be applied to the expenses of the *fatiha* of the Lord of the
"Universe, the last of the prophets (Mahomed) and the Imams,
"the blessing and peace of God be with them all, and the expenses
"of the ten days of Mohurrum and all the holy days, the repairs
"of Imambari and tombs; seven parts thereof shall be received
"by all the *amlahs* and servants, whose names are inserted at
"the foot of this or other documents bearing the seal and signa-
"ture of me, the declarant, which they may have in their pos-
"session, some from generation to generation, and others as
"long as they retain the service, as detailed in separate docu-
"ments; and six parts thereof will be received by us, the
"*mutawallis*, in equal shares." Now, the effect of this instrument is to devote all the property which this lady possessed to religious uses, to destroy her rights as proprietor, and to constitute her one only of the *mutawallis* for the management of the endowment, giving her three-twenty-eighths parts of the income of the whole property only, for her management. The deed was written in Persian, a language the Begum did not understand. Her case is, that although she executed the instrument, its contents were not explained to her, and that she was ignorant that its effect would be that which has just been described.

Their Lordships are of opinion, agreeing with the High Court, that it is not established that the Begum understood the full import and effect of the document she executed. It is incumbent on the Court, when dealing with the disposition of her property by a *purdahnashin* woman, to be satisfied that the transaction was explained to her, and that she knew what she was doing; and especially so in a case like the present, where, for no consideration, and without any equivalent, this lady has executed a document which deprives her of all her property.

A mutation of names from her own alone, to her own and Jigri Khanum's as *mutawallis* was effected; but the *mooktearnamah* was not proved. Undoubtedly, also, the estates were afterwards described in several documents as *waqf mehals*, and she herself was described in many transactions relating to the

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estates as *mutawalli*. Receipts for rents were given first in her own and Jigri's name as *mutawallis*, and, after Jigri's death, which happened about two years after the deed, in her own name as *mutawalli*. *Pottahs* were granted in which she is so described. Suits were also brought in which she is plaintiff with a similar description. On the other hand, for more than twenty years, notwithstanding she was nominally described in the transactions to which I have referred as *mutawalli*, she actually dealt with the property as her own. She granted *maurusi* leases, sold parts, and mortgaged other parts, and in every way treated the property as her own, and as if it were not subject to a religious trust. Those acts, which extended over the whole time from the execution of the deed to the commencement of the suit, are very strong to show her own consciousness, that while she was described as *mutawalli* she really believed herself to be the proprietor and owner of the property, and had no idea that she had reduced herself to the state of a mere manager of it, entitled only to three-twenty-eighths parts of the income for her maintenance.

Her own evidence, with reference to the deed, is given in an apparently candid manner. She admits its execution, and that she intended to create some trust for religious purposes; but she denies that she knew what was the full extent and import of the deed. She says: "I executed the *tauliutnamah* when I was "residing in this house. I have been, prior to the execution of "the *tauliutnamah*, residing and am still residing in this house "since my mother's death. When my mother died I was then "at Moorshedabad. A year after my mother's death I came "here, but on the way my nephews Nawab Ashgar Ali and "Nawab Ahmed Ali, the plaintiffs in this suit, stopped my "boat. I was detained for twenty days near Roushenabad, and "then I applied to the Magistrate and got my boat released. "After this I came here. Two or three years after I came "here, I executed this *tauliutnamah*. I myself do not know how "to read and write. I told Ali Zamir, my servant, to draw out "a will, or some such writing, as will after my death be able to "keep up the religious ceremonies of my mother. Then he "brought to me a writing which he read to me." She says in

another place that it was read in Persian: "He also told me "that, after my death, whoever will be the *mutawalli* will perpe- "tuate the works (*i.e.*, the religious affairs) of my mother. I "do not understand Persian." Then there is a note by the Commissioner. "A portion of the document marked 'A' was "read to the witness, and she says, I do not understand it. "That portion being translated into Urdu by Abdool Aziz, she "says: I now understand it. My object in making the *tauliut-* "*namah* was not what is stated in the part marked A." This part of the deed is not identified, but no doubt it was a material part. Then there is this question, "Whether for the purpose "of perpetuating the ceremonies observed in your family from "ancient time, you executed the *tauliutnamah?* Answer, "Moonshi Ali Zamen brought to me a writing saying that I "shall have absolute power over the properties during my life- "time." If the deed was thus represented to her, then it did not carry out her intentions. It was a deed which not only did not carry them into effect, but was entirely and absolutely opposed to them. She intended and desired to retain the estate for her own life, and to create an endowment by way of testamentary disposition of it after her death. The person who prepared the *tauliutnamah* may have been aware that she could not effect her purpose by such a disposition, and having prepared this deed may have led her to suppose that it did carry out her purpose, without explaining to her that it would deprive her of her property and leave her in the state of a mere manager of it, liable to be deprived of that management if she broke any of the trusts of the deed. It is impossible to suppose that she could have been conscious of the tenor and effect of the deed, when immediately after, and ever after, she wholly disregarded the trusts of it by the mode in which she dealt with the property.

There are eight witnesses to the deed; one only has been called, and he does not prove that the deed was read over and explained. This witness does not say that he was present when it was read over to her in Persian. Undoubtedly, if a person of competent capacity signs a deed, it is to be presumed that he understood the instrument to which he has affixed his name;

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but in the case of a *purdahnashin* woman, who had, as in this case, no legal assistance, the ordinary presumption does not arise; and it is incumbent upon the Court to be satisfied, as a matter of fact, that she really did understand the instrument to which she has put her name. This seems to have been the view of the High Court, which it has expressed in two passages of the judgment. The Court says: "It is clear that she had no "professional assistance at the time. Ali Zamen is described "as an old and trustworthy servant, but not a lawyer,"—(it may be observed, the respondent says that this is the only deed that he ever drew as far as she knows,)—"and none of the "witnesses examined for the plaintiffs prove that the Begum, "in creating the *waqf*, was in any way cognizant of the effect "of her act. It has been generally held in this country that "*purdahnashin* ladies have a claim to special consideration, "particularly in cases where they deny on oath an effectual "knowledge of documents which they are said to have made." And again, the Court says: "In this case we have an illiterate "and prejudiced woman, with no professional assistance, exe- "cuting a deed written in a language which she did not under- "stand, and which, as she swears, was not explained to her, by "which she completely divests herself of the whole of a large "property, and then immediately sets to work to do a series "of acts which would have the effect of turning her out of the "*mutawalishíp* she had created for herself, and of throwing her "upon the world absolutely penniless. Before we come to such "a conclusion we ought to have very distinct proof that the "real purport of the *waqf* deed was properly explained to "Dilrus Banoo Begum, and that she knew what she was about, "and that it is not too much to say that no such proof has been "attempted to be given by the plaintiffs."

Their Lordships having come to this conclusion upon the main facts of the case, it is not necessary for them to determine the other point which the High Court decided,—namely, that this endowment was not of such a public character as would sustain a suit under Act XX of 1863, but their Lordships desire to say that they see no reason for disagreeing with that part of the judgment.

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In the result, their Lordships will humbly advise Her Majesty to affirm the judgment of the High Court, and to dismiss this appeal, with costs.

Appeal dismissed.

Agent for the appellants: Mr. *T. L. Wilson.*

Agents for the respondent: Messrs. *Wrentmore and Swinhoe.*

APPELLATE CIVIL.

Before Mr. Justice Markby and Mr. Justice Prinsep.

KRISHNA MOHUN BOSE (DEFENDANT) *v.* OKHILMONI DOSSEE (PLAINTIFF).*

1877 *Dec.* 8.

Maintenance, Suit for—Limitation—Act XIV of 1859, *s.* 1, *cl.* 13—*Act IX of* 1871, *sch. II, art.* 128.

A claim once barred cannot be revived by a change in the law of limitation. This principle applies as well to a claim for arrears of maintenance or any other claims, as to one for possession of land.

THIS suit was instituted by the widow of one Gocul Chunder Bose, against her late husband's brother, for maintenance. Gocul Chunder Bose died in Magh, 1251 B. S. (1845), and the lower Court found that the plaintiff had neither received nor made any claim for maintenance from that date till the year 1278 B. S. (1871). The present suit was filed on the 17th September 1873. The Court of first instance gave the plaintiff a decree, finding that, under Act IX of 1871, the law of limitation in force at the time of filing the plaint, the claim was not barred. The lower Appellate Court upheld this decision, and the defendant preferred a special appeal to the High Court.

Baboo *Chunder Madhab Ghose* and Baboo *Bhoirab Chunder Banerjee* for the appellant.—The suit is barred by limitation.

* Special Appeal, No. 228 of 1876, against the decree of W. Macpherson, Esq., Officiating Judge of Zilla Cuttack, dated the 9th September 1875, affirming the decree of W. Wright, Esq., Subordinate Judge of that district, dated the 24th September 1874.